



U.S. Office of Government Ethics
Program Review Division

Ethics Program Review

Marine Mammal Commission

Report No. 12-36
February 2012

Results in Brief

The United States Office of Government Ethics (OGE) conducted a review of the Marine Mammal Commission's (the Commission) ethics program in December 2011. The results of the review indicated that the Commission's ethics program is generally effectively administered and in compliance with applicable laws, regulations, and policies.

Highlights

- Comprehensive memorandum on post-employment restrictions provided to all departing employees

Concerns

- Ethics training does not meet all requirements in its present form
- Semi-annual reports of travel acceptance from non-Federal sources are not submitted to OGE timely

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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 the Commission's ethics program, OGE examined a variety of documents provided by the Designated Agency Ethics Official (DAEO); other documents that the Commission forwarded to OGE, including the 2010 annual questionnaire; all of the Commission's public and confidential financial disclosure reports; and a sample of advice and counsel provided to the Commission's employees. In addition, members of OGE's Program Review Division met with the DAEO to obtain additional information about the strengths and weaknesses of the Commission's ethics program, seek clarification on issues that arose through the documentation analysis, and verify data collected.

Program Administration

The Commission's ethics office consists of a DAEO and Alternate DAEO. The General Counsel serves as the DAEO while the Executive Director serves as the Alternate DAEO. The DAEO is the primary point of contact for ethics issues and is responsible for the overall administration of the ethics program at the 13-person agency. The DAEO is the primary ethics advisor and financial disclosure reviewer. Although not active in day-to-day program operations, the Executive Director serves as additional support and elevates ethics at the Commission.

Financial Disclosure

The Commission has formal written procedures for the administration of the financial disclosure program. The DAEO maintains a master list of filers which he also uses to track education and training. The DAEO also maintains a list of filers with recusals in place; these recusals are also annotated on the filers' reports.

For the year under review, the financial disclosure program consisted of two public financial disclosure reports and seven confidential financial disclosure reports, excluding reports of special Government employees (SGEs). The public financial disclosure reports were filed, reviewed, and certified timely. The confidential financial disclosure reports were filed, reviewed, and certified timely. Reports were technically sufficient and most reports contained notes from the DAEO with special emphasis on noting recusals in place.

Special Government Employees

The Commissioners and Committee of Scientific Advisors on Marine Mammals members are classified as SGEs. For the year under review, the SGE reports consisted of one public financial disclosure report and nine confidential financial disclosure reports. In previous reviews, OGE recommended that the Commission establish an annual filing deadline of 30 days prior to each scheduled annual meeting. OGE advisory DO-95-019 gives agencies flexibility to collect reports simultaneously for term SGEs. The ethics office received reports in February, March, April and May 2011 for the May 2011 meeting. OGE could not determine the timeliness of public and confidential financial disclosure reports filed by SGEs. However, the reports were reviewed and certified timely. The OGE review team observed notes from the DAEO regarding recusals in place to address potential conflicts of interest.

Education & Training

Due to the small size of the agency, the DAEO is immediately aware of the status of all staff and is able to account for all Commissioners, Committee members, and staff required to receive either initial ethics orientation or annual ethics training. The DAEO provides a one-on-one initial ethics orientation to new employees (IEO). The one-on-one IEO is supplemented with written materials. For 2011, the Commission had one new staff member. Four new SGEs were appointed in 2011, one Commissioner and three committee members¹. Of the three committee members, one is a full-time Federal employee and received IEO in that capacity. The two other committee members received IEO over the telephone. Additionally, they were sent OGE's pamphlet, "To Serve with Honor" to review and were required to review the online module "Ethics Training for Special Government Employees" on the OGE Web site. The review team found that the description of IEO meets all relevant requirements.

The Commission has an annual ethics training plan in place that meets all applicable requirements. The Commissioners and members of the Committee of Scientific Advisors on Marine Mammals constitute the majority of individuals who must receive annual ethics training. However, due to the nature of their appointments, they are not based in the Commission's headquarters. The DAEO conducts ethics training at the Commission's annual meeting where Commissioners, Committee members, and staff convene. The DAEO makes alternative arrangements to provide training to any filer that does not attend the annual meeting. The OGE review team examined the ethics training presentation that the DAEO provided at the most recent annual meeting. The presentation is supplemented with OGE's pamphlet, "To Serve With Honor" which targets advisory committee members and special Government employees (SGEs). However, the training did not provide all necessary information to annual filers. In order to meet annual training requirements, the ethics office should include contact information² and supplemental documentation on conflict of interest statutes.

