



U.S. Office of Government Ethics
Program Review Division

Ethics Program Review

Federal Labor Relations Authority

Report No. 11-026
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Results in Brief

The United States Office of Government Ethics (OGE) conducted a review of the Federal Labor Relations Authority's (FLRA) ethics program in February 2011. The results of the review indicated that the FLRA's ethics program is effectively administered and generally in compliance with statutory and regulatory requirements in the areas of financial disclosure, training, outside activities, oversight, and general program administration. However, OGE identified significant deficiencies in the areas of confidential financial disclosure and annual training. These deficiencies were easily correctable and the Designated Agency Ethics Official (DAEO) has already taken definitive action to bring FLRA's ethics program into full compliance with applicable requirements.

Highlights

- The DAEO includes ethics-related information and guidance in FLRA's weekly newsletter.
- The DAEO personally provides initial ethics orientation to new employees.
- The DAEO personally determines each new employee's financial disclosure report filing status.
- The DAEO has established a formal memorandum of understanding with FLRA's Office of the Inspector General.

Concerns

- Not all SGEs filed confidential financial disclosure reports annually, as required.
- There was no way to determine if the training the majority of covered employees received in 2010 complied with applicable requirements.
- The FLRA has not appointed an Alternate DAEO.

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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 FLRA's ethics program, OGE examined a variety of documents provided by ethics officials; other documents that FLRA forwarded to OGE, including the annual questionnaire; prior program review reports, and a sample of the FLRA's public and confidential financial disclosure reports and advice and counsel provided to FLRA's employees. In addition, members of OGE's Program Review Division met with the Inspector General (IG) to obtain additional information about the strengths and weaknesses of FLRA's ethics program.

Program Administration

The FLRA's Solicitor serves as the Designated Agency Ethics Official (DAEO) and is the only ethics official within FLRA. The DAEO has been able to provide all required ethics services and has exceeded many of our requirements; however, OGE is concerned that the ethics program would be greatly affected by the DAEO's absence, whether planned or unplanned. Considering the importance of continuity planning for the ethics program and the imperative that employees always have access to knowledgeable ethics officials, OGE suggests that FLRA designate an Alternate DAEO to both comply with regulatory requirements and help ensure the viability of the ethics program in the absence of the DAEO.

Recommendation

- Appoint an Alternate DAEO.

Financial Disclosure

Public and confidential financial disclosure reports were generally filed, reviewed, and certified timely; they also received thorough and timely review and certification. FLRA's procedures were comprehensive and, with one exception, appear to be effective. The exception involves the administration of the confidential financial disclosure system for FLRA's special Government employees (SGE).

In 2010, the DAEO mistakenly told the FLRA's nine SGEs that they were not required to file new entrant reports annually. The DAEO instructed SGEs that they were only required to file reports upon their appointment or reappointment, even if they were appointed to multiple-year terms. All nine SGEs filed new entrant reports in 2009. Notwithstanding the DAEO's guidance,

six of FLRA's nine SGEs filed annual reports in 2010. The OGE review team clarified that SGEs are required to file new entrant reports annually. The DAEO took immediate action to obtain reports from FLRA's three SGEs who did not file in 2010. The DAEO agreed to ensure that SGEs file new entrant reports annually. Further, the DAEO stated she will obtain signed statements from the three SGEs who did not file in 2010 that they did not act in an official capacity in any matter in which they had a personal financial interest during the period for which there was no report. All outstanding reports and signed statements were collected shortly after the conclusion of the OGE's fieldwork. OGE is satisfied that this action appropriately addresses the lapse in filing and that going forward, the problem will not be repeated. OGE also suggests that the DAEO establish a date on which all SGE reports will be due, rather than collect reports on the individual SGE appointment or anniversary dates. Establishing a set date will help ease administrative burden and reduce the chances of missed filings.

Recommendations

- Amend written procedures for administering financial disclosure systems to ensure that all SGE's understand that they are required to file new entrant reports each year.

Suggestion

- Establish a single date on which all SGE reports will be due.

