

United States Office of Government Ethics

Compliance Division

Ethics Program Review

U.S. Office of Special Counsel

Results in Brief

The United States Office of Government Ethics (OGE) conducted a review of the U.S. Office of Special Counsel’s (OSC) ethics program between November and December 2012. The results of the review indicated that OSC’s ethics program generally appears to be effectively administered and in compliance with applicable laws, regulations, and policies.

Highlights

- The Special Counsel has demonstrated a commitment to the agency’s ethics program by expanding annual ethics training. The Special Counsel also presented in-person remarks at the training, which increased the visibility of the program and set a strong tone from the top about the importance of ethics.
- OSC provides ethics training to all agency employees, which exceeds the minimum regulatory training requirement.
- In addition to required written procedures for administering OSC’s financial disclosure system, OSC ethics officials maintain updated and detailed standard operating procedures for administering education and training and travel payments accepted under 31 U.S.C. § 1353.

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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 of 1978, 5 U.S.C. app. § 402, and 5 C.F.R. part 2638.

To assess OSC's ethics program, OGE examined a variety of documents provided by the Acting Designated Agency Ethics Official (DAEO), the Alternate Designated Agency Ethics Official (ADAEO) and the Deputy Ethics Official (DEO) at OSC headquarters (HQ) in Washington, D.C. OGE reviewed OSC's annual ethics program questionnaire, the prior program review report, OSC's public and confidential financial disclosure reports, and a sample of the advice and counseling rendered to OSC's employees. OGE reviewers met with the Acting DAEO, the ADAEO, the HQ DEO, and two Human Resources Specialists to seek clarification on issues that arose through analysis of documentation and to verify data collected.

Program Administration

The OSC is an independent federal investigative and prosecutorial agency. Its authorities come from four federal statutes: the Civil Service Reform Act, the Whistleblower Protection Act, the Hatch Act, and the Uniformed Services Employment & Reemployment Rights Act (USERRA). OSC's primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistle-blowing. OSC maintains a Disclosure Unit for federal workers to disclose information about workplace improprieties, a Hatch Act unit to promote compliance with government employees' legal restrictions on political activities, and enforces USERRA to protect the civilian employment and reemployment rights of military veterans and members of the Guard and Reserve.

OSC is led by the Special Counsel, who is appointed by the President and confirmed by the Senate. OSC employs primarily personnel management specialists, investigators, and attorneys, with approximately 90 employees assigned to its Washington, D.C. HQ and 20 in the various field offices located in Dallas, Detroit, and Oakland.

The Office of General Counsel (OGC) provides legal advice and administers OSC's ethics program. At the time of the review, the Senior Legal Advisor served as the Acting DAEO, the Associate General Counsel served as the ADAEO, and the DEO at HQ and three DEOs in the field offices served as OSC's ethics officers. A vacancy announcement for the General Counsel/DAEO position was being advertised. The ADAEO and the HQ DEO manage the day to day administration of the ethics program for the entire agency, with active oversight from the Acting DAEO. The field office DEOs are designated by the Acting DAEO to manage ethics advice and counsel outside of HQ.

OSC ethics officials have updated, comprehensive standard operating procedures (SOP) covering the administration of the financial disclosure system, education and training, and the acceptance of travel payments under 31 U.S.C. § 1353. The SOPs outline the responsibilities of the OSC's ethics staff, define compliance requirements, specify ethics program practices, and detail operational practices for the annual training plan, conflict of interest analysis, regulatory deadlines, and employee exit counseling. Well-conceived SOPs help ethics officials streamline and modernize the administration of the ethics program and are critical component of an effective succession plan to support future ethics officials.

Model Practice

OGE tries to identify model practices that other agencies should consider adopting. The following is a model practice:

- OSC's ethics officials maintain updated and detailed SOPs for administering areas of the ethics program including financial disclosure, education and training, and the acceptance of travel payments under 31 U.S.C. § 1353.

Financial Disclosure

Title I of the Ethics in Government Act requires that agencies ensure confidence in the integrity of the Federal Government by demonstrating that officials are able to carry out their duties without compromising the public trust. High-level federal officials demonstrate this by disclosing publicly their personal financial interests by completing OGE Form 278. Title I also authorizes OGE to establish a confidential financial disclosure system for less senior executive branch personnel in certain designated positions to facilitate internal agency conflict of interest reviews. OGE implements this authority by requiring the covered executive branch personnel to complete OGE Form 450.

Financial disclosure serves to prevent conflicts of interest and to identify potential conflicts by providing for a systematic review of the financial interests of both current and prospective officers and employees. The financial disclosure reports are also a source of important information that agency ethics officials need to administer ethics programs and provide counseling to employees. *See* 5 C.F.R. § 2634.104(b).