Recommendation

- Update annual training to provide contact information for the ethics office and coverage of the conflict of interest statutes

Advice & Counsel

The Commission's DAEO provides ethics advice and counsel based on a written delegation of authority letter from the Executive Director. The OGE review team examined samples of the Commission's ethics guidance and found them to be detailed and timely. The DAEO explained that requests for advice are rare and usually of a simple nature. The DAEO provides all departing employees with a seven page memorandum that outlines post-employment restrictions. While the

¹ The new Commissioner had been on the Committee of Scientific Advisors on Marine Mammals for 11 years prior to her appointment, no initial training was needed.

² While OGE recognizes that the Commission is a small agency and that relationships with full-time employees, Commissioners, and committee members may be longstanding and established, providing contact information is a regulatory requirement which ensures that access to ethics officials is readily available.

memorandum is geared towards the Commissioners and committee members, it contains valuable information for all departing employees.

Conflict Remedies

No non-PAS ethics agreements or 18 U.S.C. § 208 waivers were established during the period covered by this program review. The DAEO maintains a list of recusals arranged by Commissioners, Committee members, and staff that documents potential conflicts. When necessary, the DAEO sets up a screening arrangement for Commissioners and committee members and notifies all staff of the details through a memorandum. The DAEO and alternate DAEO attend Commission and committee meetings, which allows them to remain vigilant regarding recusals and potential conflicts of interest.

Enforcement

The Commission has no Office of the Inspector General (OIG). A memorandum of understanding between the Department of Commerce's OIG and the Commission creates a relationship that allows the Commission to utilize the services of the Department of Commerce's OIG. The DAEO explained that the Commission has not made any referrals to the OIG or the Department of Justice in several years. In the one instance where there was an issue, the Commission consulted with OGE and rectified the matter. The DAEO had not contacted the OIG recently or reaffirmed lines of communication since potential conflicts of interest are so rare. The DAEO told the OGE review team that he was responsible for making referrals to the Department of Justice and concurrently notifying OGE of those referrals.

Suggestion

- Periodically confirm contact information for officials with Department of Commerce's OIG

1353 Travel Acceptances

The Commission has historically not filed the required semi-annual reports of travel acceptance from non-Federal sources in a timely manner. At the beginning of the on-site portion of the review, the DAEO provided OGE with the required semi-annual reports.

The Commission had no written procedures to administer travel acceptance from non-Federal sources. During the course of the review, the DAEO drafted procedures that include a conflict of interest review prior to the occurrence of the travel.

Recommendation

- Submit semi-annual reports of travel from non-Federal sources to OGE in a timely manner

Agency Comments

OGE provided the Commission an opportunity to comment on the draft version of this report. The DAEO provided the following comments:

Thank you for providing me with a copy of the final draft report of the recently completed Office of Government Ethics review of the Marine Mammal Commission's ethics program and the opportunity to submit comments. I would like to address both areas of concern identified in the report.

As recommended, the Commission will provide contact information and expanded coverage of the conflict of interest statutes in future training sessions. However, I take issue with the assessment that past training has been wanting in these regards. As discussed at the exit conference, the oral presentation given at the training session on which the review was based included coverage of the conflict of interest statutes, albeit not as formally as the reviewers might have liked. As for providing contact information, I think that the record indicates that past notifications have been sufficient to inform those required to receive training who to contact to obtain advice on ethics issues. Of the seven staff members required to receive training, all work in the same small office suite, share the same central telephone number, and see each other more or less on a daily basis. I also reviewed the e-mails that I received in the past year from each of the 12 special government employees required to receive ethics training. The minimum number of e-mails that I had received from any of those individuals within that period was eight. More telling, I had received at least one e-mail from each of those individuals concerning some aspect of the Commission's ethics program. I can think of no clearer indication that this widely scattered group of employees knows who to contact regarding ethics matters and how to contact him.

The Commission recognizes that it needs to do a better job of submitting travel reports in a timely manner. The draft review indicates that the Commission has "drafted procedures that include a conflict of interest review prior to the occurrence of the travel." The review also should note that those procedures have been implemented and are expected to provide a mechanism for having ready access to the information needed to file accurate and timely reports.