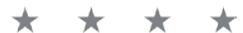




Ethics Program Review

Export-Import Bank of the United States

Report No. 17-26
May 2017



The United States Office of Government Ethics (OGE) conducted a review of the Export-Import Bank of the United States (the Bank) ethics program during September and October 2016. The following summarizes the results of that review.

Contents

Objectives, Scope, and Methodology.....	2
Agency Background.....	3
Program Administration.....	3
Financial Disclosure.....	3
Education and Training.....	5
Advice and Counseling.....	6
Agency-Specific Ethics Rules.....	6
Conflict Remedies.....	6
Enforcement.....	7
Agency Comments.....	7

Objectives, Scope, and Methodology

Objectives: OGE provides overall leadership and oversight of the executive branch ethics program designed to prevent and resolve conflicts of interest. The Ethics in Government Act gives OGE the authority to evaluate the effectiveness of executive agency ethics programs.¹ OGE uses this evaluation authority largely to conduct reviews of agency ethics programs. 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.

Scope: OGE examined all elements of the Bank’s ethics program including: program administration, financial disclosure, education and training, ethics advice and counseling, and agency-specific ethics rules on outside employment.²

Methodology: OGE conducted a review of the Bank’s ethics program in September and October 2016. As part of its review, OGE examined a variety of documents provided by the Bank’s ethics officials, including the Bank’s response to OGE’s 2015 Annual Agency Ethics Program Questionnaire, written procedures for administering the program, samples of public and confidential financial disclosure reports filed in 2016, ethics training materials, and a sample of the ethics advice and counseling provided to employees. In addition, OGE met with agency ethics officials to clarify the information gathered, follow up on issues identified during the review, and discuss ethics program operations in further detail.

¹ See title IV of the Ethics in Government Act, 5 U.S.C. app. § 402 and 5 C.F.R. part 2638.

² The Bank has a supplemental standards of conduct regulation at 5 C.F.R. part 6201 requiring employees to obtain approval prior to engaging in outside employment.

Agency Background

The Bank is the official export credit agency of the U. S. and is an independent, self-sustaining executive branch agency with a mission of supporting American jobs by facilitating the export of U.S. goods and services. When private sector lenders are unable or unwilling to provide financing, the Bank fills in the gap for American businesses by equipping them with the financing tools necessary to compete for global sales. The Bank has offices located throughout the U.S.

Program Administration

The Bank's ethics program is administered by the Office of Ethics (OE), which is headed by the Chief Ethics Officer who also serves as the Bank's Designated Agency Ethics Official (DAEO). The Chief Ethics Officer/DAEO is appointed by the President of the Bank and approved by the Board of Directors.

The Alternate DAEO (ADAEO) position is also organizationally located in OE; however, that position is currently vacant. A Senior Counsel from the Bank's Office of General Counsel (OGC) is serving as Acting ADAEO. In addition to providing an Acting DAEO, OGC provides substantial support to OE in managing the program and reviewing financial disclosure reports.

Financial Disclosure

Title I of the Ethics in Government Act requires that agencies administer public and confidential financial disclosure systems. Financial disclosure serves to prevent, identify, and resolve conflicts of interest by providing for a systematic review of the financial interests of officers and employees. The financial disclosure process also offers an opportunity for ethics officials to provide ethics-related counseling to report filers.

To evaluate the Bank's financial disclosure systems, OGE examined the Bank's written procedures for administering its systems and public and confidential financial disclosure reports that were required to be filed by the Bank's employees in 2016.

Financial Disclosure Written Procedures

Each executive branch agency must establish written procedures for collecting, reviewing, evaluating, and where applicable, making publicly available financial disclosure reports filed by the agency's officers and employees.³ OGE examined the Bank's written procedures and determined that they meet applicable requirements.

³ See 5 U.S.C. app. § 402(d)(1).

OGE's Examination of Public Financial Disclosure Reports

To evaluate the administration of the Bank's public financial disclosure system, OGE examined the 3 new entrant, 26 annual, and 4 termination reports that were filed in 2016 up to the date of OGE's review. Table 1 below presents the results of OGE's examination.

Table 1. OGE's Examination of the Bank's Public Financial Disclosure Reports

	New Entrant		Annual		Termination		Total	
Reports Examined	3		26		4		33	
Filed Timely	2	(67%)	26	(100%)	4	(100%)	32	(97%)
Certified Timely	2	(67%)	24	(92%)	3	(75%)	29	(88%)

As noted in Table 1, 2 of the 3 new entrant reports (67%) were filed timely and 2 of the new entrant reports (67%) were certified timely. In addition, 3 of the 4 termination reports (75%) were certified timely. The limited number of new entrant and termination reports did not provide OGE with a sufficient basis for a determination regarding the effectiveness of the Bank's processes for collecting or certifying new entrant or termination reports in timely manner. However, based on OGE's examination of the Bank's written procedures and discussions with ethics officials, OGE determined that overall the Bank's public financial disclosure system is in substantial compliance with applicable requirements.

OGE's Examination of Confidential Financial Disclosure Reports

To evaluate the administration of the Bank's confidential financial disclosure system, OGE examined a sample of 22 new entrant and 40 annual reports that were filed in 2016 up to the date of OGE's review. Table 2 below presents the results of OGE's examination.

