

United States Office of Government Ethics

Program Review Division

Ethics Program Review

Federal Retirement Thrift Investment Board

Results in Brief

The United States Office of Government Ethics (OGE) conducted a review of the Federal Retirement Thrift Investment Board's (FRTIB) ethics program in June 2012. The results of the review indicated that FRTIB's ethics program generally appears to be effectively administered and in compliance with applicable laws, regulations, and policies. The FRTIB Alternate Designated Agency Ethics Official (ADAEO) promptly corrected matters addressed prior to and during our examination in the areas of financial disclosure and ethics agreements.

Highlights

- FRTIB requires all employees to receive annual ethics training.
- Ethics officials provide an in-person initial ethics orientation (IEO) to all new employees.

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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 FRTIB's ethics program, OGE examined a variety of documents provided by the ADAEO and the Assistant General Counsel; other documents that FRTIB submitted to OGE,

including the annual questionnaire, prior program review reports, a review of FRTIB's public and confidential financial disclosure reports and the advice and counseling rendered to FRTIB employees. In addition, members of OGE's Program Review Division met with the Designated Agency Ethics Official (DAEO), ADAEO and an Assistant General Counsel to obtain additional information about the strengths and weaknesses of FRTIB's ethics program, seek clarification on issues that arose through the documentation analysis, and verify data collected.

Program Administration

FRTIB is a small, independent agency established to administer the Thrift Savings Plans (TSP), which provides Federal employees the opportunity to save for additional retirement security. The TSP is a tax-deferred defined contribution plan similar to private sector 401(k) plans. FRTIB is managed by five presidentially appointed and Senate confirmed board members and an Executive Director who are required by law to manage the TSP prudently and solely in the interest of the participants and their beneficiaries. Board members meet monthly to conduct business. FRTIB also has 93 full-time employees.

The ethics program at FRTIB is organizationally located within the Office of General Counsel. The General Counsel serves as DAEO and an Assistant General Counsel serves as ADAEO. Another Assistant General Counsel also serves as a Deputy DAEO. Since the current DAEO was designated in May 2012, our primary points of contact during this review were the ADAEO and the Deputy DAEO. The ADAEO and the Deputy DAEO are currently the primary ethics program administrators, although the DAEO envisions having more direct involvement in the future by providing overall direction to the FRTIB ethics program. Administering the ethics program is a part-time, collateral duty for all three ethics officials.

Financial Disclosure

Title I of the Ethics in Government Act requires that agencies ensure confidence in the integrity of the Federal Government by demonstrating that officials are able to carry out their duties without compromising the public trust. High-level Federal officials demonstrate that they are able to carry out their duties without compromising the public trust by disclosing publicly their personal financial interests (OGE Form 278). Title I also authorizes OGE to establish a confidential financial disclosure system for less senior executive branch personnel in certain designated positions to facilitate internal agency conflict of interest review (OGE Form 450).

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 in providing counseling to employees. *See* 5 CFR § 2634.104(b).

Written Procedures

FRTIB has written procedures for the administration of its financial disclosure system as required by Section 402(d)(1) of the Ethics in Government Act. FRTIB has a total of 31 public and confidential filers out of the 93 full-time employees. Reports for those filers are addressed below. The five board members will be discussed in the section on special Government employees.

Public Financial Disclosure

FRTIB had nine public financial disclosure filers in 2011. To evaluate the effectiveness of FRTIB's public system, OGE examined all nine public financial disclosure reports that were required to be filed in 2011. All reports were submitted timely. Overall, OGE found that the reports complied with statutory and regulatory requirements for review and certification. There was evidence of follow-up with filers requesting additional information which suggests a thorough review. Although two of the nine reports were certified after the 60-day deadline, the certification was late by only a few days. In one instance, a filer provided FRTIB ethics officials with the public report that had been submitted to and certified by a previous Federal agency. However, the review team found no evidence that the filer's report had also been reviewed and certified at FRTIB. Ethics officials confirmed that they have since reviewed and certified this financial disclosure report.

Confidential Financial Disclosure

To evaluate the effectiveness of FRTIB's confidential system, OGE examined the 22 annual confidential financial disclosure reports that were required to be filed in 2012. All reports were submitted, reviewed and certified timely. There was also evidence of follow-up with filers requesting additional information which suggests a thorough review.

