



U.S. Office of Government Ethics
Program Review Division

Ethics Program Review

Commodity Futures Trading Commission

Report No.
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Results in Brief

The United States Office of Government Ethics (OGE) conducted a review of the ethics program at the Commodity Futures Trading Commission (CFTC) intermittently between October and November 2011. The results of the review found that while CFTC's ethics program has many strong program elements, improvements are needed within certain areas of the program to enable CFTC to comply more fully with ethics regulatory requirements. OGE believes that when these issues are addressed the ethics program will again be in full compliance.

Highlights

- In-person, post-employment briefings are provided by the Ethics Office to those departing from Federal service as part of CFTC's employee check-out process.
- CFTC requires non-filers to receive annual ethics training.
- CFTC maintains an intranet ethics program Web site with comprehensive ethics tools for all employees. OGE found the ethics coverage on the Web site to be very useful and informative.

Concerns

- The Ethics Office must continue to collect and certify the financial disclosure reports filed in 2011. As part of this action, the public reports filed by the two public filers on detail to another agency must also be collected and certified. The Ethics Office must also determine whether the late filing fee should be applied.
- The Ethics Office should establish a formal written memorandum of understanding with the Office of Human Resources and Support Services to provide a clear understanding of what role each office plays in coordinating with one another.
- The Ethics Office must develop oversight mechanisms to monitor and track completion of initial ethics orientation.

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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 CFTC's ethics program, OGE examined a variety of documents provided by ethics officials; other documents that CFTC forwarded to OGE, including the annual questionnaire; prior program review reports, and a sample of CFTC's public and confidential financial disclosure reports and advice and counsel provided to CFTC employees. In addition, members of OGE's Program Review Division met with CFTC ethics officials to obtain additional information about the strengths and weaknesses of CFTC's ethics program, seek clarification on issues that arose through the documentation analysis, and verify data collected.

Program Administration

CFTC's ethics program is organizationally located within the Office of General Counsel (OGC), hereafter referred to as the Ethics Office. The General Counsel serves as the agency's Designated Agency Ethics Official (DAEO) and has oversight responsibility for the ethics program. However, the day-to-day management of the program is carried out under the direction of the Counsel who serves as the agency's Alternate DAEO (ADAEO). Assisting the ADAEO is a paralegal specialist.

The Ethics Office is responsible for carrying out the majority of the ethics functions, including providing and coordinating counseling and advice services agency-wide, implementing the requirements for annual ethics training, and administering and monitoring the CFTC's public and confidential financial disclosure systems. However, other offices are utilized to handle other aspects of the ethics program. The Office of Human Resources and Support Services implements the requirements for initial ethics orientation training. The Office of Data and Technology developed CFTC's electronic filing system of financial disclosure reports and continues to provide technical support for the application.

The ethics program also relies on the cooperative efforts of three Regional Deputy Ethics Officers, located in CFTC's three regional offices, who serve as conduits to the Ethics Office when ethics-related issues are raised by employees within their respective regions.

Supplemental Standards of Conduct Regulation

CFTC's supplement to the standards of conduct regulation at 5 CFR part 5101 prohibits employees from engaging in business or financial transactions, or hold any business or financial interests, prohibited by the Commodity Exchange Act (CEA), as set forth in 17 CFR §140.735-2.

The supplemental also requires employees to obtain prior approval, before engaging in outside employment, from his or her division or office head and the Executive Director, who may seek the concurrence of the Ethics Office. For those employees who wish to engage in any outside employment, requests for approval must be submitted using CFTC's Request for Approval of Outside Employment form. During the review, OGE examined 16 outside activity requests submitted in 2011 and found each of them to have appropriate supervisory and Ethics Office approval and concurrence.

OGE notes that CFTC employees are also required to comply with the Regulation Concerning Conduct of Members and Employees and Former Members and Employees of the Commission found at 17 CFR part 140, which implements CFTC's separate statutory authority over conflict of interest in the CEA. This regulation is separate and apart from, and in addition to, OGE's standards of conduct, at 5 CFR part 2635, and the supplemental regulation issued jointly by CFTC and OGE.

Financial Disclosure

OGE recognizes its examination of CFTC's financial disclosure system occurred during a time of transition for the Ethics Office. In 2010, the Ethics Office, in conjunction with the Office of Data and Technology, developed in-house an e-filing system known as the "Ethics Management and Tracking System" (EMAT) to help manage OGE's financial disclosure filing requirements for both its public and confidential filers. The EMAT was officially launched for use by all CFTC filers during the 2011 filing cycle. OGE's review occurred during the transition to this new electronic filing system.

