



United States Office
Of Government Ethics

Report Number 06-014

Highlights

Issues of Compliance

- RRB is in substantial compliance with applicable requirements.

Model Practices

- Ethics officials provided training specifically designed for new supervisors who were not required to receive annual ethics training. The DAEO also sends a memorandum to all employees annually, reminding them that they are subject to the Standards of Ethical Conduct for Employees of the Executive Branch and encouraging them to seek the advice of an ethics official when appropriate.
- Post-employment counseling is incorporated into RRB's employee out-processing procedures, allowing ethics officials to assess each employee's needs and provide counseling when appropriate.

OGE Suggests

- RRB review and certify each report filed by a Presidentially-appointed, Senate-confirmed employee as soon as possible after the intermediate review is completed and then immediately submit the report to OGE.
- RRB determine which office should be responsible for providing concurrent notification to OGE when the agency makes a referral to the Department of Justice regarding alleged violations of the criminal conflict of interest laws.

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Ethics Program Review

Railroad Retirement Board

October 2006 Report

Executive Summary

The Office of Government Ethics (OGE) has completed its review of the ethics program at the Railroad Retirement Board (RRB). The purpose of a review is to identify and report on the strengths and weaknesses of the program by: (1) measuring agency compliance with ethics requirements found in the relevant laws, regulations, and policies; and (2) evaluating ethics-related systems, processes, and procedures in place for administering the program. OGE determined that there is reasonable assurance that the performance and management of RRB's ethics program is effective. However, OGE suggests that actions be taken to resolve two issues to enhance the effectiveness of the program.

First, public financial disclosure reports filed by Presidentially-appointed, Senate-confirmed employees are not generally submitted to OGE as soon as they are approved, as required by OGE guidance issued in DAEOgrams DO-05-009, dated April 13, 2005, and DO-06-010, dated April 7, 2006.

Second, both the Inspector General and the Alternate Designated Agency Ethics Official were aware of the requirement that agencies must concurrently notify OGE when making a referral to the Department of Justice regarding alleged violations of the criminal conflict of interest laws. 5 C.F.R. § 2638.603(b). However, both stated that their respective offices would be responsible for notifying OGE, which could result in duplicated efforts and OGE receiving multiple notifications of the same referral or a misunderstanding that would result in OGE receiving no notification at all.

OGE's review also identified several model practices that RRB has implemented. These include providing training specifically for new supervisors who were not required to receive annual ethics training and annually reminding all employees that they are subject to the Standards of Ethical Conduct for Employees of the Executive Branch. Additionally, the incorporation of post-employment counseling into RRB's employee out-processing procedures allows ethics officials to assess each employee's needs and provide counseling when appropriate.

This report has been forwarded to RRB's Designated Agency Ethics Official (DAEO) and Inspector General.



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Ethics Program Review
Railroad Retirement Board

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Introduction

OGE MISSION

The Office of Government Ethics (OGE) provides leadership for the purpose of promoting an ethical workforce, preventing conflicts of interest, and supporting good governance initiatives.

PURPOSE OF A REVIEW

The purpose of a review is to identify and report on the strengths and weaknesses of the program by: (1) measuring agency compliance with ethics requirements found in the relevant laws, regulations, and policies; and (2) evaluating ethics-related systems, processes, and procedures in place for administering the program.

REVIEW AUTHORITY AND SCOPE

OGE has the authority to evaluate the effectiveness of executive agency programs. This review of the Railroad Retirement Board (RRB) focused on the financial disclosure systems, ethics agreements, ethics education and training, advice and counseling, and the enforcement of ethics laws and regulations. The review also addressed RRB's determination of the employment status of members of the Actuarial Advisory Board and the acceptance of travel payments from non-Federal sources. Title IV of the Ethics in Government Act of 1978, as amended, and 5 C.F.R. part 2638.

This review was conducted onsite in February 2006, at RRB Headquarters in Chicago, Illinois.

Ethics Program Review: RRB

Findings

PROGRAM STRUCTURE

The current structure of RRB's ethics program appears to be effective in meeting relevant requirements and the needs of employees for ethics-related services. RRB's General Counsel serves as the Designated Agency Ethics Official (DAEO) and the Assistant General Counsel has been appointed Alternate DAEO. The ethics program is primarily administered by the Alternate DAEO, with support from an Ethics Advisor and a paralegal. None of RRB's ethics officials work exclusively on ethics program responsibilities.

EMPLOYEE ETHICS SURVEY

Prior to the review of RRB's ethics program, OGE surveyed the agency's employees to assess the effectiveness of the ethics program and agency ethical climate from the employees' perspective. The results were discussed with the Alternate DAEO and transmitted to the DAEO during the course of the review. Overall, employees who responded to the survey were favorable in their assessment of RRB's ethics program and ethical climate. Most respondents indicated that they were familiar with the rules of ethical conduct for executive branch employees and aware that there are officials in their agency with responsibility for addressing ethics concerns. These results indicate a relatively high level of program awareness among survey respondents. Most respondents also indicated that the ethics advice and ethics education and training they had received were useful in making them more aware of ethics issues and guiding their decisions and conduct in connection with their work.