Education & Training

An ethics training program is essential to raising awareness among employees about ethics laws and rules and informing them that an agency ethics official is available to provide ethics counseling. Each agency's ethics training program must include at least an initial ethics orientation (IEO) for all employees and annual ethics training for covered employees. FRTIB's training program appears to meet all relevant requirements.¹

Annual Training Plan

The review team noted that FRTIB's annual ethics training plan meets all relevant requirements outlined with 5 CFR § 2638.706. The annual training plan notes that FRTIB requires all employees to receive annual ethics training.

¹ SGE training will be addressed in SGE section of report.

Initial Ethics Orientation

OGE examined FRTIB's IEO presentation and found it to be in compliance with 5 CFR § 2638.703. The Deputy DAEO stated that all new employees receive an in-person IEO within 30 days of starting employment. The review team was able to examine certifications signed by all new employees who attended in-person IEO and confirmed that training occurred within 30 days.

Annual Ethics Training

In 2011, the FRTIB ethics officials provided verbal training to all 93 full-time employees. OGE examined FRTIB's annual training materials and found them to be in compliance with 5 CFR § 2638.704 and 705.

Model Practices

- Ethics officials provide an in-person initial ethics orientation to all new employees.
- FRTIB requires all employees to receive annual ethics training.

Advice & Counsel

The DAEO is required to ensure that a counseling program for agency employees concerning ethics and standards of conduct matters, including post-employment matters, is developed and conducted. See 5 CFR § 2638.203. The DAEO may delegate to one or more deputy ethics officials the responsibility for developing and conducting the counseling program. See 5 CFR § 2638.204.

OGE's review of the advice and counseling services found that FRTIB is complying with 5 CFR § 2638.203(b)(7) and (8). Specifically, OGE reviewed a sample of 18 written advice and counsel memoranda issued to agency employees on widely attended gatherings, standards of conduct, conflicts of interest, and outside activities. The advice was rendered timely and appeared to be accurate. The ADAEO and Deputy DAEO render all ethics-related advice and counseling. All rendered advice is maintained in a shared drive that is accessible to all ethics officials to ensure consistency and maximize efficiency.

Conflict Remedies

Prior to the on-site portion of the review, the OGE review team discovered that an FRTIB board member entered into an ethics agreement dated September 2011 for which OGE did not have evidence of compliance. FRTIB officials felt the board member had satisfied the requirements of the ethics agreement. However, it had failed to communicate its rationale for this status to OGE. FRTIB is reminded to notify OGE of action taken by individuals pursuant to ethics agreements no later than three months from the agreement or Senate confirmation in accordance with 5 U.S.C. app. § 110 and 5 CFR § 2634.802(b).

Enforcement

FRTIB reported no disciplinary actions based wholly or in part upon violations of the criminal conflict of interest statutes (18 U.S.C §§ 203, 205, 207, 208, and 209) or the standards of conduct provisions (5 CFR part 2635) in 2011.

FRTIB does not have its own Office of Inspector General nor does the agency utilize the services of an outside investigative body to help ensure that certain program elements described at 5 CFR § 2638.203(b)(11) and (12) are carried out.

Suggestion

- OGE suggests FRTIB enter into a memorandum of understanding with an investigative organization that can investigate violations of ethics laws and regulations to ensure program elements described at 5 C.F.R. § 2638.203(b)(11) and (12) are carried out.

Special Government Employees

An SGE is defined in 18 U.S.C. § 202(a) as “an *officer or employee*... who is retained, designated, appointed, or employed” by the Government to perform temporary duties, with or without compensation, for not more than 130 days during any period of 365 consecutive days. Accordingly, SGEs are Government employees for purposes of certain conflict of interest laws. See DAEOgram DO-00-003A and OGE’s informal Advisory Memoranda 82 x 21, 82 x 22, and 00x 1, and DAEOgram DO-04-022. SGEs are required to file their financial disclosure reports before attending a board meeting or rendering any advice. Because ethics laws prohibit Government employees from having financial conflicts of interest, it is essential that ethics officials identify and resolve all real or potential conflicts of interest or other violations in a timely manner. See 5 CFR § 2634.903 (b)(3) and OGE Advisory opinion 00 X 1.

As previously mentioned, FRTIB is directed by five presidentially appointed board members. FRTIB officials have determined that all board members meet the definition of SGE.

