United States Office
Of Government Ethics

Ethics Program Review

United States Equal Employment Opportunity Commission

December 2010 Report

RESULTS IN BRIEF

The United States Office of Government Ethics (OGE) found the United States Equal Employment Opportunity Commission's (EEOC) ethics program to be in general compliance with the Ethics in Government Act of 1978, as amended (the Ethics in Government Act) and 5 CFR part 2634.

However, OGE identified some areas that could be improved. Specifically, OGE recommends District Directors assume the responsibility for providing new employee information directly to the Office of Legal Counsel (OLC), track the completion of Initial Ethics Orientation (IEO) in their districts, and provide new entrant filers with confidential financial disclosure forms. In addition, OGE recommends that EEOC increase the frequency of ethics training and that EEOC create a process in which independent parties investigate potential violations against District Directors.

OBJECTIVE, 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. As a part of OGE's monitoring activities, OGE conducted a focused review of the financial disclosure and ethics training programs administered at EEOC.

OGE's objective was to evaluate EEOC's processes for preventing conflicts of interests through (1) its review of financial disclosure reports for potential conflicts of interest and (2) the identification of new employees for training and filing purposes. To meet this objective, OGE examined 36 public financial disclosure reports and 191 confidential financial disclosure reports required to be filed in 2009. The public financial disclosure reports examined consisted of 4 new entrant, 29 annual, and 3 termination reports. The confidential financial disclosure reports examined consisted of 184 annual reports and 7 new entrant reports. OGE examined the financial disclosure reports to determine whether they had been filed, reviewed, and certified timely. Additionally, OGE interviewed seven[1] of EEOC's 15 District Directors and members of their staffs and an Assistant Director of Human Resources. The purpose of the interviews was to determine and evaluate the processes for preventing conflicts of interest, providing ethics training, identifying new employees, and reviewing and collecting confidential financial disclosure reports.

OGE also evaluated EEOC's directives, processes, and procedures and their impact on the agency's ability to prevent and detect ethics violations. OGE's fieldwork for this review was conducted between February and June 2010.

BACKGROUND

EEOC enforces laws that prohibit discrimination based on race, color, religion, sex, national origin, disability, age or genetic information in hiring, promoting, firing, setting wages, testing, training, apprenticeship, and all other terms and conditions of employment. EEOC conducts investigations of alleged discrimination; makes determinations based on gathered evidence; attempts conciliation when discrimination has taken place; files lawsuits; and conducts voluntary assistance programs for employees, unions, employers, and community organizations. EEOC also has adjudicatory and oversight responsibility for all compliance and enforcement activities relating to equal employment opportunity among Federal employees and applicants, including discrimination against individuals with disabilities.

The last review of EEOC's ethics program was conducted in 2003. In the 2003 report, OGE issued three recommendations in the areas of training and financial disclosure. The recommendations were closed after the follow-up review was conducted in April 2004.

PROGRAM STRUCTURE

The ethics program at EEOC is located within OLC. The Legal Counsel serves as the Designated Agency Ethics Official (DAEO)[2] and has oversight responsibility for the ethics program. The Assistant Legal Counsel for the Advice and External Litigation Division within OLC is the Alternate DAEO (ADAEO) and is responsible for the day-to-day operations of the ethics program. The OLC staff is comprised of seven attorneys who share ethics duties in a part-

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[1] The review team interviewed employees from the following districts: Atlanta, Birmingham, Charlotte, Chicago, Memphis, New York, and San Francisco.

[2] The DAEO position, which is a non-career SES, has been vacant since January 2009. The Associate Legal Counsel serves as the DAEO when the position is vacant.

time capacity. The staff attorneys provide advice, render ethics opinions, conduct ethics training, and review financial disclosure reports. They also serve as liaisons to the 15 districts.

