



U.S. Office of Government Ethics
Program Review Division

Ethics Program Review

Federal Mediation & Conciliation Service

Report No. 12-06
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Results in Brief

The United States Office of Government Ethics (OGE) conducted a review of the Federal Mediation & Conciliation Service (FMCS) ethics program in April 2011. The results of the review indicate that FMCS's ethics program appears to be effectively administered and in compliance with applicable laws, regulations, and policies.

Highlights

- Ethics duties are incorporated into the performance appraisals of the Designated Agency Ethics Official (DAEO), Alternate DAEO and the Deputy DAEO.
- The DAEO meets with each public financial disclosure filer individually to discuss policies and procedures on filing their form.
- All FMCS employees received annual ethics training in 2010.
- The DAEO conducted a self-assessment to evaluate the effectiveness of the ethics program.

Concern

- FMCS has established a prior approval requirement for outside activities without the required supplemental regulation.

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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 FMCS's ethics program, OGE examined a variety of documents provided by the ethics officials including the annual questionnaire; a prior review report; confidential financial disclosure reports that were required to be filed in 2011, covering calendar year 2010; public financial disclosure reports that were required to be filed in 2010, covering calendar year 2009; and a sample of advice and counsel provided to employees. In addition, the OGE review team met with the DAEO, ADAEO, and the Deputy DAEO to obtain additional information on the strengths and weaknesses of FMCS's ethics program, seek clarification on issues that arose through the documentation analysis, and verify data collected.

Program Administration

FMCS's ethics program is administered within the Office of General Counsel (OGC). The General Counsel serves as the DAEO. The Deputy General Counsel serves as the ADAEO. An Attorney Advisor serves as the Deputy DAEO. The DAEO is responsible for the day-to-day administration of the ethics program.

Financial Disclosure

Public and confidential financial disclosure reports were generally filed, reviewed, and certified timely. However, the ADAEO indicated that he did not do a conflict of interest analysis of the OGE 450s or OGE 278s in regards to individual holdings. According to the ADAEO and DAEO, the high volume of cases assigned each year and the programmatic need for immediate action on cases makes the review of individual holdings as to each assignment impossible as a practical matter. In addition, the DAEO and ADAEO place a high degree of confidence on the ability of their filers to recognize a potential conflict of interest and to notify officials of the need to recuse from assigned cases. In a subsequent discussion with the DAEO, she agreed that distributing cautionary or training memos to OGE 450 filers about potential conflicts of interest would provide additional assurances that inadvertent conflicts do not arise. Use of these memos will be a beneficial step in the prevention process. The benefits could be expanded, however, if the memos were distributed to supervisors as well as to filers. In addition, FMCS should consider pursuing certification of no conflict statements to provide just-in-time conflict of interest identification. Preventing conflicts is the cornerstone of a successful ethics program. Because ethics laws prohibit Government employees from having financial conflicts of interest, it is essential that potential or actual conflicts of interest are identified timely. When issues are raised about potential conflicts of interest, FMCS must determine whether or not the filers can accept a certain assignment.

During the examination of the public system, the review team noticed that the DAEO meets with each public filer to discuss policies and procedures relevant to the filing year. OGE views this approach, which results in a better understanding of the filing requirements, to be a model practice and encourages the DAEO to continue this practice each year. Individualized attention provided to public filers not only helps provide greater opportunities to develop support for the ethics program but also demonstrates that ethics training is a priority.

We discussed with the DAEO the possibility of expanding the pool of employees who file OGE 450s or certification of no conflict statements. Specifically, we noted that nonsupervisory mediators do not file either form. Mediators who serve as Directors of Mediation Services and have overall management responsibility of the subregion to which they are assigned do, however, file confidential financial disclosure reports. OGE is concerned that not requiring all other mediators to file either confidential reports or financial disclosure certifications may create a risk for FMCS and non-filing mediators. This concern can be addressed in an alternative way, however, by FMCS requiring ethics training for nonsupervisory mediators. Indeed, in the year under review, FMCS provided ethics training, including financial conflicts of interest, to every employee. Providing nonsupervisory mediators with such training on an ongoing basis would reinforce the principle that official duties must be carried out free of conflicts of interest.