To evaluate timeliness of filing, review, and certification, OGE selected 100 of the 607 financial disclosure reports that were required to be filed using the EMAT in 2011. Initially, of the 100 reports examined, 16 confidential reports appeared to be missing. To determine whether this reflected an isolated or more widespread issue, OGE cross-referenced the names found on both the master lists of public and confidential filers against the actual number of reports filed in the EMAT. Based on this review OGE could not locate an additional 108 reports, including 45 public and 63 confidential reports. After bringing this to the ADAEO's attention, OGE was assured that many of these reports had been reviewed and it was suggested by the ADAEO that there might have been a technical error within the e-filing system which resulted in these reports no longer appearing in the EMAT.

OGE met with representatives from the Office of Data and Technology to discuss this issue and was advised that the EMAT only permits the Ethics Office to see financial disclosure reports from employees who are currently employed with CFTC and have an active account to logon to the CFTC's network. Currently, the EMAT does not permit the Ethics Office to see the proper status of forms submitted by employees who have either left the agency or forms assigned with the administrative status of "Not Started" or "In Progress".² Notwithstanding this, these forms

² The status of "Not Started" or "In Progress" indicate that forms have not been signed and sent to the Ethics Office for review.

are available in the EMAT database and can be queried directly. IT representatives thought the Ethics Office was aware of this, but it appears they were not.

IT generated a report which revealed that of the 124 combined public and confidential reports in question, 57 reports were listed either as “Not Started” or “In Progress”. This included many of the reports that the Ethics Office had been certain that they had reviewed but had returned to filers for required changes. IT representatives explained that to protect the privacy of the filer while preparing their forms online, the status of “Not Started” or “In Progress” were assigned to forms to ensure that neither the Ethics Office nor an Administrator could see the form until it had been signed by the filer. It was indicated that when reports are returned to the filer the forms status changes from “In Review” to “In Progress.” Since ethics officials were not aware that they could query the EMAT database, certification was delayed. OGE discussed this issue with IT representatives and were given assurances that in the future, the Ethics Office will be able to determine the status of all forms from within the EMAT.

Based on onsite discussions with the Ethics Office and Office of Data and Technology and subsequent follow-up responses thereafter, OGE was provided the status of all financial disclosure reports that OGE initially considered missing:

- Of the 45 public reports, 16 were identified as termination reports. The ADAEO informed OGE that these filers were not required to file their reports in the EMAT and were instead required to file the paper version of the form. During the review, OGE confirmed that all 16 termination reports had been collected and reviewed. As for the remaining reports, 14 were identified as “Complete”, 12 were “In Progress”, 1 was “In Review”, and 2 were “Not Started” because they were detailed to another agency.
- Of the 79 confidential reports, 13 were identified as “Complete”, 8 were “In Certification”, 2 were “In Review”, and 9 were “In Progress”. The remaining 47 reports left the agency in 2010 or 2011.

As discussed during the review, untimely reviews or the lack of review diminishes an agency’s ability to provide timely and specific conflict-of-interest advice. In view of this, OGE was pleased to see the ADAEO take prompt corrective action to ensure that all reports were quickly collected and certified. Since not all reports had been certified by the conclusion of our review, OGE recommends that the Ethics Office continue its attempts to certify all financial disclosure reports that were required to be filed in 2011. As part of this action, CFTC must collect the public reports from the two public filers who are currently on detail at another agency. CFTC should also determine whether the late filing fee pursuant to 5 CFR § 2634.704 should be applied.

OGE believes CFTC’s tracking of financial disclosure reports will improve considerably during future filing cycles once planned enhancements are incorporated into the EMAT. However, the Ethics Office must continue to increase its understanding of the system to ensure its overall effectiveness.

Relationship with CFTC's personnel office

When OGE last reviewed CFTC's ethics program in 2002, the Office of Human Resources and Support Services handled not only the administrative aspects of the system but also the review and certification of all confidential reports. Now the Ethics Office is responsible for review and certification of confidential reports. The Ethics Office continues to rely on the Office of Human Resources and Support Services to handle the administrative aspects of the system, such as helping to identify new hires, departures, promotions, and transfers. However, the ADAEO acknowledged some difficulty obtaining this information from this office. As a result, ethics officials were relying heavily on the Office of Data and Technology to help provide this type of information.

OGE met with the Special Assistant to the Director of HR to discuss this issue and to provide ways to improve communication with the Ethics Office. OGE found its suggestions well-received. However, to ensure that information is provided consistently and timely, OGE recommends that the Ethics Office establish a formal written memorandum of understanding with the Office of Human Resources and Support Services to provide a clear understanding of what role each office will play in coordinating with one another.