All District Directors are designated as Deputy Ethics Officials (DEO) and their ethics responsibilities are outlined in EEOC's Directives 680.001 and 680.003. The directives cover a wide range of DEO responsibilities including providing advice to employees, collecting and reviewing confidential financial disclosure reports, and evaluating requests for approval of outside activities for subordinate employees.

While the Office of Human Resources (OHR) is separate from OLC, EEOC's Directives 680.001 and 680.003 have also delegated to OHR responsibility for key elements of the ethics program such as the administration of IEO and the identification of new entrant financial disclosure filers. Each of EEOC's 15 districts has a District Resource Manager (DRM) who serves as liaison between OHR, which is located in headquarters, and the district. The DRMs are responsible for providing IEO to employees throughout the districts. The directives require both OLC and OHR to work together closely to ensure that all elements of the ethics program are administered efficiently.

QUALITY OF REVIEW OF CONFIDENTIAL FINANCIAL DISCLOSURE REPORTS

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).

EEOC Directive 680.001 states, and the ADAEO confirmed, that District Directors are responsible for performing a conflicts of interest review of all confidential financial disclosure reports collected in their districts. During interviews with District Directors, the review team found there were inconsistencies in the type of review the District Directors indicated they perform on the confidential financial disclosure reports. Four District Directors indicated they perform a conflicts of interest analysis on the confidential financial disclosure reports before forwarding them to OLC. The conflicts of interest analysis performed by these District Directors included a review of the financial interests of the filer and a comparison of those assets to companies with open charges filed against them within the filer's district. Two other District Directors indicated they only perform technical reviews of the confidential financial disclosure reports, while another District Director only forwards the reports to OLC but does not review them.

The ADAEO stated that although District Directors are responsible for performing a conflicts of interest review of confidential financial disclosure reports, District Directors have not received formal training on how to perform this task. Because District Directors have not received formal training to properly identify conflicts of interest and some are not aware of their responsibility to perform this task, the quality of the intermediate review is compromised.

In subsequent discussions with the DAEO and ADAEO and in response to our draft report, they determined that the District Directors would no longer perform the conflict of interest analysis on the confidential financial disclosure reports. Instead, the District Directors will be responsible for collecting the reports and ensuring they are technically complete and then forwarding the reports to OLC staff for the conflict of interest reviews. The DAEO also stated that they will recommend revision of EEOC Director 680.001 to remove the conflict of interest review of the confidential financial dislcosure reports from the District Directors' responsibilities. This change in procedure should provide uniformity of review of the confidential financial disclosure reports. OGE recommends, however, that EEOC thoroughly communicate to District Directors their responsibilities for the confidential financial disclosure process and ensure that District Directors understand what constitutes a technically complete report.

OGE also found that there is not a formal agency-wide system to identify potential conflicts of interest prior to case assignment. Instead, OLC relies primarily on employee training.[3] Employee training is an essential element of an ethics program, and, ultimately, employees are responsible for ensuring that they do not participate in particular matters in which they, their spouses or dependent children have a financial interest. However, annual training may not be sufficient. Therefore, OGE recommends that EEOC increase the frequency of ethics training and that the OLC partner with the District Directors to assist in this upgraded training effort.

EEOC also employs a system that identifies conflicts of interest that may have already occurred. During the annual filing season, OLC receives a list from the Office of Information Technology (IT) that includes all open charges for each district in that calendar year. OLC then compares the assets of financial disclosure filers with the list of open charges. If a conflict is found between a filer's assets and any open charges, a "match" memorandum (hereafter referred to as a match memo) is sent to the appropriate District Director listing the open charge that matches the filer's asset. The District Director is then responsible for verifying whether the filer worked on the charge and reporting those findings to OLC.