Table 2. OGE's Examination of the Bank's Confidential Financial Disclosure Reports

	New Entrant		Annual		Total	
Reports Examined	22		40		62	
Filed Timely	16	(73%)	33	(83%)	49	(79%)
Certified Timely	17	(77%)	32	(80%)	49	(79%)

As indicated in Table 2, 6 of the 22 new entrant reports OGE examined (27%) were filed late. However, the 6 reports were filed, on average, only 10 days late.

OGE concluded that the Bank's confidential financial disclosure system is in substantial compliance with applicable requirements, based on the examination of confidential reports, the Bank's written procedures, and discussions with ethics officials.

Education and Training

An ethics training program is essential to raising awareness among employees about the ethics laws and rules that apply to them and the availability of agency ethics officials to provide ethics counseling. During the period covered by OGE's review, each agency's ethics training program was required to include at least an initial ethics orientation for new employees and annual ethics training for covered employees.⁴

Initial Ethics Orientation

To meet initial ethics orientation (IEO) requirements in 2015, all new agency employees were required to receive ethics official contact information along with the following material within 90 days of beginning work: (1) the Standards of Conduct for Employees of the Executive Branch (Standards of Conduct) and any agency supplemental standards of conduct to keep or review; or (2) summaries of the Standards of Conduct, any agency supplemental standards of conduct, and the Principles of Ethical Conduct (Principles) to keep. Employees were also to receive one hour of official duty time to review the material.

OGE reviewed the materials the Bank used to provide IEO in 2015 and determined that the materials met applicable content requirements. OGE also determined that the Bank provided IEO to all new employees within 90 days, as required.

At the Bank, the ADAEO conducted in-person IEO in 30-minute sessions during which new employees were provided with the required ethics materials. Attendees were instructed they had an additional 30 minutes of official time to review the materials, which included a pocket handbook that addresses some of the most common and problematic ethics issues. OGE found the pocket handbook to be an effective tool in helping employees maintain awareness of ethics-related requirements and restrictions and instructing them on how to seek guidance when necessary. Senior officials were provided IEO individually by the ADAEO who addressed all required material.

Annual Ethics Training

To meet the annual ethics training requirements in 2015, covered employees were required to receive annual training consisting of a review of: (1) the Principles; (2) the Standards of Conduct; (3) any agency supplemental standards of conduct; (4) the criminal conflict of interest statutes; and (5) ethics official contact information. Training length and delivery method could vary by an employee's financial disclosure filing status.

OGE reviewed the materials the Bank used to provide annual ethics training in 2015 and determined that the materials met applicable content requirements. OGE also examined training records and determined that the Bank provided annual ethics training to all employees. (The Bank requires all employees to receive annual ethics training.) The training was conducted in six

⁴ Subsequent to the period covered by OGE's review, the regulation governing executive branch agency ethics training at 5 C.F.R. part 2638 was amended. These amendments became effective January 1, 2017.

sessions, including teleconference sessions that were used to train covered employees at field locations. The required materials were provided during the training.

Advice and Counseling

The 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. The DAEO may delegate to one or more deputy ethics officials the responsibility for developing and conducting the counseling program.

OGE reviewed a sample of advice and counseling that the Bank's ethics officials provided to its employees. The advice examined addressed criminal conflict of interest statutes, gifts, and the Standards of Conduct in general. The advice appeared to be responsive to the questions asked, timely, and consistent with applicable laws and regulations.

Agency-Specific Ethics Rules

An agency may modify or supplement the Standards of Conduct, with the concurrence of OGE, to meet the particular needs of that agency. A supplemental standards of conduct regulation is issued jointly by the agency and OGE and is published in title 5 of the Code of Federal Regulations.

The Bank has a supplemental standards of conduct regulation.⁵ This regulation requires employees, other than special Government employees, to receive approval prior to engaging in outside employment.

To evaluate the administration of the Bank's supplemental regulations, OGE examined the approvals associated with the outside employment disclosed in the financial disclosure reports examined during this review. OGE identified six instances of outside employment disclosed in the sample of reports and determined that all filers received the required approval prior to engaging in the disclosed outside employment.

Conflict Remedies

The criminal conflict of interest law prohibits an employee from participating in an official capacity in a particular matter in which he or she has a financial interest.⁶ Congress included two provisions that permit an agency to issue a waiver of this prohibition in individual cases. Agencies must consult with OGE, where practicable, prior to issuing such a waiver.⁷ The Bank did not issue any waivers in 2015.

Additionally, the Ethics in Government Act expressly recognizes the need for PAS nominees to address actual or apparent conflicts of interest by requiring written notice of the

⁵ See 5 C.F.R. part 6201.

⁶ See 18 U.S.C. § 208.

⁷ See Executive Order 12674.

specific actions to be taken in order to alleviate the conflict of interest.⁸ This written notice is commonly known as an “ethics agreement.” OGE determined that during the period under review, all applicable requirements were met. All of the Bank’s PAS employees had confirmed to agency ethics officials that they had complied with their ethics agreements and ethics officials had advised OGE that they had received confirmation of compliance.

Enforcement

The Bank reported no disciplinary actions based wholly or in part upon violations of the criminal conflict of interest statutes and no disciplinary actions based wholly or in part upon violations of the Standards of Conduct.

Agency Comments

Agency comments were incorporated into the text of this report.

⁸ See 5 U.S.C. app. § 110.