



United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

September 22, 2009

Thomas K. Emswiler
Associate General Counsel
Federal Retirement Thrift Investment Board
Fourth Floor
1250 H Street, NW.
Washington, DC 20005

Dear Mr. Emswiler:

The United States Office of Government Ethics (OGE) has completed its review of the ethics program at the Federal Retirement Thrift Investment Board (FRTIB). Enclosed are an executive summary and report on the results of the review.

The purpose of a review is to identify and report on the strengths and weaknesses of the 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 identified two model practices that FRTIB has implemented:

- requiring annual ethics training for all employees and
- providing ethics training for contractors.

While no formal recommendations were made, OGE made several suggestions during the on-site fieldwork. OGE suggested that FRTIB:

- revise its written procedures to reflect current changes in dates and procedures,
- destroy any financial disclosure reports of more than six years old as required by 5 CFR § 2634.603(g)(1), and
- partake in OGE training courses to learn about reviewing financial disclosure reports as well as administering an agency ethics program.

If you have comments or would like to discuss the report, please contact me at 202-482-9224. You may also contact Joseph E. Gangloff, OGE's Deputy Director, at 202-482-9220.

Sincerely,

A handwritten signature in black ink, appearing to read "D.A. Christopher, Jr.", written over a horizontal line.

Dale A. Christopher, Jr.
Associate Director
Program Review Division

Enclosures



United States Office
Of Government Ethics

Report Number 09-020

Highlights

Model Practices

- FRTIB requires annual ethics training for all agency employees.
- FRTIB provides ethics training to contractors.

OGE Suggests

- FRTIB revise its outdated written procedures to reflect current changes in dates and procedures.
- FRTIB destroy any financial disclosure reports of more than six years old as required by 5 CFR § 2634.603(g)(1).
- FRTIB partake in OGE training courses to learn about reviewing financial disclosure reports as well as administering an agency ethics program.

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

Ethics Program Review Federal Retirement Thrift Investment Board

September 2009 Report

Executive Summary

The United States Office of Government Ethics (OGE) has completed its review of the ethics program at the Federal Retirement Thrift Investment Board (FRTIB). 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 as set forth in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures for administering the program.

OGE's review identified two model practices that FRTIB has implemented. The model practices include:

- requiring annual ethics training for all employees and
- providing ethics training for contractors.

While no formal recommendations were made, OGE made several suggestions during the on-site fieldwork. OGE suggested that FRTIB:

- revise its outdated written procedures to reflect current changes in dates and procedures,
- destroy any financial disclosure reports of more than six years old as required by 5 CFR § 2634.603(g)(1), and
- partake in OGE training courses to learn about reviewing financial disclosure reports as well as administering an agency ethics program.

This report has been forwarded to the FRTIB Designated Agency Ethics Official.



**United States Office
Of Government Ethics**

Report Number 09-020

Ethics Program Review

Federal Retirement Thrift Investment Board

September 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.

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 as set forth in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures 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 Federal Retirement Thrift Investment Board (FRTIB), focused on the elements listed below.

- Program structure
- Leadership
- Financial disclosure systems
- Outside employment
- Advisory committees
- Ethics training
- Ethics counseling
- Enforcement of ethics laws and regulations
- Travel payments from non-Federal sources

On-site fieldwork for OGE's review of FRTIB was conducted in May 2009.

Program Elements

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

PROGRAM STRUCTURE

At FRTIB, the ethics function resides organizationally within the Office of General Counsel and is overseen by the Associate General Counsel, who serves as the Designated Agency Ethics Official (DAEO). At the time of OGE's on-site fieldwork, the day-to-day operation of the ethics program was carried out by the Deputy General Counsel, who served as the Alternate DAEO. Since the completion of the on-site fieldwork, the Assistant General Counsel has since been designated as Alternate DAEO. Additionally, an Attorney has been designed as an agency Ethics Contact.

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. The OGE review team met with the Executive Director of FRTIB to discuss the scope of the OGE review and the importance of agency leadership involvement in an ethics program, in accordance with 5 CFR § 2638.202(a). The Executive Director indicated his willingness to incorporate ethical leadership strategies into the day-to-day management of the ethics program. Currently, the Executive Director sends an e-mail message to all FRTIB employees reminding them of the importance of attending annual ethics training. Beginning in 2009, annual ethics training is mandatory for all FRTIB employees.

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 in providing counseling to employees. *See* 5 CFR § 2634.104(b).

Written Procedures

Written procedures ensure consistency in the collection, review, and certification of financial disclosure reports. Moreover, written procedures are essential for a good succession

Ethics Program Review: FRTIB

plan and effective internal controls. During its review, OGE suggested that FRTIB revise their outdated written procedures to reflect current changes in dates and procedures.

Retention of Reports

During OGE's on-site fieldwork, the review team determined that FRTIB was not destroying financial disclosure reports more than six years old as required by 5 CFR § 2634.603(g)(1). OGE suggested that FRTIB destroy any outdated reports.

Public Financial Disclosure System (SF 278)

To evaluate the public system at FRTIB, OGE examined the 8 public financial disclosure reports that were required to be filed, reviewed, and certified in 2008. The following is a summary of OGE's examination.

Type of Report

- 8 annual reports

Filing Timeliness

- All 8 reports were filed timely.

Review Timeliness

- All 8 reports were reviewed timely.

Certification Timeliness

- All 8 reports were certified timely.

Quality of Review

OGE noticed recurring technical errors during its examination of the public reports; overreporting and incomplete reports were the most common errors. OGE conveyed the importance of conducting a thorough technical review of the reports in addition to conducting the conflict of interest analysis. The OGE review team suggested various training courses offered by OGE to help the ethics staff at FRTIB learn more about reviewing financial disclosure reports as well as administering the ethics program.