OGE is seriously concerned about the way investigations are conducted when a match memo is sent regarding a District Director. The review team found that when a match memo was sent regarding a District Director, the District Director asked subordinates to investigate whether the District Director had any involvement in the case that presented a potential conflict of interest. The District Director then responded to OLC with an explanation of the results of the investigation. OGE finds this practice troublesome in that the District Director assigns a subordinate to perform the investigation and provides the response concerning the potential

[3] EEOC also sends a memorandum to incumbent financial disclosure filers reminding them of their responsibility to disqualify themselves from matters that could cause a conflict of interest as required in 18 USC 208.

violations. Therefore, OGE recommends EEOC create a process by which an independent party investigates potential violations against District Directors.

While EEOC faces challenges in the quality of its review for potential conflicts of interest, the review team also found deficiencies in the timeliness of the collection of confidential financial disclosure reports in two districts. The review team interviewed the District Directors from both districts. One District Director stated that she forgot to collect the reports by the filing deadline. She did not remember until OLC ethics officials sent an email inquiring about the late reports. The other District Director stated that his secretary did not forward the reports to OLC until all of the reports were submitted. He indicated that one report was late and, therefore, all reports were forwarded late. Because the issues with the timeliness of the collection of confidential financial disclosure reports appear to be isolated to only 2 of the 15 districts, OGE is not making any formal recommendations at this time. OGE believes that the recommended training provided to District Directors should alleviate these deficiencies.

IDENTIFICATION OF NEW EMPLOYEES

EEOC's current process for identifying new employees in the districts for purposes of training and confidential financial disclosure filing is in need of improvement. The current process relies heavily on the delegation of duties to OHR while not utilizing the District Directors in their roles as DEOs. OGE believes expanding the role District Directors play in the administration of the ethics program will resolve the areas of deficiency in the identification of new employees in the districts for training and filing purposes.

EEOC's Directive 680.001 lists the positions that require the filing of a confidential financial disclosure report. According to the directive, District Directors are to provide OHR with the names of new employees as well as of employees who are acting in covered positions for more than 60 days.[4] OHR is to incorporate that information into the master list of filers that is then provided to OLC. OHR should then provide financial disclosure forms and annual training to the employees on the master list.

OLC ethics officials stated that the master list of confidential financial disclosure filers obtained from OHR contains errors and that the confidential financial disclosure master list is unreliable. According to the ADAEO, District Directors often include and request OGE Form 450s from employees who are not on the original master list provided by OHR. As a result, some new entrant filers submit their new entrant report at the time of annual filing. In fact, the review team found that 29 percent of new entrant confidential financial disclosure reports were filed untimely. The ADAEO indicated that many employees who are acting in covered positions are never identified due to constant rotation in their positions. During interviews with the review team, District Directors and DRMs confirmed that new employee information is provided to

[4] When candidates are selected for positions in the districts, the DRMs provide OHR with the candidates' information for final approval. DRMs also provide OHR with the Standard Form 52 when an employee is acting in a position for more than 60 days.

OHR. Therefore, it appears that the breakdown in the process for identifying new entrant filers is between OHR and OLC.

EEOC's Directive 680.003 states that the ADAEO is responsible for developing and conducting IEO with the assistance of the Director of OHR. The ADAEO stated that OHR conducts IEO which consists of a packet of materials provided to employees during the new employee orientation at headquarters. This packet contains a copy of the Standards of Ethical Conduct for Employees of the Executive Branch, EEOC's supplemental regulations, an Ethics Order, and a blank certification form with instructions to complete and mail the certification to the ADAEO once the new employee has reviewed the material. OHR is responsible for providing IEO to employees at headquarters and DRMs provide IEO to employees in their districts.

An ethics training program is essential to raising awareness among employees about ethics laws and rules and the availability of an agency ethics official to provide ethics counseling. Each agency's ethics training program must include, at least, an IEO for all new employees and annual ethics training for covered employees.

