



United States Office
Of Government Ethics

Report Number 09-007

Highlights

Model Practices

- Commerce provides tailored, relevant ethics training to targeted audiences.
- Commerce requires ethics training for non-covered employees.
- Commerce leadership demonstrates substantial support for ethics department-wide.
- Commerce creates added visibility for the ethics program beyond the department through additional outreach.

If you have comments or would like to discuss this report, please contact Dale Christopher, Associate Director, Program Review Division, at 202-482-9224.

Ethics Program Review Office of the Secretary and National Institute of Standards and Technology

Department of Commerce

February 2009 Report

Executive Summary

The United States Office of Government Ethics (OGE) has completed its review of the ethics programs at the Office of the Secretary and National Institute of Standards and Technology, Department of Commerce (Commerce). The purpose of a review is to identify and report on the strengths and weaknesses of a program by evaluating: (1) agency compliance with ethics requirements found in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures for administering the program.

OGE's identified several model practices that Commerce has implemented. First, Commerce offers a variety of targeted ethics training that is specifically tailored to various groups within the department.

Second, in addition to providing ethics training for covered employees, a Secretarial decision requires all GS-11 and above employees to receive ethics training.

Third, leadership involvement in the ethics program at Commerce is evident. The Secretary of Commerce's first communication to the department was an e-mail addressing ethical conduct.

Finally, additional outreach increases the visibility of the ethics program at Commerce. For example, the Ethics Division has developed a comprehensive Web site that is available to employees as well as the public. Also, the Ethics Division periodically provides briefings to officials of foreign governments and international organizations on the Commerce ethics program and the organization of its ethics operations.

This report has been sent to the Commerce's Designated Agency Ethics Official and Inspector General.



United States Office
Of Government Ethics

Report Number 09-007

Ethics Program Review

Office of the Secretary and National Institute of Standards and Technology

Department of Commerce

February 2009 Report

Introduction

OGE MISSION

The United States Office of Government Ethics (OGE) provides leadership for the purpose of promoting an ethical workforce, preventing conflicts of interest, and supporting good governance initiatives.

PURPOSE OF A REVIEW

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 found in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures in place for administering the program.

REVIEW AUTHORITY AND SCOPE

OGE has the authority to evaluate the effectiveness of executive agency ethics programs. See Title IV of the Ethics in Government Act of 1978, as amended (the Ethics in Government Act), and 5 CFR part 2638. OGE's review of the Office of the Secretary (OS) and National Institute of Standards and Technology (NIST), Department of Commerce (Commerce), focused on the elements listed below.

- Leadership
- Program structure
- Financial disclosure systems
- Ethics training
- Ethics counseling
- Enforcement
- Ethics agreements

Ethics Program Review: OS and NIST

- Travel payments from non-Federal sources
- Special Government employees

Onsite fieldwork for OGE's review of OS and NIST was conducted in October 2008.

Program Elements

This report consists of descriptions, analyses, and conclusions regarding each program element reviewed.

LEADERSHIP

Commitment and action by agency leadership is the keystone for ensuring the integrity of an agency's ethical culture and for fostering public confidence in the decision-making processes of Government. Leadership involvement in the ethics program at Commerce is evident. The Secretary of Commerce's first communication to the Department was an e-mail addressing ethical conduct. In the e-mail, the Secretary encouraged employees to take advantage of the ethics resources available to them at Commerce and to comply with ethics requirements. This display of leadership support for the ethics program is a model practice.

PROGRAM STRUCTURE

Commerce's ethics program is administered by the Ethics Law and Programs Division within the Office of the General Counsel. The Assistant General Counsel for Administration serves as the Designated Agency Ethics Official (DAEO) and is responsible for the administration of the ethics program. The Chief of the Ethics Division serves as the Alternate DAEO and is closely involved in the day-to-day administration of the ethics program. The Ethics Division is composed of 18 staff members. The majority of the staff members are attorneys and the remaining staff consists of Ethics Program Specialists.

FINANCIAL DISCLOSURE SYSTEMS

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 that they are able to carry out their duties without compromising the public trust by disclosing publicly their personal financial interests (SF 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 review (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 also assist agencies in administering their ethics programs and providing counseling to employees. *See* 5 CFR § 2634.104(b).

Ethics Program Review: OS and NIST

Public Financial Disclosure System (SF 278)

The Ethics Division has comprehensive written procedures for administering Commerce's public financial disclosure system. The written procedures are applicable to all Commerce components, including OS and NIST. The written procedures cover the collection, review, retention, and public availability of financial disclosure reports. Successful written procedures allow for consistent and uninterrupted administration of the public financial disclosure system.

