



United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

January 12, 2006

Kenneth R. Schmalzbach
Designated Agency Ethics Official
Department of the Treasury
Room 2023 MT
1500 Pennsylvania Avenue, NW.
Washington, DC 20220

Dear Mr. Schmalzbach:

The Office of Government Ethics (OGE) has completed its review of the ethics program at the Office of the Comptroller of the Currency (OCC), a bureau of the Department of the Treasury (Treasury). The review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended. Our objective was to determine the program's compliance with applicable laws and regulations. We also evaluated OCC's systems and procedures for ensuring that ethics violations do not occur. The review was conducted during August 2005. The following is a summary of our findings and conclusions.

HIGHLIGHTS

The program meets or exceeds the requirements of the ethics laws and regulations. The documentation of the advice and counseling enhances both the transparency and accountability of the ethics program. Providing post-employment counseling to all departing employees is a best practice. The Ethics Tracking System enables OCC to determine that it is meeting the requirements for the financial disclosure and education and training systems. It is also a practical way of providing a screening mechanism for employee recusals. Also, the use of electronic mail to alert employees of ethics issues, along with maintenance of an extensive ethics bulletin board on the OCC computer network, promotes ethics awareness among employees.

ADMINISTRATION OF THE ETHICS PROGRAM

A Senior Counsel, Administrative and Internal Law, is the Ethics Counselor. He is primarily responsible for the day-to-day operation of the ethics program and is assisted by one staff member and approximately eleven District Counsels. The District Counsels, with oversight by the Ethics Counselor, carry out the ethics program in four district offices.

To monitor several aspects of the ethics program, OCC has developed an electronic Ethics Tracking System. With this, OCC is able to monitor the progress of the financial disclosure systems, ethics orientation training, and annual ethics training. The inclusion of an

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employee's recusal information in the Ethics Tracking System enables supervisors to avoid conflicts of interest when assigning employees to bank examinations.

COUNSELING AND ADVICE

One notable part of the ethics program is the documentation of the ethics counseling and advice. In addition, our review of a selected sample of the counseling and advice found that it is consistent with applicable law and regulation, and is timely.

Most of the counseling and advice is requested and provided via electronic mail. The Ethics Counselor often asks that any in-person or telephonic inquiries be submitted via electronic mail. A record of the advice and counseling requested and provided is generally printed, with a copy of the advice placed in the employee's financial disclosure file.

Also of note is the best practice of providing post-employment counseling to all departing employees, which is documented. Annual audits are performed by the Ethics Counselor to ensure that departing employees have received this counseling. The documentation and annual audits were a response to an audit of the post-employment activities of OCC's examiners performed by Treasury's Office of the Inspector General (OIG).

Finally, current ethics information is readily available to employees. The Ethics Counselor maintains an electronic Ethics Bulletin Board on the OCC Intranet. Our review of the Intranet material found it to be extensive and current.

ENFORCEMENT

OIG and OCC have developed a system to provide oversight and consequences for employees who engage in ethics violations. In order to carry out such a program, OCC has appointed an individual to serve as liaison with OIG. Allegations of ethics violations referred to OIG are tracked by the liaison who makes sure that management and the Ethics Counselor are kept informed.

OIG performs any necessary investigations. Those involving alleged violations of the conflict of interest statutes are referred to the Department of Justice (Justice). Matters, once investigated, requiring administrative and/or disciplinary action are referred from OIG back to OCC for action. We noted that OIG made one recent referral to the Department of Justice (Justice) regarding a former employee of OCC for a potential violation of 18 U.S.C. § 207. This was timely reported to OGE. Justice has yet to decide whether to prosecute this matter.

To carry out its responsibility to take administrative and/or disciplinary action, OCC has developed a policy on discipline and adverse action including a "table of penalties." We selected nine cases of violations of the standards of conduct (that were referred back from OIG to OCC) and found that disciplinary action taken appeared to be prompt and in accordance with the "table

of penalties.”

Although OIG does not perform routine audits of OCC’s ethics program, an audit on the conflict of interest controls over examiners resigning for employment with banks was performed in 1997, resulting in a recommendation to strengthen those controls. OIG follow-up on the recommendation was completed in 2001 and found that OCC had taken action to implement the recommendation.