OGE Recommendations

- Continue to collect and certify all financial disclosure reports filed in 2011. As part of this action, CFTC must collect and certify the public reports from the two filers who are currently on detail at another agency. CFTC must also determine whether the late filing fee pursuant to 5 CFR § 2634.704 should be applied.
- Establish a formal written memorandum of understanding between the Ethics Office and the Office of Human Resources and Support Services to provide a clear understanding of what role each office will play in coordinating with one another.

Ethics Agreements

CFTC has five Presidentially-appointed and Senate-confirmed appointees (PAS). At the time of fieldwork, All PAS appointees that had ethics agreements in place had satisfied the terms of their agreement.

Education & Training

OGE's ethics education and training requirements at subpart G of 5 CFR part 2638 are generally being met. However, OGE believes certain improvements can be made to strengthen this program element further in view of the importance of ethics education and training in making employees aware of their personal ethical responsibilities. OGE's suggestions and recommendations for improvement are discussed below.

Annual Training Plan

When OGE last reviewed CFTC's ethics program, we reminded ethics officials of the requirement to annually document CFTC's annual training plan. OGE's training regulation, found at 5 CFR § 2638.706, has long-required that ethics officials develop a written plan at the beginning of each calendar year. The plan must contain a brief description of the agency's annual ethics training and numerical estimates of the number of employees who will receive verbal and written training, broken out between public filers and non-public filers; and estimates of the number of employees who will receive written training instead of verbal training, broken out according to the various exceptions to the verbal training requirements for public filers and non-public filers.

At the time of our current examination, OGE found CFTC to not have a written training plan developed for 2011. As a result, OGE again reminded ethics officials of this basic training regulation requirement. OGE is making no formal recommendation regarding this matter, since the ADAEO developed and provided to us CFTC's written plan for 2012 prior to the conclusion of our review. OGE notes that beyond being required, the development of an annual training plan serves as a record of ethics officials' training intentions for the year and can serve as evidence of a thoughtful, deliberate training strategy.

Initial Ethics Orientation

As noted, CFTC's Office of Human Resources and Support Services is responsible for ensuring that all new employees satisfy OGE's initial ethics orientation (IEO) requirement. IEO at CFTC is accomplished by providing new employees with copies of the basic requirements that satisfy 5 CFR § 2638.703, which include OGE's Standards of Ethical Conduct for Employees of the Executive Branch, CFTC's supplemental regulation, and contact information of the Ethics Office. New employees are also provided copies of CFTC's separate statutory and regulatory requirements. In addition to the required written material, new employees are also instructed to view an OGE video entitled, "Ethics: Get Advice, or Pay the Price." At various times throughout the year, the ADAEO also provides face-to-face IEO presentations to new employees to also help satisfy the IEO requirement.

Training completion is tracked through the collection of certification forms, which are maintained by the Office of Human Resources and Support Services. During the time of fieldwork, OGE verified that 39 new CFTC employees were required to receive IEO training from January 2011 to October 2011. However, CFTC could only provide 11 of 39 certifications for OGE to verify completion of IEO. Because the function of providing IEO is decentralized to another office, OGE recommends that the Ethics Office develop oversight mechanisms for monitoring and tracking whether orientation material is received. This could be accomplished by having the Office of Human Resources and Support Services provide the Ethics Office, on a quarterly basis, a status report of IEO completion. This should also be addressed in the memorandum of understanding OGE recommends CFTC develop with the Office of Human Resources and Support Services.

Additionally, OGE raised two other concerns about the training certification form with the Ethics Office:

- The certification form gave no indication as to whether the new employee received IEO training within the required timeframe of 90 days from entering on duty. The form only asked for the employee's name, signature, and date.
- The certification form gave no indication as to whether a new employee was entering into a covered position. As discussed with ethics officials, this could be helpful for timely identification of new entrant confidential filers.

To address these concerns, OGE suggested as a good management practice that the Ethics Office consider revising the certification form to include more useful information, such as the employee's entrance on duty date; job title; work telephone number and/direct extension; grade level; employment type/classification; and supervisor's name and contact information (if known). Adding a checkbox to the form to indicate whether the new employee is entering into a covered position was also suggested to help ensure that new employees entering into covered positions are identified and instructed to file their confidential reports timely.

Annual Ethics Training

As noted, CFTC exceeds OGE's annual training requirement by requiring all employees to be annually trained. To satisfy this requirement in 2011, the Ethics Office required all employees to attend one of two instructor-lead training sessions provided by the ADAEO. Live video conferencing of these sessions were made available to all regional employees. For those unable to attend, a videotaped session was required to be viewed in addition to the ADAEO's Power Point presentation.

