



U.S. Office of Government Ethics
Program Review Division

Ethics Program Review

National Archives and Records
Administration

Report No. 12-02
October 2011

Results in Brief

The United States Office of Government Ethics (OGE) conducted a review of the National Archives and Records Administration (NARA) ethics program in August 2011. The results of the review indicated that NARA's ethics program generally appears to be effectively administered and in compliance with applicable laws, regulations, and policies.

Highlights

- NARA's ethics officials have shown consistent interest and enthusiasm by seeking further improvements to the ethics program.
- NARA provides targeted training to supervisors and other specialized groups as necessary.
- Ethics duties are incorporated into the position description and performance appraisal of NARA's Designated Agency Ethics Official (DAEO), Alternate DAEO (ADAEO), and deputy ethics officials.
- NARA memorializes all advice and counsel in a searchable electronic database to assist ethics officials in providing accurate and consistent advice and counsel.

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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 NARA's ethics program, OGE examined a variety of documents provided by NARA's ethics office. OGE examined a sample of confidential and public financial disclosure reports that were required to be filed at NARA in 2011, covering calendar year 2010. In addition, the OGE review team met with NARA's DAEO, two deputy ethics officials, the Counsel to the Inspector General (IG), the Director of Human Capital Planning and Accountability (HCPA), and the Audit Follow-up Official to (1) obtain additional information NARA's ethics program, (2) seek clarification on issues and (3) verify data collected.

Program Administration

NARA's ethics program is administered within the Office of General Counsel. The Senior Counsel for Trust Fund and Foundation Policy serves as the DAEO. The Counsel for Procurement and Employment Law serves as the ADAEO. The DAEO is primarily responsible for the day-to-day administration of the ethics program and five deputy ethics officials assist in the program's administration. The DAEO communicates regularly with senior leadership during senior staff meetings about ethics matters that affect NARA.

Since OGE's ethics program review in 2006, NARA has significantly increased the number of attorneys involved in the ethics program. NARA's new program structure appears sufficient to meet the needs of an agency of this size. In addition, ethics duties are incorporated into the position description and performance appraisal of the DAEO, ADAEO, and deputy ethics officials, which OGE considers to be a model practice.

Model Practice

- Ethics duties are incorporated into the position description and performance appraisal of the DAEO, ADAEO, and deputy ethics officials.

Financial Disclosure

NARA ethics officials indicated that all covered employees¹ filed the required financial disclosure reports. However, OGE is concerned about the timely identification of confidential new entrant filers and the quality of the review of public financial disclosure reports. The review team examined a judgmental sample of financial disclosure reports required to be filed in 2011. The review team found that more than half of new entrant confidential reports were filed beyond the due date and that some public financial disclosure reports did not meet the standards of completeness.

Specifically, in the sampled reports, 57 percent of the new entrant confidential financial disclosure reports were filed late and a few were filed more than 80 days late. During the

¹ Special Government employees (SGE) file an OGE-approved alternative form which allows them to certify that no conflicts of interest exist with the work they are completing during their tenure at NARA.

review, ethics officials expressed concerns about being able to capture new entrants when these employees have been promoted or are acting in a covered position. OGE also found that more than half of the public financial disclosure reports did not meet the standards of completeness. For example, income type and amounts were omitted, schedules were completely blank and personal information was disclosed.

OGE discussed concerns about NARA's financial disclosure system with ethics officials. To address concerns with late new entrant confidential filers, the DAEO indicated that ethics officials will send regular reminders to supervisors about the need to inform the ethics office of any employees entering covered positions through promotions or details. In addition, NARA ethics officials responded by correcting technical insufficiencies on previously filed public financial disclosure reports.

OGE is pleased that NARA immediately addressed concerns in the area of financial disclosure since both incomplete reporting on public reports and the late identification of new entrant confidential filers increase the vulnerability of NARA's ethics program. Therefore, OGE is not making a formal recommendation in the area of financial disclosure. However, OGE will follow up on the suggestions made in this section of the report.

Suggestion

- Send regular reminders to supervisors about the need to inform the ethics office of any employees entering covered positions through promotions or details.
- Continue to take steps to improve the quality of the review of public financial disclosure reports to ensure reports meet OGE's standards of completeness. Specifically, ensure that appropriate follow-up is done when information is missing or that reports are annotated with reviewer assumptions, where available.