ETHICS AGREEMENTS

The Ethics Counselor is monitoring compliance with ethics agreements made by Presidentially-appointed, Senate-confirmed (PAS) employees. The Comptroller of the Currency is OCC’s only PAS position. This position was just recently filled and the new Comptroller has entered into an ethics agreement that included resignations, recusals, and divestitures. The Ethics Counselor has a worksheet of actions to be taken and when they must be completed.

In addition, there are many situations where OCC’s employees need to recuse themselves. The recusals, essentially in the form of cautionary memorandums, result from the review of the financial disclosure reports. Results of the review of the financial disclosure reports are entered into the Ethics Tracking System, including recusal information. This generates a memorandum that is forwarded to the employees advising them that they must recuse themselves from acting in any matters involving specific entities. As the screening mechanism, the Ethics Tracking System is consulted by OCC’s supervisory employees prior to making assignments to their employees.

There are no other formal ethics agreements. According to the Ethics Counselor, OCC has not issued an 18 U.S.C. § 208 (b)(1) waiver in years and, as there are no advisory committees, OCC has issued no § 208 (b)(3) waivers.

EDUCATION AND TRAINING

OCC not only meets the training requirements at subpart G of 5 C.F.R. part 2638, but exceeds them by providing additional ethics training annually to its bank examiners. In addition, we reviewed OCC’s training plans for 2004 and 2005, which were submitted to Treasury for inclusion in its training plans for those two years.

Initial Ethics Orientation

Initial ethics orientation, by being conducted verbally, exceeds the minimum regulatory requirements. Employees are provided a “Plain English Guide to Ethics” (Guide) along with a list of the ethics officials. Additionally, employees view an ethics video, during which an ethics official is in attendance to provide comment and to answer any questions that may arise. Employees are required to complete a certification for receipt of the Guide and sign-in sheets are

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used. Names from the sign-in sheets are entered by ethics officials into the Ethics Tracking System.

We reviewed the Guide and found it to be current, accurate, and tailored for OCC's employees.

Annual Ethics Training

For 2004, public filers received verbal ethics training in the form of an in-person power point slide presentation by an ethics official. Sign-in sheets were used to record attendance and to update the Ethics Tracking System. Other covered employees received their verbal ethics training in a computer-based format. At the completion of the training, employees completed an electronic certification of completion that updated the Ethics Tracking System.

We reviewed the materials used for the 2004 annual ethics training and found them to be current, accurate, and tailored for OCC's employees.

It appears that all covered employees received annual ethics training. To make this determination, we obtained correspondence sent to all covered employees to remind them of the need to complete the training and we browsed the Ethics Tracking System and found the records indicated that all covered employees had completed the ethics training.

Additional Ethics Training

Additional ethics training is provided to bank examiners as part of their annual continuing professional education requirements. Most of OCC's employees are bank examiners and are already required to receive annual ethics training. Currently the ethics portion of the training is approximately one hour in length and includes approximately 40 ethics scenarios likely to be encountered by the examiners. The Ethics Counselor and District Counselors are asked to participate in the ethics portion of the training presented in either OCC Headquarters, in the case of the Ethics Counselor, or the respective district where the District Counselors work.

FINANCIAL DISCLOSURE

OCC meets the financial disclosure requirements at 5 C.F.R. part 2634, including those relating to alternative and supplemental financial disclosure. In addition to the SF 278 and OGE Form 450, OCC has designed a report to capture information necessary to ensure compliance with additional statutory and regulatory restrictions placed upon OCC's employees. With OGE's concurrence and approval, OCC has implemented the "OCC Confidential Financial Disclosure Report" (OCC report). This OCC report is an alternative financial disclosure procedure for certain employees and as a supplemental financial disclosure report for other employees who are also required to file the SF 278 or the OGE Form 450. The OCC report is filed, reviewed and maintained in either OCC's Headquarters or the respective district where the employee works.

Public Financial Disclosure

Treasury has written procedures for those employees who are required to file the SF 278. The SF 278 is initially reviewed by OCC's Ethics Counselor. He then forwards it for final review and certification by Treasury's ethics officials. Treasury maintains the file and makes the SF 278 publicly available upon proper request.

OCC provides comprehensive instructions in a package of materials sent to SF 278 filers, including instructions on completion of the OCC report. OCC reports are reviewed and certified by OCC's ethics officials.