The Ethics Division provides all public filers with guidelines explaining how to properly fill out a public financial disclosure report and how to avoid common mistakes. The Ethics Division also provides each new entrant and annual filer with an e-mail notice when its review is complete and the report has been certified, with an invitation to seek advice on future ethics issues.

Commerce's Human Resources offices are required to determine the filing status of each employee. The Human Resources offices also provide lists of filers to the Ethics Division. Annually, the Ethics Division contacts each of Commerce's Human Resources offices to request a list of annual SF 278 filers. New incumbent employees entering into covered positions and filers terminating from covered positions are notified by the Human Resources offices of the requirement to file a report. The Human Resources offices also notify the Ethics Division of new filers and termination filers on a monthly basis.

Commerce ethics officials, attorneys and Ethics Program Specialists alike, conduct the initial review of all public financial disclosure reports. The reports are then submitted to the specific attorneys who are authorized to certify SF 278s. For Presidentially-appointed, Senate-confirmed filers, the DAEO or Alternate DAEO conducts the final certification.

To evaluate the public financial disclosure system at OS and NIST, OGE examined 59 of the 116 public financial disclosure reports required to be filed by OS employees and 40 of the 79 reports required to be filed by NIST employees in 2007. The following is a summary of OGE's examination of the reports:

OS

Type of Report

- 34 incumbent reports
- 14 new entrant reports
- 11 termination reports

59 total

Ethics Program Review: OS and NIST

Filing Timeliness

- 58 reports were filed timely.
- 1 report was filed late.

59 total

Review/Certification Timeliness

- All 59 reports were reviewed and certified timely.

Quality of Review

Written comments on the reports and documentation in the files indicated that the reports underwent a thorough review by the Ethics Division. In most cases there was evidence of communication with the filer regarding follow-up questions.

NIST

Type of Report

- 32 incumbent reports
- 4 new entrant reports
- 4 termination reports

40 total

Filing Timeliness

- All 40 reports were filed timely.

Review/Certification Timeliness

- 36 reports were reviewed and certified timely.
- 4 reports were reviewed and certified late.

40 total

Quality of Review

Written comments on the reports and documentation in the files indicated that the reports underwent a thorough review by the Ethics Division. In most cases there was evidence of communication with the filer regarding follow-up questions. However, as noted above, four reports were reviewed and certified significantly late. According to 5 CFR § 2634.605(a), all

Ethics Program Review: OS and NIST

reports shall be reviewed within 60 days from the date of filing. Final certification may, of necessity, occur later, when additional information is being sought.

Confidential Financial Disclosure System (OGE Form 450)

The Ethics Division has comprehensive written procedures for administering Commerce's confidential financial disclosure system. The written procedures are applicable to all Commerce components, including OS and NIST. The written procedures contain detailed instructions to aid in the review of confidential financial disclosure reports. Successful written procedures allow for consistent and uninterrupted administration of the confidential financial disclosure system. Additionally, the Ethics Division provides all annual filers with guidelines explaining how to properly fill out a confidential financial disclosure report and how to avoid common mistakes.

Annually, the Ethics Division contacts each of the Department's Human Resources offices to request a list of annual OGE Form 450 filers. New and incumbent employees entering into covered positions are notified by the Human Resources offices of the requirement to file a report. The Human Resources offices also notify the Ethics Division of new filers on a monthly basis and provide the Ethics Division with a copy of the notification letter given to new entrant filers.

The Ethics Division Ethics Program Specialists conduct the initial review and final certification of all Commerce's confidential financial disclosure reports, including reports filed by OS and NIST employees.

To evaluate the confidential financial disclosure system at OS and NIST, OGE examined 55 of the 288 confidential financial disclosure reports required to be filed by OS employees and 100 of the 552 reports required to be filed by NIST employees in 2007. The following is a summary of OGE's examination of the reports:

OS

Type of Report

- 43 annual reports
- 12 new entrant reports

55 total

Filing Timeliness

- 49 reports were filed timely.
- 6 reports were filed late.

55 total

Ethics Program Review: OS and NIST

Review/Certification Timeliness

- 43 reports were reviewed and certified timely.
- 12 reports were reviewed and certified late.

55 total

Quality of Review

Written comments on the reports and documentation in the files indicated that the reports underwent a thorough, though in some cases protracted, review by the Ethics Division. According to 5 CFR § 2634.605(a), all reports shall be reviewed within 60 days from the date of filing. Final certification may, of necessity, occur later, when additional information is being sought.

NIST

Type of Report

- 86 annual reports
- 14 new entrant reports

100 total

Filing Timeliness

- 95 reports were filed timely.
- 5 reports were filed late.