Suggestion

- Issue cautionary or training memos to OGE 450 financial disclosure filers who serve as mediators with a copy to supervisors listing any disclosed interest that could pose an actual or potential conflict of interest and describing the requirement to avoid conflicts of interest and the need for each individual to evaluate his or her case assignments with this obligation in mind.
- Reevaluate whether all mediators should be required to file either financial disclosure reports or certification statements.
- Require nonsupervisory mediators to attend annual ethics training.

Education & Training

FMCS reported that all required employees received initial ethics orientation and annual ethics training. According to the DAEO, initial ethics orientation is provided by the Office of Human Resources. The Office of Human Resources provides all new employees with a copy of OGE's Standards of Ethical Conduct for Employees of the Executive Branch (Standards). New employees are instructed to review the Standards and are advised that the agency provides one hour of official duty time for this purpose. Additionally, new employees are provided with the contact information for the ethics officials. The Office of Human Resources maintains a record of each new employee's receipt of the written materials and contact information which is signed by the employee.

According to the DAEO, the Office of Human Resources also instructs all new employees to view the OGE training video, "Integrity in Public Service: Earning the Public trust," which is available on the FMCS intranet. New employees are instructed to send an email to the FMCS

ethics office within 30 days of viewing the training video. The Staff Assistant in the ethics office monitors the emails to ensure compliance with the training instructions. OGE reviewed the materials used for initial ethics orientation and found them to be in compliance with 5 CFR § 2638.703.

According to the DAEO, all employees received annual training in 2010. The Deputy Ethics Official prepared a one-hour online course for OGE Form 450 filers, titled “Essential Ethics for FMCS Employees.” The training was computer based and included a review of the 14 Principles of Ethical Conduct; Standards; conflict of interest statutes; and names, titles, email address and telephone number of the ethics officials. After the employee completes the training, an e-mail is sent to the Staff Assistant in the ethics office. The Staff Assistant creates a list to track the trainees. The OGE review team found FMCS’s annual training materials to be in compliance with 5 CFR 2638.704 and 2638.705.

Model Practice

- All FMCS employees received annual ethics training in 2010.

Advice & Counsel

FMCS’s advice and counsel process is clearly defined. Managers and employees can contact any of the ethics officials for ethics advice; however, the ADAEO and Deputy DAEO generally consult with the DAEO prior to providing ethics advice or counseling. The DAEO maintains copies of written advice and counsel provided to employees and maintains individual files documenting advice provided over the telephone. Additionally, the DAEO distributes topical ethics advice to all employees via email. For example, during the winter holiday season, the ethics emails address issues relating to gifts between and among employees. Furthermore, the DAEO attends regular periodic meetings of all agency senior managers during which she advises agency senior managers that ethics counseling is available from the DAEO, ADAEO, and Deputy DAEO and encourages all managers to seek such advice. The written advice and counsel opinions reviewed by OGE were accurate and timely.

Agency-Specific Ethics Rules

During our review the review team found that FMCS had not published its supplemental regulation requiring prior approval for outside activities in the Federal Register. While OGE recognizes FMCS’s desire to require prior approval until the supplemental regulation has been published, employees can only be requested to seek advice regarding their outside employment activities. They cannot be required to obtain prior approval.

Recommendation

- Until FMCS publishes its supplemental standards of conduct regulation in the Federal Register requiring employees to seek prior approval for outside activities it can no longer require outside activity approval.

Ethics Agreements

FMCS had one ethics agreement in place at the time of the ethics program review. Actions necessary to comply with relevant requirements were taken in a timely manner.

Enforcement

There were no recent reported violations of the criminal conflict of interest statutes or standards of conduct regulations in 2010. The agency has no Inspector General (IG). According to the DAEO, she functions as the IG for the agency when the need arises. In the event a matter requires an IG without connection to the FMCS, the agency seeks assistance from the IG of another agency.

1353 Travel Acceptances

FMCS submitted to OGE in a timely manner the required semi-annual reports of payments accepted from non-Federal sources. A clear system exists to identify and communicate with those employees who might file a report under 31 U.S.C. § 1353. The DAEO reviews each travel request for conflicts of interest. The DAEO has final approval authority.

Agency Comments

OGE provided FMCS ethics officials a copy of the draft report for comment. The agency comments were incorporated into this report.