



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

November 16, 2004

Thomas K. Emswiler
Designated Agency Ethics Official
Federal Retirement Thrift
Investment Board
Fourth Floor
1250 H Street, NW.
Washington, DC 20005

Dear Mr. Emswiler:

The Office of Government Ethics (OGE) has completed its review of the Federal Retirement Thrift Investment Board's (FRTIB) ethics program. The review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended. Our objective was to determine the program's compliance with applicable statutes and regulations. We also evaluated FRTIB's systems and procedures for ensuring that ethics violations do not occur. This review was conducted in September 2004. The following is a summary of our findings.

HIGHLIGHTS

FRTIB's ethics program continues to be well managed, even with a new ethics staff in place since our last review in 1999. Our findings signify that FRTIB's ethics program appears to be in compliance with the ethics statutes and regulations.

PROGRAM STRUCTURE

The level of staffing dedicated to administering the ethics program appears to be appropriate, considering the size and organizational structure of FRTIB. FRTIB is located in Washington, DC and consists of approximately 100 full-time employees.¹ FRTIB's five board members serve as part-time employees; they only attend the monthly board meetings. You, as the Designated Agency Ethics Official (DAEO), and the Alternate DAEO administer FRTIB's ethics program in addition to your other duties in the Office of General Counsel. Whereas most ethics duties are shared, the Alternate DAEO is solely responsible for the financial disclosure systems.

¹ FRTIB also has two call centers which are staffed by contractor employees. Contractor employees are not subject to the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) and other Government ethics requirements.

FRTIB'S SUPPLEMENTAL REGULATION

With concurrence from our Office, FRTIB issued its supplement to the Standards. FRTIB's supplement to the Standards, at 5 C.F.R. part 8601, requires employees, other than special Government employees, to obtain approval before engaging in certain outside employment.

FRTIB'S ADVISORY COUNCIL

Under 5 U.S.C. § 8473, FRTIB established an Employee Thrift Advisory Council (Council) composed of fifteen members. With the exception of the uniformed services member, who is a Government employee, Council members are neither regular Government employees nor special Government employees (SGE). According to FRTIB's Director of the Office of External Affairs, the Council members perform duties defined under the statute and reflected in their appointment letters. Additionally, the members meet once or twice a year; they represent recognizable groups, which also nominate them for membership on the Council; and they work as a group. The members are not compensated by FRTIB; they are not spokesmen for the FRTIB; they do not perform a Government function in an independent capacity; and they are not supervised by a FRTIB employee. We suggested, as a best practice, that future appointment letters include a statement that the members are not SGEs and, therefore, not subject to the Standards and other Government ethics requirements.

FINANCIAL DISCLOSURE SYSTEMS

We found that the financial disclosure systems appeared to be well managed, based on our examination of the public and confidential reports filed for 2003. In addition to our findings, we suggested, as a best practice, that the reviewer record the review start date in the comments section of the financial disclosure report when certification is going to be delayed pending the receipt of additional information from the filer.

Public Financial Disclosure System

Our examination of the 10 public reports filed for 2003, including your reports required to be transmitted to OGE for review in accordance with 5 C.F.R. § 2634.602(c)(1), disclosed that you filed both a new entrant report in December 2003 and an annual report for 2003. However, you were not required to file an incumbent report for 2003 since you worked less than 60 days as DAEO in 2003. Nonetheless, our examination disclosed that the public reports were filed, reviewed, and certified timely and revealed no technical or substantive issues.

Our examination also disclosed that one filer listed an outside position. We confirmed that the filer received prior approval in 1998 in accordance with FRTIB's supplemental regulation.

Confidential Financial Disclosure System-
Regular Government Employees

Our examination of all confidential reports, including one new entrant report, required to be filed in 2003 disclosed that all 14 filers submitted either an OGE Form 450 or OGE Optional Form 450-A. We reminded ethics officials that all incumbent (annual) confidential filers must complete an OGE Form 450 for 2004 in accordance with 5 C.F.R. § 2634.905(d)(4). We found that all of the reports were filed timely and that most of the reports were reviewed and certified in a timely manner. We could not determine the timeliness of the reviews of a few reports, as certification was delayed pending the receipt of additional information from the filers. Additionally, the ethics official could not recall the review start dates. We suggested, as a best practice, that when certification is going to be delayed pending the receipt of additional information from the filer, the reviewer indicate the review start date in the comments section of the report. It was difficult to determine whether there were potential conflicts, but we were assured by the ethics officials that there were none based on FRTIB's two-tiered review process that includes the filer's supervisor performing the initial review of the reports.

Our examination also disclosed that two filers listed an outside position. We confirmed that they received prior approval, one in 1988 and the other in 2002, in accordance with FRTIB's supplemental regulation.

Confidential Financial Disclosure System-SGEs

Our examination of the five reports from SGEs² disclosed that while three follow-on new entrant reports were filed timely by November 30, which is the deadline used in lieu of their SGE report filing anniversary date, one report was filed late. The remaining SGE, who filed his nominee report in December 2002, should have been requested to file an updated report once he was confirmed in June of 2003; he will be required to file an updated new entrant report by November 30 of 2004. Additionally, our examination disclosed that most of the reports were reviewed and certified later than 60 days after they were filed. The ethics officials informed us that the reports were initially reviewed within 60 days, but they delayed certifying the reports. Again, we suggested, as a best practice, that the reviewer indicate the review start date in the comments section of the report.

