



U.S. Office of Government Ethics
Program Review Division

Ethics Program Review

Office of Personnel Management

Report No. 11-028
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Results in Brief

The United States Office of Government Ethics (OGE) conducted a review of the Office of Personnel Management's (OPM) ethics program in June 2011. The results of the review indicated that OPM's ethics program generally appears to be in compliance with applicable laws, regulations, and policies. Additionally, OGE found that OPM has implemented a number of model practices that enhance the ethics program.

Highlights

- Leadership support is evident in the education and training element of the ethics program.
- Ethics officials have drafted comprehensive written procedures for most aspects of the ethics program.
- Ethics officials provide targeted training to non-covered employees, as requested.

Concerns

- Challenges exist in timely identifying new confidential financial disclosure filers.

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

Program Administration

OPM's ethics program is administered within the Office of General Counsel. The General Counsel serves as the Designated Agency Ethics Official (DAEO). The Deputy General Counsel serves as the Alternate DAEO and an Attorney Advisor serves as the Principal Deputy Ethics Official (Principal DEO). The Principal DEO acts as the primary, day-to-day administrator of the ethics program. An Associate General Counsel, a Deputy Assistant General Counsel, a Senior Attorney, and 15 Points of Contact (POCs) support the Principal DEO in administering the ethics program.

OPM's ethics program structure appears sufficient to meet the needs of an organization of this size. OGE was impressed with OPM's succession planning efforts: ethics officials have drafted comprehensive written procedures for several aspects of the ethics program.

Financial Disclosure

The review team examined all 87 public financial disclosure reports required to be filed in 2010 and a sample of 76 confidential financial disclosure reports required to be filed in 2011. OGE was impressed by OPM's high rate of timely annual financial disclosure submissions.

The review team found no significant issues with the public financial disclosure reports examined. Some public financial disclosure reports displayed evidence of follow-up with filers and edits based on additional information provided. However, 18 percent of the public financial disclosure reports were certified late and had no accompanying documentation indicating follow-up information was requested from the filers. The Principal DEO indicated that in many cases the delay in certification was a result of waiting on additional information from the filers, but he neglected to document that on the reports. The OGE review team encouraged the Principal DEO to document on the reports all instances of follow-up with filers if certification does not occur within 60 days of submission. Given the high visibility of public filers, it is important that OPM ensure that public financial disclosure reports are reviewed and certified in a timely manner.

The confidential financial disclosure system appears to be generally well managed. OPM's only vulnerability in its confidential financial disclosure system appears to be the timely identification of new entrant filers. All 6 new entrant reports in OGE's sample were submitted substantially late. Currently, POCs are responsible for identifying new entrant confidential filers. The OGE review team interviewed six POCs, and two were unaware that they had to be vigilant in timely identifying new entrant filers. Given the number of late new entrant reports in the sample, OGE recommends that OPM take action to address the issue by implementing a mechanism to ensure that POCs are consistently aware of and fulfilling their responsibilities related to new entrant identification. OPM may consider strategies such as issuing regular advisories to the POCs reminding them of their new entrant identification responsibilities or instituting a biweekly schedule for POCs to submit reports of any new employees entering duty and their filing status.

In addition to his other duties, the Principal DEO is primarily responsible for the review of the more than 300 confidential reports required to be filed by OPM employees. OGE discussed with the Principal DEO whether some employees currently filing might be eliminated from the requirement based on the definition of a confidential financial disclosure filer as outlined in 5 CFR 2634.904. Eliminating unnecessary filers could allow the Principal DEO to shift some of this saved time to other aspects of the ethics program.

Recommendation

- Establish a mechanism to ensure that POCs are aware of and meeting their responsibilities related to identifying new entrant confidential financial disclosure filers in a timely manner.

Suggestion

- Review the filing criteria for confidential financial disclosure reports to ensure that only employees who meet the definition are required to file.

Education & Training

OPM's training program meets all relevant requirements. The Principal DEO confirmed that all required employees received initial ethics orientation and annual ethics training in 2010. OPM's Director sent a message to covered employees reminding them of their responsibility to obtain annual ethics training. OPM also provides targeted ethics training, as requested. Additionally, in 2010, OPM trained 125 employees who were not covered by the training requirements. OGE commends OPM on its efforts to provide training to non-covered employees.