OSC's financial disclosure program for both public and confidential filers is administered by the Acting DAEO, ADAEO, and HQ DEO. OSC's written procedures for the financial disclosure program meet the requirements set forth in 5 U.S.C. app. § 402(d)(1) and (2). OSC has 10 financial disclosure filers including 7 public filers and 3 confidential filers. With the exception of one public filer, all filers are located in Washington, D.C. Because of the centrally located positions of the filers at HQ, ethics officials have frequent, personal contact with filers. The one public filer located in California sends his form via email and forwards the hardcopy by standard mail. Regular reminders are sent early in the year to allow public filers to coordinate their financial disclosure preparation with their tax return preparation.

Public and confidential financial disclosure reports go through an initial review by the HQ DEO. During this preliminary review, issues or questions are resolved and then the report is forwarded to the ADAEO for the final review and certification of the reports.¹

OGE reviewed all seven public and three confidential financial disclosure reports filed in 2012. All of the seven annual public financial disclosure reports were submitted, reviewed and certified within the statutory deadlines. Of the three confidential financial reports, two were annual and

¹ OSC's DAEO has delegated financial disclosure certification authority for non-PAS staff to the ADAEO.

one was a new entrant report. The two annual reports were timely filed and the one new entrant report was filed in November 2011 and therefore an annual was not required to be filed for this filer in 2012. All confidential financial disclosure reports were submitted, reviewed, and certified with the required timeframes. The reports contained detailed reviewer notes and evidence of follow-up to clarify specific entries. The reports appeared complete and technically sound. OGE reviewed five filing deadline extensions and found them to be adequately documented as required under 5 C.F.R. § 2634.201(f).

OSC is implementing several practices to ensure an effective financial disclosure system. The DEO is in the process of modernizing OSC's filing system, creating new forms and unifying files so that information is readily accessible. Furthermore, pursuant to General Records Schedule 25, ethics officials have ensured that all financial disclosure forms and related records that have met the six-year threshold have been destroyed unless they are subject to an extended disposition date. Finally, the Director of Human Resources Branch (HRB) provides the ethics office monthly updates regarding new staff and position changes that could result in a change of financial disclosure filing status, thereby reducing the risk that an employee will be appointed to a filing position without being required to file.

Education and Training

Pursuant to 5 C.F.R. § 2638.701, each executive branch agency shall maintain a program of ethics training designed to ensure that all of its employees are aware of the federal conflict of interest statutes and principles of ethical conduct. At a minimum, each agency program shall consist of initial ethics orientation required by 5 C.F.R. § 2638.703 and annual ethics training required by 5 C.F.R. § 2638.704.

The Special Counsel emphasized the importance of government ethics by expanding annual ethics training to reach all employees. The Special Counsel reinforced a direct, personal commitment to ethics by attending annual training and providing opening and closing remarks, which were recorded for OSC employees to watch on the agency's intranet site.

Initial Ethics Orientation

In accordance with 5 C.F.R. § 2638.703 within 90 days of an employee's start date, the agency must provide the new employee with initial ethics orientation that includes the Standards of Ethical Conduct for Employees of the Executive Branch (Standards), any agency supplemental standards, and ethics officials' contact information. The agency must give the employee at least one hour of official duty time to review the material.

As part of the on-boarding process at OSC, HRB and field office personnel provides new employees with Form OSC-66a, which includes the Standards, conflict of interest statutes, and hyperlinks to other ethics materials that are available on OSC's intranet, accompanied by ethics officials' contact information. Employees are provided a minimum of one hour of official duty time to review the material in their first 90 days with the agency. Upon completion of initial ethics orientation, the HR specialist gives employees the oath of office and signs their

appointment affidavits. HR confirms and documents initial ethics orientation completion and the employee's commitment to review the ethics materials on Form OSC-66b, which is signed by employees and maintained in their personnel file. New employees at OSC cannot begin work until this certification is completed.

Two new permanent OSC employees received initial ethics orientation in 2011 and three new permanent employees received initial ethics orientation in 2012. The Human Resources Specialist (HR) confirmed in writing that all required employees received initial ethics orientation in 2011 and in 2012.

Annual Ethics Training

As requested by the newly appointed Acting DAEO, OGE instructors provided OSC mandatory ethics training in November 2012, covering a broad range of issues, including criminal conflicts of interest and the standards of conduct. OSC recorded the annual training presentation and made the video available to all employees on the agency's intranet. OGE determined that OSC's annual ethics training plan for 2012 met the applicable content requirements.

Subsequent to the onsite review, OSC confirmed in writing that all seven public filers, three confidential filers, and ethics officials either attended the training presentation or viewed the recorded program. Because annual ethics training has been made mandatory for all employees, OSC also confirmed that all non-covered employees would view the presentation by the end of 2012. However, because there is currently no mechanism to track non-covered employees' attendance at training, OGE suggests OSC create internal controls in order to verify that all employees receive annual training.

