United States
Office of Government Ethics
Suite 500, 1201 New York Avenue, N.W.
Washington, D.C. 20005-3917

August 14, 1990

Mr. Frank Cavanaugh
Executive Director
Federal Retirement Thrift
Investment Board
805 Fifteenth Street, N.W.
Washington, D.C. 20005

Dear Mr. Cavanaugh:

Our agency recently completed a review of the Federal Retirement Thrift Investment Board's ethics program. This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended, and was performed May 23-June 12, 1990. The objective of the review was to determine the effectiveness of the ethics program. To accomplish this, we reviewed and analyzed five program elements: the standards of conduct, the ethics officials' duties and responsibilities, the financial disclosure reporting systems, the counseling program, and the ethics education and training program.

The DAEO has developed an effective ethics program that is generally in compliance with Federal regulations, Executive orders, and the Board's standards of conduct. However, some improvements are needed to maintain the integrity of the program. For example, Board members who work less than 60 days should file confidential reports, the technical review of the public and confidential reports needs improvement, and efforts are needed to ensure more employees receive ethics training.

BACKGROUND

Requirements for an agency's ethics program are contained in the Ethics in Government Act of 1978, as amended, Executive orders 11122 and 12674, and implementing regulations issued by the Office of Personnel Management (5 C.F.R. 735), the Office of Government Ethics (5 C.F.R. 2634, 2635, 2637, 2638), and the individual federal agency. In addition to these regulations, an agency may have internal policy directives. The Federal Retirement Thrift Investment Board has agency regulations in 5 C.F.R. 1633 and Directive 3 entitled <u>Standards of Conduct Ethics Plan and Program</u>.

RESULTS OF OUR REVIEW

The Board's Interpretation of Confidential Reporting Requirements for Its Members is Not Consistent with Federal Regulations

The Board's interpretation that its Board members who work less than 60 days are not required to file confidential financial disclosure reports is not consistent with 5 C.F.R. 735.403 which identifies individuals required to submit confidential reports. Although § 735.404 identifies two exceptions to these confidential reporting requirements, Board members working less than 60 days do not meet either of these exceptions.

Because Board members work less than 60 days, make Government decisions in regard to the investment policy of Thrift Savings Plan (TSP) assets and, as final decisionmakers, are not subject to the degree of supervision and review cited in § 735.404(a) and because the members' duties may have the potential for conflicts-of-interest situations as evidenced by the three letters to members on this subject, we believe that Board members do not meet the exception in § 735.404(a).

Furthermore, although the standards of conduct have a separate subpart for Board members and a separate subpart for special Government employees (SGEs), Board members **are** SGEs as defined by 18 U.S.C. 202(a) because they are "officers (or) employees...of the agencies who are appointed ...to serve, with or without compensation, for not more than 130 days during any period of 365 consecutive days either on a full-time or intermittent basis." Therefore, Board members who work less than 60 days are subject to the SGE confidential reporting requirements specified in § 735.412(b).

The DAEO told us that the Board has not implemented confidential reporting for members who worked less than 60 days because the Board did not interpret it as a requirement. Agency regulations contain a separate subpart for SGEs and a separate subpart for Board members, and based on these regulations members who work less than 60 days are not required to file confidential statements.

The Technical Review of the Public and Confidential Financial Disclosure Reports Needs Improvement

Under the Ethics Act and implementing regulations, the reviewing official reviews each financial disclosure report to determine that each item is complete and that no financial holding or position disclosed on the report violates or appears to violate conflict of interest statutes, Executive orders, or regulations.

To assess the adequacy of the Board's review process, we examined all 10 public reports and all 24 confidential reports. We identified no real or apparent conflicts of interest; however, we found instances where information in the report was insufficient to perform a complete conflict of interest analysis. For example, the nature of businesses was not specified, the type of an IRA was not described, and the names of specific mutual funds were not reported. Despite the lack of information, the reviewer approved these reports. However, without more details, we were unable to determine whether the mutual funds were widely diversified nor were we able to determine whether the nature of the businesses created potential conflicts of interest in relation to the individual's official duties.