Advice & Counsel

OGE reviewed a sample of OPM's written advice and counsel issued to employees. The Principal DEO provides most of the advice and counsel issued at OPM; however, the DAEO provides advice in certain cases such as outside activity and 1353 travel approvals. OGE's

review found that the written advice and counsel provided to OPM employees was generally accurate, timely and consistent.

Enforcement

OPM reported no disciplinary actions based wholly or in part upon violations of the standards of conduct provisions (5 CFR part 2635) in 2010. There were also 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). OPM did make two referrals to the Department of Justice (DOJ) of potential violations of the criminal conflict of interest statutes. One of the referrals is currently under investigation and the other was sent back to OPM for administrative action.

The review team spoke to the Assistant Inspector General for Legal Affairs regarding the relationship between the Office of the Inspector General (OIG) and OPM ethics office. Based on that discussion as well as discussions with the Principal DEO, the OIG and OPM ethics office appear to have an excellent working relationship. For example, in an effort to keep the OIG advised of ethics issues, the OPM ethics office invites two representatives of the OIG to the OGE National Government Ethics Conference each year. Additionally, the Assistant Inspector General for Legal Affairs indicated that the OIG utilizes the expertise of the ethics office when dealing with alleged misconduct investigations. OGE commends the OPM ethics office and the OIG for their close working relationship.

Supplemental Regulation

With concurrence from OGE, OPM issued a supplemental regulation to the Standards of Ethical Conduct for Employees of the Executive Branch. The supplemental regulation requires employees to obtain prior approval to engage in certain outside activities relating to their official duties or involving a prohibited source: these requests must be made in writing. The Principal DEO indicated that such requests are rare; he indicated there was only one request in the last calendar year. The outside activity request was submitted and approved in compliance with ethics laws and regulations.

Special Government Employees

OPM has four committees created under the Federal Advisory Committee Act (FACA) and one non-FACA committee. Although there are special Government employees (SGEs) on each committee, none are required to file a financial disclosure report. OPM determined under 5 CFR § 2634.905(a) to exclude the SGEs from the requirement to file financial disclosure reports because their responsibilities are unlikely to give rise to real or apparent conflicts of interest.

1353 Travel Acceptances

OPM submitted the required semi-annual reports of payments accepted from non-Federal sources to OGE in a timely manner. OPM has an established process for approving requests for travel payments accepted from non-Federal sources. The DAEO performs a conflicts of interest analysis on all requests before making a recommendation to OPM's Deputy Director, who has the final approval authority.

Agency Comments

On July 26, 2011, OGE provided a draft of this report to OPM ethics officials for comment. OPM responded with the following comments on August 2, 2011:

“Thank you for the review of OPM's ethics program and for the opportunity to respond to the ensuing draft report. We are pleased that you found OPM's ethics program in compliance with applicable laws, regulations, and policies. We also appreciate that you recognized the emphasis placed on ethics by OPM and its leadership, and the fact that you found our ethics program exceeds minimal program standards and requirements in a number of key areas. OPM takes very seriously its responsibility to maintain an ethics program that is both effective and in conformity with law and policy, and we understand that any program can benefit from periodic review and resulting adjustments. Consequently, we appreciate both your suggestions, which we will seriously consider, and the recommendation contained in your draft report that OPM establish a mechanism to ensure that OPM's ethics points of contact (POC) are aware of and meet their responsibility to identify new entrant confidential financial disclosure report filers in a timely manner.

To address that recommendation, we have begun discussions with OPM's POCs to ensure that they are aware of their responsibility to identify new confidential financial disclosure report filers in their organizations as soon as they begin their new responsibilities, to promptly notify our principal deputy ethics official of each new filer, to distribute to the new filer a blank OGE form 450, and to assist in ensuring that the new filer's report is timely completed. We are asking for their input in attempting to identify the most efficient means of accomplishing this and for their suggestions for an effective verification system to ensure that this important ethics requirement is met for each new confidential filer. Following those discussions, we will establish new remedial process and verification procedures. We will continue to communicate with you as we implement these new measures, and we look forward to your return visit to OPM in approximately six months, with a goal of demonstrating to you in person the success of our actions. Thank you again for the service you have done OPM in conducting the review and for the assistance and support you continue to provide.”