OGE noted that the DAEO personally meets with and determines the filing status of each new employee. OGE recognizes that this practice may be difficult for many agencies to implement; however, OGE highlights this practice as it is a very effective technique for ensuring the timely filing of new entrant financial disclosure reports.

Education & Training

Annual training for most covered employees likely did not meet regulatory requirements.¹ FLRA's DAEO provided covered employees with a link to the training modules located on OGE's website. Employees were instructed to complete at least one of the modules and then confirm via email that they had completed their training. Most of the modules are designed to address specific topics such as gifts, conflicts of interest, and misuse of position. Modules on how to complete a public or confidential financial disclosure report are also available. Since most of the modules are designed to address only specific topics and not the broader content

¹ Annual training for public filers must be verbal and must include, at least, a review of the General Principles of Conduct, the Standards of Ethical Conduct for Employees of the Executive Branch, any agency supplemental standards, the Federal conflict of interest statutes, and contact information for ethics officials. Annual training for confidential filers must be provided verbally at least once every three years. Written training can be provided to confidential filers in the intervening years.

requirements for annual training, most do not qualify as annual training. FLRA's SGEs were directed to complete OGE's training module specifically designed for SGEs. That module would meet the requirements for annual training. The DAEO is following up with filers to ensure they receive follow-up training that meets annual training requirements for 2010. While OGE views providing incomplete training as a significant issue, we again acknowledge that the DAEO is taking action to resolve the matter.

Recommendations

- Ensure that 2010 annual ethics training is provided to all covered employees prior to OGE's 6-month follow up.
- Develop a plan to ensure future annual training meets applicable requirements.

FLRA appears to be meeting all requirements for initial ethics orientation. The Human Resources Division notifies the DAEO when new employees enter on duty. The DAEO meets with each new employee within a few days of their arrival and provides them with the required materials.

Advice & Counsel

FLRA has no formal written policies or procedures for administering the advice and counsel element of its ethics program. However, the availability of advice and counseling services is well advertised within the agency during ethics training and in the agency's weekly newsletter. OGE examined a sample of advice and counseling provided to employees. The sample included opinions regarding gifts, invitations, and fundraising. The opinions were all provided either the day they were requested or the following business day. All opinions appeared to be responsive to the question asked and in accordance with applicable statutes and regulations. Once issued, opinions are stored in electronic directories and, if applicable, in financial disclosure report filers' individual files for future reference.

OGE also examined some of the general advice/guidance the DAEO provided to all employees via the agency's weekly newsletter. The articles addressed a wide variety of issues. OGE strongly endorses this type of assistance because it raises the level of awareness of the ethics program, encourages employees to seek advice when necessary, and helps to create an ethical culture.

Agency-Specific Ethics Rules

FLRA recently issued, with OGE's concurrence, an agency supplemental regulation at 5 C.F.R. Part 5901. The regulation requires that any FLRA employee, other than an SGE, obtain prior written approval from FLRA's DAEO or Alternate DAEO before engaging in any outside employment, unless that activity has been appropriately exempted from the requirement. The rule became effective on January 19, 2011. Since the requirement for prior approval did not become effective until just before the review of FLRA's ethics program, it was not possible to

evaluate this element of FLRA's ethics program. OGE will consult with FLRA during the 6-month follow to this review to assess this part of its ethics program. At that time, OGE will examine the processes and procedure in place for administering the prior approval requirement and look for evidence of compliance.

Ethics Agreements

FLRA had two ethics agreements in place at the time of the ethics program review. Actions necessary to comply with relevant requirements were taken.

Enforcement

There have been no recent reported violations of the criminal conflict of interest statutes or standards of conduct regulations. There appears to be an effective working relationship between the DAEO and the Inspector General. A memorandum of understanding between the two offices clearly establishes mutual responsibilities. OGE strongly encourages this type of formal coordination and documentation, especially in small agencies like FLRA where any change in staff can lead to problems in continuity of the ethics program and its functions.

1353 Travel Acceptances

The required semi-annual reports of payments accepted from non-Federal sources were submitted to OGE either by or shortly after the filing due date.

Agency Comments

The FLRA was provided with a draft of this report for comment. The agency responded that no comment was necessary.