OGE'S LAST REVIEW OF RRB

OGE last conducted a review of RRB's ethics program in July 2000. This review concluded that RRB had a generally effective ethics program. However, it was noted that some of the public financial disclosure reports required to be filed in 2000 were not reviewed in a timely manner. Additionally, RRB was encouraged to document its determination that members of the Actuarial Advisory Committee (AAC) were not special Government employees. The report also commended certain aspects of the administration of annual ethics training.

FINANCIAL DISCLOSURE SYSTEMS

The public and confidential financial disclosure systems are well-managed. Ethics officials stated that each public and confidential report is thoroughly reviewed for conflicts of interest. This is supported by notations made on individual reports and documentation of questions to filers provided to the review team during the review. An examination of the financial disclosure procedures, as well as individual financial disclosure reports, found the systems to generally comply with applicable requirements. However, as discussed below, OGE suggests that procedures for the public financial disclosure system be amended to more fully adhere to OGE's policy regarding the submission of reports filed by Presidentially-appointed, Senate-confirmed (PAS) employees to OGE.

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Public Financial Disclosure System

Sixteen RRB employees were required to file public reports in 2005. These include RRB's four PAS employees and DAEO, whose reports were submitted to OGE. The review team examined the 11 reports not required to be submitted to OGE. These included nine incumbent and two new entrant reports. All were filed, reviewed, and certified in a timely manner. No substantive issues were identified.

All four PAS reports required to be filed in 2005 were incumbent reports. All were filed and reviewed in a timely manner. However, RRB ethics officials waited until all reports were certified by the agency in order to submit them to OGE all at once, rather than individually immediately after each report was certified. OGE's DAEOgram DO-05-009, dated April 13, 2005, provided guidance (repeated in OGE's DAEOgram DO-06-010, dated April 7, 2006) regarding the prompt submission to OGE of PAS reports as soon as they are approved by the agency. While RRB submitted reports in accordance with the DAEOgram's instructions that reports be submitted to OGE "as soon as approved by [an] agency or department, but no later than August 1, 2005," the intent of the DAEOgram was to encourage agencies to review and certify these reports as soon as possible so that they could be submitted to OGE at the earliest possible date. As these reports are filed by the highest-level executive branch officials, it is vital that they be reviewed and certified by both RRB and OGE as soon as possible to bolster public confidence in Government processes, enhance employee respect for the ethics program, and prevent the embarrassment of the filers. Therefore, OGE suggests that RRB immediately submit each report as soon as it is reviewed and certified by RRB's ethics officials.

Confidential Financial Disclosure System

RRB's ethics officials have designated only two of the agency's approximately 1,000 positions as meeting the criteria at 5 C.F.R. § 2634.904, defining positions whose incumbents should be required to file confidential financial disclosure reports. In response to questions about whether this accurately reflects the number of positions meeting the criteria, ethics officials stated that RRB had designated many more positions as meeting the criteria prior to the issuance of OGE's DAEOgram DO-94-031, on September 14, 1994. This DAEOgram resulted from OGE's single issue review examining the effectiveness of the confidential financial disclosure system across the executive branch. Based on that review, OGE, in DAEOgram DO-94-031, strongly urged agencies to reevaluate their designations of positions to insure that only those employees whose duties present potential conflicts file confidential reports. Based on the guidance in the DAEOgram, RRB significantly reduced the number of positions designated as requiring incumbents to file confidential reports. RRB focused on two areas in making its determination: auditors of railroads and contracting officials. It was determined that only four employees were required to file confidential reports. Subsequent downsizing and reorganizations have further reduced the number to two. Ethics officials were confident that their designation of positions was appropriate.

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The review team examined both of the reports filed in 2005. Both were incumbent reports. They were filed, reviewed and certified in a timely manner. No substantive issues were identified.

Ethics Agreements

There are currently no ethics agreements in place at RRB. Ethics officials stated that there has been no need for RRB employees to enter into ethics agreements, including recusals.

ETHICS EDUCATION AND TRAINING

RRB met the requirements at subpart G of 5 C.F.R. part 2638 for providing initial ethics orientation and exceeded the requirements for providing annual ethics training in 2005.

Initial Ethics Orientation

RRB's Bureau of Human Resources provides all new employees with a packet of initial ethics orientation materials as part of their in-processing into the agency. The packet provided to the 23 employees who were new in 2005 included all required materials and were provided within 90 days of the dates the employees started work.

The Alternate DAEO confirmed that all current PAS employees appointed during 2006 and the three previous calendar years received initial ethics orientation.

Annual Ethics Training

All 18 employees required to receive annual ethics training in 2005 attended live presentations given by a qualified instructor, in accordance with RRB's 2005 annual ethics training plan. The materials used in the presentations met all relevant requirements regarding content and format. Training included interactive exercises based on realistic scenarios. Employees were asked to apply ethics-related rules to determine what actions were permissible within the context of a particular scenario. Sign-in sheets provided ethics officials with a reliable means of tracking employees' completion of annual ethics training. Ethics officials confirmed that all current PAS employees received annual ethics training in 2005 and the three previous years, as applicable.