While it appears that IEO is provided consistently at headquarters, the review team found discrepancies in the way IEO is provided in the districts: In three districts, employees are provided with only the IEO packet. In two other districts, employees are provided with the IEO packet and directed to complete an online course. The online course is the only training provided in one district, while another District Director stated he believed IEO was provided during a two-week new employee training in headquarters. The ADAEO indicated that in late 2009 he became aware that some districts were using the online course to meet the IEO requirement. The ADAEO stated that he advised OHR to cease using the online course because he had not reviewed it to ensure that the course complied with regulations.[5]

EEOC also faced challenges in certifying that all new employees received IEO in 2009. On the 2009 Agency Ethics Program Questionnaire (Questionnaire), EEOC reported that 231 of the 262 new employees received IEO. OLC ethics officials indicated that many training certifications were forwarded to OHR instead of to the ADAEO as employees were instructed to do on the certification form. Therefore, ethics officials could not verify that all new employees received IEO in 2009.

OLC currently relies on OHR to provide information that OGE believes can easily be obtained from District Directors and should be because of their roles as DEOs. District Directors should be able to provide new and acting employee information to OHR and OLC concurrently. OLC would then receive this information from both District Directors and OHR, which would allow the information received from the District Directors and the information received from OHR to be compared. This comparison, in turn, would create an additional mechanism to help ensure all new employees are identified in a timely manner for filing and training purposes. Because District Directors, in conjunction with DRMs, are already identifying new entrant filers

[5] After reviewing a draft of this report, EEOC ethics officials informed the review team that the online course used by OHR for IEO has been properly vetted and approved for use to fulfill the requirements of IEO.

and often directly supervise them, they should be able to provide new entrants with confidential financial disclosure forms upon entry into covered positions. Of course, this new responsibility will require OLC to provide additional training to District Directors regarding the financial disclosure filing requirements as the review team found that not all District Directors were familiar with the requirements.[6] In addition to being able to identify new entrants, District Directors are well-positioned to track the completion of IEO for new employees. Since District Directors directly supervise DRMs, they can easily obtain IEO completion information and provide it to OLC as an additional internal control.

OGE believes that expanding the role of District Directors to assist the ADAEO in identifying new employees and ensuring they receive IEO will alleviate the challenges EEOC faces in this area. The review team discussed the expansion of duties with three of the seven District Directors. All three District Directors were supportive of the expanded role and offered additional suggestions, which have been incorporated into OGE's formal recommendation. Therefore, OGE recommends EEOC formalize and expand the roles of District Directors to fully support the ADAEO in the administration of the ethics program and amend its directives accordingly. Specifically, OGE recommends that all District Directors identify new employees for purposes of attending IEO and filing financial disclosure forms and communicating that information directly to OLC, track the completion of IEO in their districts, and provide new entrant filers with confidential financial disclosure forms.

SUMMARY

OGE makes the following recommendations to bring EEOC's ethics program into full compliance with statutory and regulatory requirements:

1. OGE recommends that EEOC increase the frequency of employee ethics training.
2. OGE recommends EEOC create a process in which an independent party investigates potential violations against District Directors.
3. OGE recommends EEOC formalize and expand the roles of District Directors to fully support the ADAEO in the administration of the ethics program and amend its directives accordingly. Specifically, OGE recommends that all District Directors assume the following responsibilities:
    - identifying new employees for purposes of IEO and financial disclosure and communicating that information directly to OLC,
    - tracking the completion of IEO in their districts, and
    - providing new entrant filers with confidential financial disclosure forms.

[6] One District Director was not aware that employees who are acting in covered positions for longer than 60 days are required to file financial disclosure reports. In addition, two District Directors were not aware that new entrants are required to file financial disclosure reports within 30 days of entering a covered position.

EEOC's DAEO is to formally advise OGE within 60 days of the specific actions EEOC has taken or plans to take to address OGE's recommendations. OGE stands ready to assist EEOC in implementing these recommendations, as well as other program initiatives that EEOC may choose to undertake. OGE will follow-up with EEOC's DAEO within 6 months from the date of this report's issuance on the status of OGE's recommendations.

AGENCY COMMENTS

A draft of the report was provided to EEOC for comment. EEOC responded with comments which were incorporated into the final report.