100 total

Review/Certification Timeliness

- 89 reports were reviewed and certified timely.
- 11 reports were reviewed and certified late.

100 total

Quality of Review

Written comments on the reports and documentation in the files indicated that the reports underwent a thorough, though in some cases protracted, review by the Ethics Division. According to 5 CFR § 2634.605(a), all reports shall be reviewed within 60 days from the date of

Ethics Program Review: OS and NIST

filing. Final certification may, of necessity, occur later, when additional information is being sought.

ETHICS TRAINING

An ethics training program is essential to raising awareness among employees about ethics laws and rules and informing them that an agency ethics official is available to provide ethics counseling. Each agency's ethics training program must include at least an initial ethics orientation for all employees and annual ethics training for covered employees.

Training Plan

The Ethics Division annually creates a comprehensive ethics training plan for managing the training program. The training plan is applicable to all Commerce components, including OS and NIST. The training plan at Commerce can serve as a model for training plans at other agencies.

Initial Ethics Orientation

Within 90 days from the time an employee begins work for an agency, the agency must provide the employee with an initial ethics orientation. An initial ethics orientation must include:

- the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) and any agency supplemental standards;
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials; and
- at least one hour of official duty time to review the items described above. *See 5 CFR § 2638.703.*

The Human Resources offices, as part of a package of information about Federal employment, provides new employees with the following:

- the Standards and
- at least one hour of official duty time to review the Standards. *See 5 CFR § 2638.703.*

The Ethics Division also provides a weekly initial ethics orientation in the form of a lecture. As part of this lecture, the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials are provided. In 2007, all 295 OS and NIST employees required to receive an initial ethics orientation received it.

In addition to the initial ethics orientation materials provided above, the Ethics Division at Commerce also provides the following materials: (1) "Top Ten Ethics Rules for New

Ethics Program Review: OS and NIST

Employees – 2007,” (2) “Summary of Ethics Rules for New Employees – 2007,” (3) “A Word About Ethics” handouts, and (4) a pen with the Ethics Division’s contact information. As an adjunct to initial ethics orientation, additional training is provided on how to complete financial disclosure reports for all new employees in the Washington, DC area who file such reports.

Annual Ethics Training

Public financial disclosure filers are required to receive verbal annual ethics training. *See* 5 CFR § 2638.704(a). Verbal training includes training prepared by a qualified instructor and presented by telecommunications, computer, audiotape, or videotape. *See* 5 CFR § 2638.704(c)(2). Other covered employees (e.g., confidential filers) are required to receive verbal ethics training at least once every three years and may receive written training in the intervening years. *See* 5 CFR § 2638.705(c). The content requirements for both public filers and other covered employees are the same. Agencies are encouraged to vary the content of annual training from year to year but the training must include, at least, a review of:

- the 14 Principles of Ethical Conduct,
- the Standards,
- any agency supplemental standards,
- the Federal conflict of interest statutes, and
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials. *See* 5 CFR § 2638.704(b).

To meet annual ethics training requirements, Commerce offers a variety of targeted ethics training. The training is specifically tailored to the following groups: (1) PAS employees, (2) Senior Executive Service members and Schedule C employees, (3) component-specific employees, (4) field offices in select cities, (5) employees in overseas offices, and (6) Foreign Service Nationals. For example, PAS employees receive annual ethics training in a lecture/discussion format led by the Commerce DAEO. PAS employees also receive a three-ring binder that includes a summary of the ethics rules, select ethics-related handouts, and a pen with the Ethics Division’s contact information. Field offices in select cities receive annual ethics training in a lecture/discussion format led by members of the Ethics Division. In this training, cards are distributed to employees containing information relating to an ethics issue, which employees are asked to discuss. The card game format is an innovative way to encourage active participation in ethics training.

At OS and NIST, in addition to requiring annual ethics training for covered employees, a Secretarial decision requires all GS-11 and above employees to receive verbal ethics training at least once every three years. Requiring ethics training for non-covered employees is a model practice.

Ethics Program Review: OS and NIST

Additional Outreach

The Ethics Division has developed a comprehensive Web site that includes: forms commonly used by employees (OGE Form 201, OGE Form 450, SF 278, SF 326, and the widely-attended gathering approval form); general summaries of ethics rules for regular employees, special Government employees (SGEs), and some specialized categories of employees; and topic-specific summaries of ethics rules on gifts, political activities, post-employment activities, etc. The ethics Web site is available to employees as well as the public. The public availability of the ethics Web site increases the visibility of the ethics program at Commerce.

The Ethics Division also periodically provides briefings on the Commerce ethics program and the organization of its ethics operations to officials of foreign governments and international organizations.