RRB exceeded requirements for annual ethics training in 2005 by providing additional ethics training tailored to new supervisors. This training emphasized restrictions on activities which could create conflicts of interest. Additionally, each year, the DAEO sends a memorandum to all RRB employees reminding them that they are subject to the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) at 5 C.F.R. part 2635. The memorandum enumerates the subject areas addressed in the Standards and provides contact information for ethics officials available to answer questions. Employees are encouraged to contact an ethics official whenever a question regarding ethics issues arises. The memorandum also explains the provisions of 5 C.F.R. § 2635.107, which stipulate that disciplinary action will not be taken against an employee for

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violating the Standards if the employee relied in good faith upon the advice of an ethics official and made full disclosure of all relevant circumstances. RRB further exceeds annual training requirements by periodically sending memorandums discussing specific ethics topics to all employees. These have included guidance on gifts, retention of frequent flyer benefits obtained during official travel, and use of Government resources.

OGE considers the additional training for supervisors and the memorandums sent to all employees to be model practices. The emphasis on 5 C.F.R. § 2635.107 is also important as it encourages employees to seek advice prior to engaging in potentially prohibited conduct. These additional efforts help protect RRB and its employees and enhance employee awareness of and respect for the ethics program.

ETHICS ADVICE AND COUNSELING

Ethics-related advice and counseling are provided to RRB employees primarily by the Alternate DAEO and Ethics Advisor. The DAEO may contribute when advice is provided to senior agency officials or when advice constitutes a policy decision. Advice provided to employees is shared among ethics officials to help ensure consistency and awareness of ongoing issues. To evaluate the advice and counseling provided, OGE reviewed a sample of approximately 30 written determinations rendered during the period covered by the review. The advice examined addressed a wide variety of subjects: conflicts of interest, seeking employment, fundraising, gifts from outside sources, gifts between employees, misuse of position, outside activities, and attendance at widely-attended gatherings. The advice was thorough, consistent with applicable laws and regulations, and appeared to be responsive to employees' needs. Although there were no determinations regarding post-employment issues included in our sample, post-employment counseling is an item on RRB's employee out-processing checklist and is provided to departing employees when appropriate. OGE considers this proactive measure to be a model practice.

ENFORCEMENT

Both ethics officials and RRB's Inspector General (IG) indicated that there is an effective working relationship between their two offices. This relationship allows for coordination to ensure that information developed by the IG's office regarding alleged ethics violations is shared with ethics officials. 5 C.F.R. § 2638.203(b)(11) and (12). The IG's office would make any required referrals to the Department of Justice (DOJ). Both the IG and ethics officials were aware of the requirement to concurrently notify OGE of referrals to DOJ of alleged violations of the criminal conflict of interest laws. 5 C.F.R. § 2638.603(b). However, both also stated that their respective offices would be responsible for concurrently notifying OGE. OGE suggests that RRB designate only one office as being responsible for providing concurrent notification and that the designation be formally documented. This could avoid the potential for any misunderstanding that might result in OGE receiving no notification at all.

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According to both ethics officials and the IG, RRB made no referrals to DOJ regarding alleged violations of the criminal conflict of interest laws since at least January 2003. Ethics officials also stated that there were no enforcement actions against employees for violating the Standards during that period. This precludes an assessment of whether RRB takes action against those who violate the Standards. 5 C.F.R. § 2638.203(b)(9).

ACTUARIAL ADVISORY COMMITTEE

As noted, OGE's previous report on RRB's ethics program suggested that ethics officials document their determination that members of the AAC¹ are not special Government employees (SGE). This is important, as the applicability of ethics statutes and regulations is determined by the members' status. Documentation of the determination that members are not SGEs and the underlying analysis which led ethics officials to their conclusions was provided to OGE in a memorandum dated February 3, 2006 from the Alternate DAEO to the DAEO, Subject: Determination of Whether Members of [the] Actuarial Advisory Committee are Special Government Employees. In addition to the issue of whether members of the AAC are SGEs, the memorandum also documents RRB's determination that the AAC is not an advisory committee under the terms of the Federal Advisory Committee Act.

31 U.S.C. § 1353 TRAVEL PAYMENTS

RRB has filed timely semiannual reports with OGE of travel payments accepted from non-Federal sources of more than \$250 per event. This is based on OGE's review of the two reports covering the period October 1, 2004 through September 30, 2005. Four acceptances of travel payments were reported during this period. OGE's examination of the available supporting documentation indicated that RRB thoroughly evaluates the offers it receives from non-Federal sources and that payments were accepted in compliance with 31 U.S.C. § 1353 and the implementing regulation at 41 C.F.R. chapter 304.

¹ Section 15(f) of the Railroad Retirement Act (45 U.S.C. § 231n(f)) provides for the establishment of the AAC. The AAC's sole purpose is to examine the actuarial reports and estimates made by RRB and recommend any changes in actuarial methods as they may deem necessary. The AAC is comprised of three members. The Railroad Retirement Act requires that one member be appointed based on recommendations from railroad industry management and one member be appointed based on recommendations from railroad industry employees. The third member is appointed by the Secretary of the Treasury and receives compensation from the Department of the Treasury.