In addition to the technical deficiencies noted above, we found additional reporting deficiencies. For example, we found that not a single one of the 34 filers reported spousal employment. Although it may be true that none of these employees have working spouses, it is more likely that filers simply are not reporting spousal employment. In addition, 10 of the 24 confidential filers, left one or more sections of the report blank.

Because the DAEO has determined that the potential for conflicts of interest situations within the agency are minimal and generally limited to whether an employee has financial holdings in one or more of the Board's contractors, he believes that his technical review procedure is sufficient to identify any conflicts of interest. This procedure concentrates on comparing the financial holding to the contractor list instead of investigating the nature of each reported holding.

<u>More Employees Should Receive Ethics Training</u>

As evidenced by the article in the <u>OGE Newsgram</u> (Winter/Spring 1990), we commend the Board for its innovative approach to training employees on the agency's standards of conduct. Because this training is attended by GS/GM-14s, 15s, and SESers only, additional approaches are needed to target other groups within the agency who should receive training. For example, the GS-13s who file confidential reports and the five Presidential appointed Board members will be required by Executive order 12674 to receive a mandatory annual ethics briefing once OGE's regulations on ethics training are issued.

Further, the education program is not directed to all agency employees. Although the individuals who attend the standards of conduct training during the Executive Director's weekly staff meeting are encouraged to share this training with their staff, the agency currently lacks the internal controls to ensure that this is being accomplished. 5 C.F.R. 2638.203 requires that the DAEO ensure, among other things, that an education program for agency employees concerning all ethics and standards of conduct matters, including post-employment matters, is developed.

In the DAEO's opinion, the scope of the ethics education program includes Board members and agency staff. Board members receive a copy of the standards of conduct when they are appointed to the Board as well as periodic ethics memoranda. As for the GS-13s who file confidential reports, the senior employees who receive a standards of conduct briefing at the Executive Director's weekly staff meeting are encouraged to share this information with their staff, which includes the GS-13s and below. However, when asked, he admitted that he currently had no way of verifying if, indeed, the senior employees were actually sharing that information with their staff. We maintain that the agency needs to train more employees on ethics laws and regulations.

CONCLUSIONS

Overall the Board's ethics program has a sound structure and is effective, however, some improvements are needed. The Executive Director supports the ethics program and provides personal leadership in establishing, maintaining, and carrying it out. The DAEO coordinates and manages the program by performing the ethics duties required by Federal regulation. The collection of both the public and confidential financial disclosure reports is effective. The written ethics advice appears consistent with the agency's standards of conduct and conflicts of interest statutes. Improvements are needed in the identification of Board members as confidential filers, the technical review of the public and confidential reports, and the scope of the ethics education program.

RECOMMENDATIONS

We recommend that the Executive Director ensure that the ethics program complies with the requirements set forth in the Ethics in Government Act and implementing regulations. To accomplish these objectives, the Executive Director should require the DAEO to:

1. Require all Board members who work less than 60 days to file a confidential financial disclosure report at the time of entrance on duty and annually according to the procedures specified for SGEs in §1633.231 of the Board's standards of conduct.

2. Improve the review of the public and confidential financial disclosure reports by obtaining the nature of the business, the type of IRAs, and the specific names of mutual funds and by ensuring that all sections are complete. In order to improve the quality of individual reporting, the DAEO annually should include in his cover memorandum to employees a description of the common reporting errors, especially failure to report spousal employment.

3. Conduct ethics training for Board members and GS-13s and below.

In closing, I wish to thank you for all your efforts on behalf of the ethics program. Please advise me within 60 days of the actions you have taken or plan to take concerning these recommendations. A brief follow-up review will be scheduled within six-months. Failure to comply with these recommendations could result in a Notice of Deficiency under 5 C.F.R. Part 2638 to the Board if it is determined during the follow-up review that the Board is not in compliance with applicable ethics laws and regulations. If we can be of any further assistance, please contact Richard Handy at FTS-523-5757.

Sincerely,

Donald E. Campbell

Donald E. Campbell
Acting Director

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