



U.S. Office of Government Ethics
Program Review Division

Ethics Program Review

Pension Benefit Guaranty Corporation

Report No. 11-003
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Results in Brief

The United States Office of Government Ethics (OGE) conducted a review of the Pension Benefit Guaranty Corporation (PBGC) ethics program between November and December 2010. The results of the review indicated that PBGC's ethics program generally appears to be effectively administered and in compliance with applicable laws, regulations, and policies.

Highlights

- PBGC's ethics officials have shown consistent interest and enthusiasm toward seeking further improvements to the ethics program.
- PBGC has integrated several model practices in its initial and post-employment ethics training and developed useful ethics training products.

Concerns

- A few elements of PBGC's financial disclosure program have room for improvement.
- Delayed planning has affected the annual ethics training program.

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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 PBGC's ethics program, OGE examined a variety of documents provided by ethics officials; other documents that PBGC forwarded to OGE, including the Agency Ethics Program Questionnaire; prior program review reports; and a sample of PBGC's public and confidential financial disclosure reports and advice and counsel provided to PBGC employees.

In addition, members of OGE's Program Review Division met with the Designated Agency Ethics Official (DAEO), the Alternate DAEO (ADAEO) and the Special Counsel for the General Law and Ethics Division (Special Counsel) to obtain additional information about the strengths and weaknesses of PBGC's ethics program, seek clarification on issues that arose through the documentation analysis, and verify data collected.

Program Administration

PBGC's ethics program is administered within the Office of General Counsel (OGC). The Deputy General Counsel (DGC) serves as the DAEO. The Assistant General Counsel serves as the ADAEO and is the primary day-to-day administrator of the ethics program. In total, there are 10 part-time ethics officials, including the DAEO, ADAEO, and a Special Counsel.

Financial Disclosure

PBGC's public financial disclosure review process appeared to be thorough. The initial financial disclosure review step for both public and confidential reports was generally completed in a timely manner.

During its review of the confidential reports sample, OGE found one instance in which a filer listed an outside position closely related to his Government duties. OGE inquired about the conflict of interest analysis performed for this entry. Ethics officials responded that they have equipped confidential filers with the knowledge necessary to identify and avoid potential conflicts of interest. Therefore, they do not routinely caution confidential filers who have outside positions that might conflict with their PBGC employment. Instead, PBGC holds these filers responsible for identifying and avoiding matters that could create conflicts of interest or appearance concerns.

PBGC indicated that it plans to send cautionary letters to filers who have outside positions that might conflict with their PBGC employment and plans to incorporate such cautionary letters into its review process. As part of its review of confidential financial disclosure reports, PBGC

should follow-up with confidential filers and supervisors regarding outside positions that may pose a conflict of interest. OGE recommends that PBGC enhance its confidential financial disclosure review process by ensuring that outside positions do not pose a conflict. PBGC should also make a conflict of interest determination on the one instance brought to the ethics officials' attention by the OGE review team.

Public financial disclosure reports were generally submitted by filers and certified by ethics officials in a timely manner. Some incumbent confidential financial disclosure reports reviewed were submitted late, but mostly only by a few days. PBGC has detailed procedures for sending reminders to confidential filers and supervisors regarding timely compliance with the filing requirement. OGE is confident that the process in place is adequate for addressing timely submission of reports.

Some of the confidential financial disclosure reports reviewed were certified more than 60 days after they had been filed and there was no indication that ethics officials were seeking additional information or planning to take remedial action. During the course of OGE's review, PBGC stated that it will make changes to its tracking system to better track status of reviews and certification. OGE will determine whether enhancements to the tracking system have improved the certification of confidential financial disclosure reports during its follow-up review.

PBGC has one advisory committee. The advisory committee consists of seven members appointed by the President who generally serve terms that begin and end on February 19th. Members of the committee are special Government employees (SGE) and are required to file confidential financial disclosure reports. PBGC's written procedures state that OGE Form 450s should be distributed to advisory committee members at the same time the forms are distributed to incumbent confidential filers or when an individual is appointed to the advisory committee. However, in practice, PBGC distributes the OGE Form 450 to all advisory committee members in the fall because that is when new members are typically appointed by the President. During OGE's review, PBGC stated that beginning in 2011, OGE Form 450s will be distributed to members as a part of the annual filing cycle, in accordance with its written procedures.

In its review, OGE noticed that reappointed SGEs marked the "incumbent" box, indicating the type of report. PBGC should instruct all SGEs to check the "new entrant" box on their financial disclosure reports and include information for the preceding 12 months from the date of filing.

PBGC has retained financial disclosure reports beyond the six-year retention period specified by 5 C.F.R §§ 2634.603(g) and 2634.604(a). During OGE's review, PBGC directed staff to delete copies of financial disclosure reports and supporting documents submitted by PBGC filers prior to 2004, unless required to be kept. PBGC also stated during the course of OGE's review that it will revise its financial disclosure procedures to ensure the continued destruction of financial disclosure reports that no longer need to be maintained.

Recommendations

- Enhance the confidential financial disclosure review process by ensuring that outside positions do not pose a conflict and make a conflict of interest determination on the one

instance in which the filer's outside position appears to be closely related to his Government duties.