Education & Training

NARA's training program meets all relevant requirements. All required employees received initial ethics orientation (IEO) and annual ethics training in 2010. Additionally, NARA provides targeted training for supervisors and senior staff as necessary. NARA also issues regular ethics guidance to employees in the form of agency notices during political seasons and holidays. OGE considers these training efforts to be model practices.

The DAEO has delegated the responsibility of providing IEO to HCPA. All new employees are provided a packet of information which includes IEO materials.² Included in the packet is information sheet that directs employees to NARA's ethics intranet page to review the Standards of Conduct and the contact information for the ethics office. The sheet also informs employees that they have one hour of official duty time to review the material. The packet also includes a certification sheet that is returned to HCPA. HCPA tracks the completion of IEO through a

² SGEs receive written training that meets all regulatory requirements at their first meeting.

spreadsheet and provides this information to the ethics office upon request.³ Ethics officials and the Director of HCPA indicated that, in the future, ethics officials will provide an in-person briefing during the new employee orientation to accompany the written materials provided to employees.

While IEO meets the relevant regulatory requirements, OGE is concerned with the complete delegation of IEO to HCPA. Currently, ethics officials do not independently verify that all new employees received IEO. Ethics officials rely on HCPA to track and confirm that all new employees have completed IEO. While the DAEO has the authority to delegate certain ethics-related responsibilities, the accountability for those responsibilities remains with the DAEO. As such, all reportable information concerning elements of the ethics program should be provided to and verified by the DAEO.

Suggestion

- Ensure information concerning the tracking and completion of IEO is provided to and independently verified by the ethics office.

Model Practice

- NARA provides targeted training and issues regular ethics guidance to employees in the form of agency notices during political seasons and holidays.

Advice & Counsel

OGE reviewed a sample of NARA's written advice and counsel issued to employees and found that all pieces of advice and counsel appeared thorough and that employee requests for advice were responded to in a reasonable amount of time. NARA's advice and counsel process is clearly defined within the agency, with the DAEO, ADAEO, and five ethics attorneys handling ethics-related questions. Non-routine matters are discussed with the DAEO before advice is rendered. Written advice addressing complex or novel ethics matters is distributed to all ethics officials. Most ethics questions are memorialized in an electronic database for future reference and to assist ethics officials in providing accurate and consistent advice and counsel. OGE considers this a model practice.

NARA requires prior approval for outside activities and has developed a standardized approval process. Each request is completed online, forwarded to supervisor for approval, and then sent to ethics officials once approved. Copies of the request are then filed with financial disclosure reports.

Model Practice

- Ethics questions are memorialized in an electronic database for future reference and to ensure consistency and accuracy

³ IEO is provided and tracked by the regional administrative officers in regional offices.

Enforcement

NARA reported no disciplinary actions based wholly or in part upon violations of the standards of conduct provisions (5 CFR part 2635). There were 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). NARA made no referrals to the Department of Justice of potential violations of the criminal conflict of interest statutes. The IG is responsible for concurrently notifying OGE of referrals made to the Department of Justice.

NARA ethics officials appear to have a good working relationship with the OIG. Each office is aware of its responsibilities and works together effectively.

1353 Travel Acceptances

NARA has written procedures that govern the acceptance of travel payments from non-Federal sources under 31 U.S.C. § 1353. NARA has consistently submitted to OGE in a timely manner the required semi-annual reports of payments accepted from non-Federal sources.

Agency Comments

NARA provided a formal response to a draft of this report on September 9, 2011. Below is a summary of NARA's comments; their full response is attached.

NARA will adopt all suggestions made by OGE. Specifically, NARA will work with HCPA, as well as supervisors throughout the agency and field unit administrative officers to devise an effective protocol to ensure supervisors inform the ethics office of all new entrant filers. To address concerns with the review of public financial disclosure forms, NARA will issue guidance within the Office of General Counsel to reviewers on issues covered within OGE's "Public Financial Disclosure: A Reviewer's Reference." NARA will also notify public filers of specific problems with their public financial disclosure reports.

To ensure that information concerning the completion of IEO is provided to and independently verified by the ethics office, NARA will work with HCPA and the field unit administrative officers to increase the frequency of this reporting, and to cross-check it against HCPA records of new employees. In addition, NARA is working with HCPA to improve the delivery of IEO as part of an expanded on-boarding process.