Model Practices

OGE tries to identify model practices that other agencies should consider adopting. The following are model practices:

- The Special Counsel has demonstrated a commitment to the agency's ethics program by expanding annual ethics training. The Special Counsel also presented in-person remarks at the training, which increased the visibility of the program and set a strong tone from the top about the importance of ethics.
- OSC recorded live annual ethics training and made the video available to all employees on its agency intranet.

Advice and Counsel

The Acting DAEO is required to ensure that a counseling program for agency employees concerning ethics and standards of conduct matters, including post-employment matters, is developed and conducted. *See* 5 C.F.R. § 2638.203. The Acting DAEO may delegate to one or

more deputy ethics officials the responsibility for developing and conducting the counseling program. *See* 5 C.F.R. § 2638.204.

The Acting DAEO, ADAEO, and the HQ DEO provide ethics advice and counsel in-person, by phone, and by email to the employees located in Washington, D.C. The DEOs in the three regional offices consult with the Acting DAEO or ADAEO prior to providing ethics advice to employees in their respective offices. The Acting DAEO has directed the HQ DEO to manage ethics advice on various matters which include financial disclosure filing and review. Ethics advice is reviewed for approval by the Acting DAEO and ADAEO before transmittal to OSC employees.

The HQ DEO has been updating the ethics advice records system. Previously, advice records were kept electronically on former ethics officials' computer systems and accessible only to those officials. The ADAEO states that new ethics advice is now filed physically at HQ for access by all ethics officials located in HQ, including advice reviewed and provided in the field offices. Hard copies of older electronic records will also be generated and filed physically. As OSC continues to modernize the advice and counseling records system, the DEO hopes to maintain ethics advice on a network drive accessible by HQ ethics officials. The regional DEOs will have access to the advice and counsel records that pertain to their region. OGE suggests that HQ allow regional DEOs to have access to all advice and counsel given and deposited on the HQ drive. This would allow regional DEOs a resource of information for memorialized advice.

OGE reviewed a sample of 19 pieces of documented written advice and counsel from HQ, covering approximately a 15-month period from August 2011 through November 2012. The ethics-related topics covered included gift acceptance, seeking employment, speaking engagements, outside activities, and book writing. The advice was rendered timely and appeared to be accurate based on the factual circumstances described in the documentation.

Conflict Remedies

The Ethics in Government Act expressly recognizes the need for Presidentially appointed, Senate-confirmed (PAS) nominees to address actual or apparent conflicts of interest through an ethics agreement – written notice of the specific actions to be taken in order to alleviate a potential conflict of interest. The Special Counsel is the agency's only PAS official and satisfied the terms of the ethics agreement in accordance with 5 C.F.R. § 2634.802(b). In addition, all requisite evidence of action taken was submitted to OGE in accordance with 5 C.F.R. § 2634.802(a).

Enforcement

OSC reported 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) or the Standards of Conduct provisions (5 C.F.R. part 2635).

OSC does not have its own internal investigative office such as an Office of Inspector General (OIG). In previous years, when the service of an investigative body was needed, OSC signed a contract with another agency's OIG to provide this function. According to OSC Directive No. 4 and an OSC Memorandum from the Special Counsel, the DAEO is responsible for advising and coordinating with agency management and program officials on OSC referrals to the Department of Justice (DOJ) under 2638.603(b), involving alleged violations of the criminal conflict of interest statutes. The DAEO or a designee is also responsible for concurrently notifying OGE of referrals to DOJ and communicating to OGE the subsequent disposition of those referrals.

1353 Travel Acceptances

Federal agencies may accept payments from non-Federal sources for travel, subsistence, and related expenses incurred on official travel under the authority of the General Services Administration regulation at 41 C.F.R. chapter 304, implementing 31 U.S.C. § 1353. Semiannual reports of payments accepted under 31 U.S.C. § 1353 must be submitted to OGE by May 31 and November 30 of each year.

The Office of General Counsel follows OSC Directive No. 5, which delegates authority to the DAEO to carry out certain responsibilities described in Federal regulations concerning the acceptance of travel and related expenses from non-federal sources. OSC created *Standard Operating Procedures for Acceptance of Travel Payments from Non-Federal Sources* to guide ethics officials during the review process of the travel request. The memorandum describes the responsibilities of requesting employees, the procedures for conducting a conflict analysis, and ethics officials' reporting requirements under 31 U.S.C. § 1353.

According to the ADAEO, after travel payment requests have been reviewed and approved by ethics officials, the Acting DAEO conducts a final review before the employee is notified they may commence making plans for travel. This process is the same for all OSC staff, regardless of their location. OGE reviewed OSC's last four semi-annual reports covering October 2010 through September 2012 and found the reports were submitted in a timely manner.

Agency Comments

The following comments were provided by OSC by email on February 8, 2013:

OSC is pleased that the Office of Government Ethics found our program to be effective and compliant. We look to build upon our strong foundation and to continue to strengthen our ethics program in the coming years.