Confidential Financial Disclosure System (OGE Form 450) for Regular Employees

To evaluate the confidential system for regular employees at FRTIB, OGE examined all 11 regular employee confidential financial disclosure reports that were required to be filed, reviewed, and certified in 2009. The following is a summary of OGE's examination.

Ethics Program Review: FRTIB

Type of Report

- 11 annual reports

Filing Timeliness

- All 11 reports were filed timely.

Review Timeliness

- 10 reports were reviewed timely.
- 1 report was not reviewed.

11 total

Certification Timeliness

- 10 reports were certified timely.
- 1 report was not certified.

11 total

Quality of Review

Ten reports appeared to have been thoroughly reviewed for compliance with reporting requirements. However, one report had not been reviewed or certified at the time of OGE's on-site fieldwork. At the time of the review, according to the Alternate DAEO, the report has since been reviewed and certified.

Confidential Financial Disclosure System (OGE Form 450) for Special Government Employees

To evaluate the confidential system for special Government employees (SGEs) at FRTIB, OGE examined all 5 SGE confidential financial disclosure reports that were required to be filed, reviewed, and certified in 2009. The following is a summary of OGE's examination.

Type of Report

- 5 new entrant reports

Filing Timeliness

- All 5 reports were filed timely.

Ethics Program Review: FRTIB

Review Timeliness

- All 5 reports were reviewed timely.

Certification Timeliness

- All 5 reports were certified timely.

Quality of Review

All 5 reports appeared to have been thoroughly reviewed for compliance with reporting requirements.

OUTSIDE EMPLOYMENT

In accordance with 5 CFR part 8601, before engaging in outside employment, with or without compensation, other than SGEs, FRTIB employees must obtain written prior approval from his or her office director.

OGE examined the two outside employment positions reported on the financial disclosure reports that required prior approval under FRTIB's supplemental standards of conduct regulation. OGE found appropriate files for each outside employment position and found evidence that the employees had received prior approval before engaging in the outside employment.

ADVISORY COMMITTEE

FRTIB has one advisory committee, the Employee Thrift Advisory Council. This committee consists of 15 members who advise FRTIB on matters relating to investment and administration of the Thrift Savings Plan. All 15 members have been designated as representatives by FRTIB. The OGE review team determined that FRTIB appropriately designated the committee members as representatives.

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.

OGE found established processes in place at FRTIB to ensure that initial ethics orientation and annual training requirements are met, in accordance with the education-related provisions of subpart G of 5 CFR part 2638. Beginning in 2009, FRTIB requires that all employees receive annual ethics training. OGE considers the training of all employees to be a model practice.

Ethics Program Review: FRTIB

Initial Ethics Orientation

Within 90 days from the time an employee begins work for an agency, the agency must provide the employee 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.*

OGE found FRTIB to be in compliance with the initial ethics orientation requirements. FRTIB provides initial ethics orientation to all new employees as required.

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 Alternate DAEO. *See 5 CFR § 2638.704(b)*.

OGE found FRTIB to be providing verbal annual ethics training to public financial disclosure filers and other covered employees.

In light of the importance of ethics training in preventing employees from committing ethics violations, OGE notes that FRTIB requires all employees to complete annual ethics training, which is made available to employees twice a year or as needed. Additionally, FRTIB provides Privacy Act and ethics training for the agency's contractors.

Ethics Training for SGEs

OGE found FRTIB provides its SGEs with an initial ethics orientation on the conflict of interest laws and ethics regulations that apply to them when they first come on board, and annually thereafter via in-person training.

Ethics Program Review: FRTIB

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.

To evaluate the counseling services provided by FRTIB, OGE examined a sample of written ethics-related counseling. The majority of the counseling concerned gifts from outside sources. The ethics officials memorialize counseling and maintain the documents in chronological order. Generally, each piece of written counseling includes the question, background information, and a discussion of the applicable rules. OGE found the counseling to be in compliance with the requirements of 5 CFR § 2638.203 (b)(7) and (8). The counseling reviewed was generally consistent, timely, and cohered with applicable laws, regulations, and interpretive guidance.

ENFORCEMENT

The DAEO is required to ensure that (1) information developed by internal audit and review staff, the Office of the Inspector General, or other audit groups is reviewed to 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 agency's Office of the Inspector General are utilized when appropriate, including the referral of matters to and acceptance of matters from that Office. *See* 5 CFR § 2638.203(b)(11) and (12).

OGE found FRTIB to be aware of the requirements contained in 5 CFR § 2638.203(b)(11) and (12).

Prior to OGE's on-site fieldwork, an anonymous letter was sent to OGE alleging unethical behavior by an FRTIB employee. Since FRTIB does not have an Office of the Inspector General, OGE's Director suggested FRTIB use the Department of the Interior's Office of the Inspector General (DOI-OIG) to investigate the allegation. The investigation was completed by the DOI-OIG and a report was issued in late March 2009. The investigation did not find any evidence to support the allegation.

ACCEPTANCE OF 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

Ethics Program Review: FRTIB

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.

OGE determined that seven travel payments from non-Federal sources were accepted by FRTIB during the semiannual periods covering April 1, 2007 through September 30, 2008. Based on OGE's examination of written authorizations and other supporting documentation, OGE found that whenever payments of travel from non-Federal sources were offered to FRTIB employees, FRTIB ethics officials performed a conflict-of-interest analysis. Additionally, OGE found that all payments were reported to OGE using the appropriate General Services Administration Standard Form 326.

Summary

OGE's review identified two model practices that FRTIB has implemented:

- requiring annual ethics training for all employees and
- providing ethics training for contractors.

While no formal recommendations were made, OGE made several suggestions during the on-site fieldwork. OGE suggested that FRTIB:

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