EDUCATION AND TRAINING PROGRAM

FRTIB continues to exceed the ethics training requirements. FRTIB provides initial ethics orientation to all new employees and in-person annual ethics training to all covered employees. In addition, every departing employee receives an in-person post-employment briefing.

² The reports are from FRTIB's five board members who, as Presidential appointees confirmed by the Senate, are term SGEs.

As part of in-processing, new employees are required to meet with the Alternate DAEO. At this meeting, the Alternate DAEO provides them with an ethics briefing and the initial ethics orientation materials. However, we found that FRTIB's supplemental regulation was erroneously omitted from the orientation materials. To remedy this omission, the Alternate DAEO immediately sent the supplemental regulation to all current employees via e-mail. The Alternate DAEO informed us that, since our fieldwork, he provided a new employee with the initial ethics orientation materials that included the supplemental regulation.

Covered employees were provided with three types of annual ethics training in 2003. They attended either an ethics lecture provided by the General Counsel and Alternate DAEO at the November 17 board meeting or an ethics training session provided by the Alternate DAEO on December 1. Those who did not attend a live session completed the interactive Web-based computer training modules. We examined FRTIB's tracking records and found that all employees required to be trained completed the 2003 annual ethics training.

It is FRTIB's policy to give every staff-level employee an in-person exit ethics briefing, which consists primarily of a review of post-employment restrictions. Employees are also reminded to return Government property, not use telephone cards or Government credit cards, etc., and not divulge non-public information. Additionally, FRTIB mails information on the post-employment restrictions to departing executive directors and board members routinely, and to other employees who did not meet with an ethics official prior to leaving FRTIB.

ADVICE AND COUNSELING SERVICES

Our examination of the recent written advice and counseling disclosed that the advice was comprehensive and consistent with ethics statutes and regulations. The ethics advice and counseling covered financial disclosure, gifts from outside sources, misuse of position, outside activities, post-employment, seeking employment, and widely attended gatherings.

TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

Although authorized to accept payments of travel and related expenses from non-Federal sources under 31 U.S.C. § 1353, FRTIB forwarded negative semiannual reports to OGE for the periods ending September 30, 2003 and March 31, 2004, as required by 41 C.F.R. § 304-6.5. You informed us that the next semiannual report should include two payments of travel and related expenses, which were properly approved in accordance with 31 U.S.C. § 1353 and 41 C.F.R. chapter 304.

ETHICS AGREEMENTS

FRTIB granted one 18 U.S.C. § 208(b)(1) waiver in 2002 and one 5 C.F.R. § 2635.402(d)(2)(ii) waiver in 2003. The waivers indicated that FRTIB consulted with OGE informally and forwarded copies to OGE.

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ENFORCEMENT

Since FRTIB does not have an office of inspector general, you referred one alleged violation of a criminal conflict-of-interest statute directly to the Department of Justice in August 2004. The alleged violation was by a former employee. However, OGE was not concurrently notified of the referral. To remedy this, you immediately completed the OGE Form 202 during the fieldwork and submitted it to OGE.

You informed us that there have not been any alleged violations of the Standards at 5 C.F.R. § 2635, but, if there were, prompt administrative action would be taken.

In closing, we wish to thank you and your staff for your efforts on behalf of the ethics program. No six-month follow-up review is necessary in view of the fact that we have no recommendations for improving the ethics program at this time. Please contact Jean Hoff at 202-482-9246 if we may be of further assistance.

Sincerely,



Jack Covaleski
Deputy Director
Office of Agency Programs

Report Number 04 - 023

OFFICE OF GOVERNMENT ETHICS
PROGRAM REVIEW DIVISION

REPORT PROCESSING ROUTING SLIP

AGENCY Federal Retirement Thrift Investment Board (RF00)
(Identify all locations/components covered by report.) (Audit tracking system code.)

STAFF Jean Hoff, Carl Szabo

Title	Initials or Signature	Date
Director*		
General Counsel*		
Deputy Director, OAP	<i>J. Rosaleschi</i>	11-12-04
PRD edit	<i>[Signature]</i>	11-5-04
Desk Officer review (to be completed by the following date: <u>11-5-04</u>)	<i>KS</i>	11-4-04
Assoc. Director, Program Reviews	<i>[Signature]</i>	11-2-04
Referencer	<i>[Signature]</i>	2 Nov 04
Ass't. to Assoc. Director, Program Reviews*		
Team Leader	<i>[Signature]</i>	10/21/2004

*When required

PERTINENT NOTES:

Rept. # 04-023

FOR PRD USE:

Secretary, PRD Checklist ✓	Team Leader Checklist ✓
<ul style="list-style-type: none"> enter date of report into tracking system (matched to report date) 	<ul style="list-style-type: none"> check that tracking system shows locations/components reviewed
<ul style="list-style-type: none"> place copy of report in power file folder (including report processing routing slip) 	<ul style="list-style-type: none"> continuously update tracking system during report processing
<ul style="list-style-type: none"> update power file listing when report is filed in folder 	<ul style="list-style-type: none"> check that tracking system shows report recommendations
<ul style="list-style-type: none"> distribute internal copies of report (as necessary) 	<ul style="list-style-type: none"> place copy of report on P: Drive indicate file name used

THE ROUTING SLIP WILL BECOME PART OF THE PERMANENT REPORT FILE AFTER REPORT IS ISSUED AND SHOULD BE RETURNED TO PRD SECRETARY