While we found the training materials compliant with all relevant provisions, OGE did bring one issue to the attention of the ADAEO. During our review, we were advised that attendance at each session was tracked using sign-in sheets. For filers unable to attend, employees were required to e-mail the Ethics Office confirming their completion. While OGE received verbal confirmation from the ADAEO that all financial disclosure filers were trained this year, we were not able to independently verify training completeness using the sign-in sheets because the Ethics Office destroyed the sign-in sheets after it confirmed all filers received training. OGE suggests as a better management practice that the Ethics Office retain these sign-in sheets or track training completion within the EMAT. This not only helps the Ethics Office demonstrate compliance with the annual training requirement but also could help the Office of Inspector General on future investigations.

Additional Outreach Efforts

OGE found the ethics section of CFTC's Intranet page to be a very comprehensive ethics tool for all CFTC employees. This resource features immediate access to OGE regulations, and points of contact information for ethics officials; links to separate modules for financial disclosure filing, ethics training and internal agency documents, and other helpful ethics resource links.

OGE Recommendation

- Develop oversight mechanisms to monitor and track completion of initial ethics orientation.

Model Practice

- OGE considers the rendering of annual ethics training to non-filers to be a model agency practice and encourages CFTC to continue this effort.
- The Ethics Office maintains an intranet ethics program Web site with comprehensive ethics tools for all employees. OGE found the ethics coverage on the Web site to be very useful and informative.

Advice & Counsel

OGE's examination of the advice and counseling services found CFTC complying with 5 CFR § 2638.203(b)(7) and (8) by developing and conducting a counseling program for employees concerning all ethics matters, including post employment, wherein records are kept, where appropriate, on advice rendered. OGE also found CFTC's advice and counseling services to be timely which is important in preventing conflicts of interest and other ethics violations from occurring. Employees are encouraged to contact the Ethics Office via all forms of communication, including e-mail, telephone, and in-person. However, complex inquiries are followed-up by a letter or memorandum. Regional Deputy Counselors also dispense ethics advice to employees within their respective regions on routine matters, often after consulting first with the Ethics Office.

OGE also found the Ethics Offices' approach to providing guidance on the relevant Federal post-Government service employment restrictions to departing CFTC employees to be appropriate. The ADAEO and the Regional Deputy Counselors provides in-person, post-employment briefings to those departing from Federal service as part of their exit-process. In addition to the briefing, employees are provided with written materials that outline the basic post-employment restrictions. These post-employment reference guides include OGE's The Revolving Door: How Ethics Rules Apply to Your Job Seeking And Post-Government Employment Activities, and CFTC's Post-Government Service Employment Restrictions memorandum.

Model Practice

- In-person, post-employment briefings are provided to those departing from Federal service as part of CFTC's employee check-out process.

Enforcement

Consistent with 5 CFR § 2638.203(b)(12), it appears that an effective working relationship has been established between the Ethics Office and CFTC's Office of the Inspector General (IG). Based on our discussions with the ADAEO and the IG, both offices consider their coordination

with one another fundamental to their respective missions. OGE is satisfied that procedures are in place to effectively exchange ethics-related information and to resolve ethics issues.

While there were no referrals for prosecution to the Department of Justice involving alleged violations of the criminal conflict-of-interest statutes during the period covered by this review, we found both parties aware of the procedures prescribed in 5 CFR § 2638.603 to ensure that OGE is concurrently notified of all referrals, declinations to prosecute, and disciplinary or corrective action initiated, taken, or to be taken. If a referral is made in future, we were advised that the IG would be responsible for concurrently notifying OGE of the referral in accordance with 5 CFR § 2638.603.

1353 Travel Acceptances

CFTC allows its employees to accept payments on behalf of the agency from non-Federal sources for travel, subsistence, and related expenses incurred on official travel under 31 U.S.C. § 1353. The Ethics Office is responsible for collecting the information to be reported, drafting its semiannual report of payments of more than \$250 per event, and forwarding the report to OGE. OGE's examination of the acceptances reported on the CFTC's last two semiannual travel reports submitted to OGE covering the period from April 1, 2010 through March 31, 2011 identified 13 payments that were accepted during this timeframe. OGE found each semiannual report to have been submitted in a timely manner.

Agency Comments

A draft of this report was provided to the Ethics Office for review and comment on December 14, 2011. OGE received CFTC's initial response on January 3, 2012 and follow-up information on January 10, 2012. OGE incorporated much of the clarifying data it received into the body of the report.