ETHICS 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. *See* 5 CFR § 2638.203. The DAEO may delegate to one or more deputy ethics officials the responsibility for developing and conducting the counseling program. *See* 5 CFR § 2638.204.

OGE's assessment of an ethics counseling program focuses on five factors: (1) accuracy, (2) timeliness, (3) transparency, (4) accountability, and (5) consistency. To determine whether an agency's counseling program successfully addresses these factors, OGE reviews and assesses the program's processes and written procedures. Further, OGE reviews selected samples of advice to assess whether processes and written procedures are effective.

Ethics-related counseling for OS and NIST employees is provided primarily by the attorneys in the Ethics Division. The Alternate DAEO assigns questions received to the attorneys who log their responses in a searchable database. The database is available to the entire Ethics Law and Programs Division.

To evaluate the counseling provided to OS and NIST employees by the Ethics Division, OGE examined a sample of ethics-related counseling rendered during the period covered by the review. The counseling was primarily in the areas of conflicts of interest, outside activities, gifts, widely-attended gatherings, and post-employment. OGE found the counseling to be in compliance with the requirements of 5 CFR § 2638.203(b)(7) and (8).

ENFORCEMENT

The DAEO is required to ensure that (1) information developed by internal audit and review staff, the Office of the Inspector General (OIG), or other audit groups is reviewed to

Ethics Program Review: OS and NIST

determine whether such information discloses a need for revising agency standards of conduct or for taking prompt corrective action to remedy actual or potential conflict of interest situations and (2) the services of the Department's OIG are utilized when appropriate, including the referral of matters to and acceptance of matters from the OIG. *See* 5 CFR § 2638.203(b)(11) and (12).

The OGE review team interviewed Commerce's Inspector General. According to the Inspector General, the Ethics Division coordinates with OIG as necessary on ethics-related matters. The Inspector General explained that the Ethics Division and OIG have a successful working relationship.

According to the Inspector General, there were no criminal conflict of interest violations involving OS or NIST employees referred to the Department of Justice during 2007. During 2007, there were also no substantiated violations of the Standards.

ETHICS AGREEMENTS

There were three written ethics agreements entered into by PAS employees in 2007. The three ethics agreements, all requiring disqualification, were carried out in accordance with applicable regulations and the terms of the agreements.

TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

An employee may accept payment of travel expenses from non-Federal sources on behalf of the employee's agency for official travel to a meeting or similar function when specifically authorized to do so by the agency. Agencies must submit semiannual reports of travel payments from non-Federal sources in excess of \$250 to OGE. *See* 31 U.S.C. § 1353.

Commerce has written procedures applicable to OS and NIST to administer the acceptance of travel payments from non-Federal sources. The procedures require an ethics official to review travel authorization requests for legal sufficiency.

OGE reviewed the semiannual reports that OS and NIST submitted through Commerce to OGE for the periods from October 1, 2006 through March 31, 2007, April 1, 2007 through September 31, 2007, and October 1, 2007 through March 31, 2008. All three semiannual reports were sent to OGE in a timely manner using the appropriate SF 326.

SPECIAL GOVERNMENT EMPLOYEES

NIST employs SGEs who serve either as independent consultants or on advisory committees. There are no SGEs at OS.

Ethics Program Review: OS and NIST

NIST Independent Consultant SGEs

The OGE review team examined all 19 confidential financial disclosure reports filed by independent consultant SGEs at NIST in 2007. OGE's examination of the confidential financial disclosure reports revealed no substantive deficiencies; however, OGE noted that 10 of the 19 reports did not indicate new entrant status as required by 5 CFR § 2634.903(b)(1). OGE also noted that the majority of the reports did not indicate a date of appointment.

NIST Advisory Committee SGEs

The OGE review team examined all 73 confidential financial disclosure reports filed by SGE members of the 9 Federal advisory committees associated with NIST in 2007. OGE's examination of the confidential financial disclosure reports revealed no substantive deficiencies; however, OGE noted that 45 of the 73 reports did not indicate new entrant status as required by 5 CFR § 2634.903(b)(1). OGE also noted that the majority of the reports did not indicate a date of appointment.

Summary

OGE identified several model practices that the Ethics Division has implemented to administer the OS and NIST ethics programs. The model practices include:

- providing tailored, relevant ethics training to targeted audiences and requires ethics training for non-covered employees;
- requiring ethics training for covered employees, a Secretarial decision requires all GS-11 and above employees to receive ethics training;
- demonstrating substantial leadership support for ethics department-wide; and
- developing a comprehensive Web site that is available to employees as well as the public through the Commerce Internet homepage.

If you have comments or would like to discuss this report, please contact Dale Christopher, Associate Director, Program Review Division, at 202-482-9224.