All SF 278s required to be filed in 2005 were filed timely and reviews and certifications of the reports were generally performed timely. We determined this by an examination of 57 SF 278s, consisting of 39 incumbent, 8 new entrant, 6 termination, and 4 combined termination/incumbent reports. We also examined all (34) of the OCC reports filed in the Headquarters (some SF 278 filers work in the district offices and therefore their OCC reports are filed in the respective district office).

Reviews of the reports by ethics officials appeared to be comprehensive. We found few technical errors. Many reports contained reviewer's comments and at least one report resulted in an email counseling the employee on an ethics matter. In nine instances, a recusal was sent to the employee.

Confidential Financial Disclosure

Our review of OCC's written procedures for the confidential financial disclosure system disclosed that they are comprehensive. Furthermore, OCC provides comprehensive instructions in a package of materials sent to the filers. OCC has two types of confidential filers, those who must file the OGE Form 450¹ supplemented by the OCC report and those who are required to file the OCC report as an alternative to filing the OGE Form 450.

All OGE Form 450s and OCC reports required to be filed in 2004 were filed timely and reviews and certifications were performed timely. This was determined by our examination of 59 OGE Form 450s and 109 OCC reports (of which 59 were supplemental reports and 50 were alternative reports). No technical or substantive issues were noted.

We tested the accuracy of the Ethics Tracking System (previously mentioned under the Ethics Agreements section as being used by supervisors as a screening mechanism for recusals).

¹ OCC permits the use of the OGE Optional Form 450-A. However in 2004, all employees were required to use the OGE Form 450.

We selected 35 reports which had indicated potential conflicts of interest (or appearances) and found that in all cases this information was entered in the Ethics Tracking System and a recusal was sent to the employee.

OUTSIDE ACTIVITIES/EMPLOYMENT

Treasury's supplemental regulations impose a requirement for employees to obtain written approval of outside employment or business activities. Each bureau is permitted to issue specific instructions to implement this requirement. OCC's instructions require that employees notify their supervisor of any outside employment or business activity whether it is for compensation or not. If the employment or activity creates a possible conflict of interest or appearance problem or meets certain other criteria, prior approval is required.

Employees appear to be aware of the notification and prior approval requirement. This is based on our review of the financial disclosure system where we selected a sample of reported outside employment or business activities and reviewed any related correspondence. We noted that most of the correspondence indicated that employees are not sure if prior approval is required and therefore are simply requesting advice.

CONTRACTORS

OCC has a unique and apparently effective way to deal with contractors to prevent conflicts of interest. Prospective contractors for exam-related work are required to submit an *OCC Confidential Financial Disclosure Report for Contractors of the Office of the Comptroller of the Currency Who Participate in Bank Examinations and Other Bank Supervisory Activities* (Report). The Report is reviewed by the Ethics Counselor prior to the signing of a contract. Prospective contractors who are former OCC examiners are required to also complete an attachment listing all the national banks that they have examined or supervised while employed at OCC. If additional work orders are issued under the contract, an update of the Report is required and is reviewed by the Ethics Counselor before the new work order is signed.

ACCEPTANCE OF TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

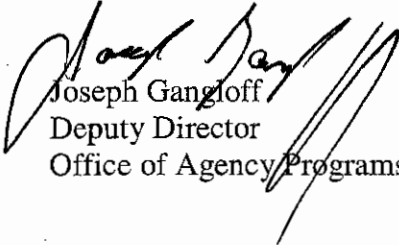
As a matter of policy, OCC does not generally permit the acceptance of travel reimbursements from non-Federal sources. Exceptions are required to be in writing and submitted to the Ethics Counselor. OCC submitted negative reports to Treasury for the three semi-annual periods covering October 1, 2003 through March 31, 2005.

In closing, we wish to thank your staff and OCC's Ethics Counselor for their efforts on behalf of the ethics program. We are sending a copy of this report via transmittal letter to OCC's

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Ethics Counselor and Treasury's OIG. Please contact Gerald Chaffinch at 202 482-9221, if we may be of further assistance.

Sincerely,



Joseph Gangloff
Deputy Director
Office of Agency Programs

Report Number 06- 001

cc: Barrett Aldemeyer
Senior Counsel
Comptroller of the Currency
Department of the Treasury