- Ensure that financial disclosure reports not required to be kept beyond the six-year retention period are destroyed.

Suggestion

- Streamline the system used to track certification of financial disclosure reports to facilitate timely certification of confidential reports.

Education & Training

Initial Ethics Orientation is provided to new employees monthly by an agency ethics counselor as part of PBGC's New Employee Orientation Program. The Human Resources Department's Training Institute maintains attendance records. In addition to the briefing covering the conflict of interest statutes and the Standards of Conduct, each new employee is provided a copy of the PBGC Ethics Handbook and contact information for the ethics counselors. PBGC's Ethics Handbook is a user-friendly desk reference guide for ethics issues. OGE commends PBGC for development of this Handbook.

PBGC provided annual ethics training in 2010 via an OGE online training module entitled, "Contractors in the Workplace: What You Need to Know." PBGC selected this method for annual ethics training due to an issue that surfaced in 2009 regarding improper employee interaction with contractor personnel. PBGC supplemented the training module with an exam developed by the Office of General Counsel used to track employee completion of the course.

The OGE online training for contract personnel was not specifically designed for annual ethics training of Federal employees and does not explicitly address the Standards of Ethical Conduct, 14 General Principles, and all of the criminal conflict of interest statutes required for annual ethics training by 5 CFR parts 2638.704 and 2638.705. OGE suggested to PBGC that the online training be supplemented with the missing components. PBGC promptly responded by supplementing the training and sending this information to all employees required to receive annual ethics training. OGE reminds PBGC to continue to include all the required components in its annual ethics training. PBGC should also remember to complete its annual training plan by the beginning of each calendar year as required by 5 CFR part 2638.706 in order to ensure adequate preparation for its annual training program.

PBGC required all Contract Officer's Technical Representatives (COTRs) to receive annual ethics training in 2010. COTRs were required to complete the same online training and exam required for public and confidential financial disclosure filers.

PBGC reported that all required employees received initial ethics orientation and annual ethics training in 2009 and 2010.

Model Practices

- Employees are provided an Ethics Handbook, a user-friendly desk reference guide for ethics issues.
- In-person verbal training is provided to special Government employees.
- Departing employees are required to meet with a PBGC ethics counselor to receive a personal training session on post-employment restrictions. In fact, an employee's final pay check is not issued if the employee fails to meet the post-employment training requirement.
- Information about ethics, including contact information for ethics officials, is disseminated to employees through PBGC's newsletter.
- Online training used for annual training was made available to all employees after it was completed by COTRs and financial disclosure filers.

Advice & Counsel

PBGC's ethics officials' names and contact information are publicized on the Intranet. Consequently, employees often contact ethics staff directly for ethics inquiries. In those instances, the ethics official prepares the response and usually sends it to the ADAEO or the Special Counsel for review before providing it to the employee. The ADAEO also assigns ethics questions to ethics officials based on individual experience and caseload. Complicated or novel situations are elevated to the DAEO prior to issuance of ethics guidance. Written advice and counsel samples reviewed by OGE were consistently accurate, timely, and complete.

For transparency purposes, advice and counseling records are maintained in a searchable case management system database. OGE commends PBGC's level of accountability and documentation of ethics advice.

Ethics Agreements

One Presidentially appointed, Senate confirmed official (PAS) entered into an ethics agreement during the last two calendar years. The PAS official complied with his ethics agreements in a timely fashion.

Enforcement

From 2009 until OGE's review in December 2010, PBGC reported no disciplinary actions based wholly or in part upon violations of the standards of conduct provisions (5 CFR part 2635) or the criminal conflict of interest statutes (18 U.S.C §§ 203, 205, 207, 208, and 209). Additionally, PBGC made no referrals to the Department of Justice of potential violations of the criminal conflict of interest statutes.

Ethics officials have a good relationship with the Office of Inspector General. The General Counsel and the DAEO meet periodically with the Inspector General and his staff. Both offices have clearly defined their roles in the enforcement of ethics laws and regulations and coordinate efforts to make employees aware of ways to report waste, fraud, abuse, and misconduct.

1353 Travel Acceptances

PBGC submitted the required semi-annual reports of payments accepted from non-Federal sources to OGE in a timely manner.

PBGC's procedures for processing payments accepted from non-Federal sources are contained in PBGC's Directive IM-10-4. The Directive requires employees to seek advance approval from the Communications and Public Affairs Department and OGC before performing any travel paid by a non-Federal source. The Directive also states that OGC's ethics officials are responsible for reviewing each travel request for conflicts of interest and for compiling and submitting to OGE PBGC's Semi-Annual Report of payments accepted from non-Federal sources in accordance with 31 U.S.C. § 1353.

Agency Comments

PBGC provided comments on the draft report. In response to OGE's recommendation, PBGC's ADAEO noted that he has followed up with the filer who listed an outside position closely related to his Government duties. The ADAEO noted that the filer has not engaged in the outside position since coming to PBGC. The ADAEO discussed reasons for concern with the filer and issued a cautionary memo. The ADAEO also indicated that PBGC has begun to address OGE's recommendation to destroy financial disclosure reports not required to be kept beyond the six-year retention period by compiling a list of applicable reports. Other comments have been incorporated into this report.