September 9, 2011

Patricia Zemple
Associate Director, Operations and Special Projects
Office of Agency Programs
United States Office of Government Ethics
1201 New York Avenue, NW, Suite 500
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Re: Response to Draft Program Review Report

Dear Ms. Zemple:

I am writing in response to the draft report that your office prepared following its August 2011 review of the National Archives and Records Administration's (NARA) ethics program. NARA's comments on the draft report are set forth below.

My colleagues and I very much appreciate the time and effort that your reviewers, Danielle Clarke and Leigh Snyder, put into the program review. They were thorough and constructive in their criticisms, and our discussions during the review yielded a number of ideas we plan to pursue in addition to implementing the suggestions made in the report itself. We look forward to working with OGE in meeting that goal.

RESPONSE

Suggestion 1: Send regular reminders to supervisors about the need to inform the ethics office of any employees entering covered positions through promotions or details.

We will adopt this suggestion and work with NARA's Office of Human Capital, as well as supervisors throughout the agency and field unit administrative officers to devise an effective protocol for implementing it. We will also revise our agency procedures for the financial disclosure program to reflect this new process. At the same time that we are addressing the longer term process issues, we will take advantage of a recently concluded, agency-wide reorganization to survey selected parts of new offices before the end of calendar year 2011 to ensure that we have accurately identified all current covered positions. Finally, ethics program officials have begun working with the Human Capital team in charge of implementing a new personnel IT system to determine whether the system has the functionality to support some aspects of the ethics program. For example, we believe the new system will allow better tracking of covered positions and aid us in identifying when individuals move into and out of these positions.

Suggestion 2: Continue to take steps to improve the quality of the review of public financial disclosure reports to ensure reports meet OGE's standards of completeness. Specifically, ensure appropriate follow-up is done when information is missing or that reports are annotated with reviewer assumptions, where available. We will adopt this suggestion and plan to implement it in two ways. First, by issuing guidance within the Office of General Counsel to reviewers of the public forms that focuses on reviewer assumptions, necessary follow-up, and other concerns, as covered by the 278 Reviewer's Guide. Second, we will notify financial disclosure filers of specific problems with the public financial disclosure reports, both in under- and over-reporting, and offer guidance on the proper technical completion of the report. Our agency procedures will be revised, if necessary, to reflect this review requirement.

Suggestion 3: Ensure information concerning the tracking and completion of initial ethics orientation (IEO) is provided to and independently verified by the ethics office. We will adopt this suggestion and work with the Office of Human Capital and the field unit administrative officers (who conduct the on-boarding process for new employees at regional facilities and presidential libraries) to devise an effective process for implementing

it. Currently, we require reporting offices to verify on a semi-annual basis that all new employees received IEO. We intend to increase the frequency of this reporting, and to cross-check it against Human Capital's records of new employees, so that we will be able to confirm that all new employees receive IEO in a timely manner.

In addition to independently verifying that all new employees are receiving training, we have been working with Human Capital on ways to improve the delivery of IEO as part of an expanded on-boarding process. For example, we will begin giving a short presentation on the ethics program and the IEO requirements at our College Park location as part of the day-one orientation process. We also plan to record a presentation that can be used at other locations.

OTHER COMMENTS

1. On page 5, the report refers to "the Director of HC." As noted on page 3, the title of the person in the Human Capital office who spoke with the reviewers is the "Director of Human Capital Planning and Accountability."
2. On page 5, the draft report states that, "Ethics officials rely on HC to track and confirm that all new employees have completed IEO." As the footnote on page 5 notes, this task is performed by field unit administrative officers at NARA's regional facilities and the presidential libraries. Field unit administrative officers are not under the direction of the Human Capital Office, but rather under the Office of Business Support Services or the Office of Presidential Libraries, depending on their location.

CONCLUSION

Thank you again for the assistance OGE is providing NARA's ethics program through the Desk Officer program and the program reviews. If you have questions concerning this response, you may contact me by e-mail at chris.runkel@nara.gov or by telephone at 301-837-2928.

Sincerely,

CHRISTOPHER M. RUNKEL
Designated Agency Ethics Official

cc:

David S. Ferriero
Archivist of the United States

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Mary Drak
Performance and Accountability Staff