Confidential Financial Disclosure for SGEs

The Deputy DAEO told the review team that FRTIB has not established a single date of collection for SGE confidential financial disclosure reports. As such, ethics officials must be vigilant to collect confidential financial disclosure reports from the board members on their anniversary appointment date. The review team suggested that FRTIB should use a single date of submission, instead of the individual SGE anniversary date for ease of administration.

The OGE review team examined four confidential financial disclosure reports filed by SGEs in 2011.² The four reports the review team examined were submitted, reviewed and certified timely.

² One report was not submitted. Ethics officials told the review team that the Board member has not attended any meetings in the last three years and has not been in contact with FRTIB.

Ethics Training for SGEs

The OGE review team reviewed a presentation tailored for SGEs and found it met all training requirements. All four active SGEs have received ethics training as required.

Outside Employment

In accordance with 5 CFR part 8601, before engaging in outside employment, with or without compensation, other than SGEs, FRTIB employees must obtain written prior approval.

OGE examined a sample of eight outside employment positions reported on the financial disclosure reports that required prior approval under FRTIB's supplemental regulation. OGE found memoranda to support that the employees had received approval before engaging in outside employment.

Advisory Council

A representative is defined in OGE's informal Advisory Memoranda 82 x 22 as a consultant or adviser "who is requested to appear before a Government department or agency to present the views of a non-governmental organization or group which he represents, or for which he is in a position to speak, and does not act as a servant of the Government and is not its officer or employee." A representative is not subject to the conflicts of interest laws. Under 5 U.S.C. § 8473, FRTIB established an Employee Thrift Advisory Council (Council) composed of 15 members who have been designated as representatives. The Council members advise FRTIB on matters relating to investment and administration of the TSP. Council members are nominated for membership by groups that have a significant interest in the work of the FRTIB such as American Federation of Government Employees, National Treasury Employees Union, National Association of Letter Carriers, and the Senior Executives Association and Uniformed Services. The Council meets once or twice a year. Members of the Council are not compensated by and do not speak for the FRTIB. Furthermore, the Council does not perform a Government function in an independent capacity and is not supervised by FRTIB.

1353 Travel Acceptances

FRTIB permits its employees to accept payments from non-Federal sources for travel, subsistence, and related expenses incurred on official travel under the authority of the General Services Administration (GSA) regulation at 41 CFR chapter 304, implementing 31 U.S.C. § 1353. FRTIB does not have written procedures to implement 31 U.S.C. § 1353; however, the ethics officials told the review team the Office of General Counsel conducts a written conflict of interest review of all requests prior to any actual travel. However, since FRTIB usually submits reports with no reportable activity, the review team was not able to inspect recent instances of travel acceptances to verify adherence with procedures.

The semiannual reports on travel payments covering the period from April 1, 2011 – September 30, 2011 and October 1, 2011 – March 31, 2012 were submitted timely using the appropriate GSA Standard Form 326.

Agency Comments

The FRTIB appreciates the time and effort OGE expended on the review and report of its recommendations related to the FRTIB's ethics program. In response to the report's recommendations, we would like to make the following comments:

Suggestion:

- Notify OGE of action taken by individuals pursuant to ethics agreements no later than three months from the agreement or Senate confirmation in accordance with 5 U.S.C. app. § 110 and 5 CFR § 2634.802(b).

Comment:

Prior to the on-site portion of the review, the OGE review team discovered that an FRTIB Board member entered into an ethics agreement for which OGE did not have evidence of compliance. We are confident that the Board member has satisfied the requirements of the ethics agreement. However, we did not provide proper documentation of that fact to OGE. We have since submitted a screening arrangement to OGE as evidence of compliance.

Suggestion:

- Establish a single date of collection for all SGE confidential financial disclosure reports instead of using the SGEs' anniversary appointment dates.

Comment:

The FRTIB has established a single date of collection for all SGE confidential financial disclosure reports in response to OGE's recommendation. Beginning this year, we have requested SGE confidential financial disclosure reports to be filed by September 15th.

Suggestion:

- OGE suggests that the FRTIB enter into a memorandum of understanding with an investigative organization that can investigate violations of ethics laws and regulations to ensure program elements described at 5 C.F.R. § 2638.203(b)(11) and (12) are carried out.

Comment:

Though the Agency does not have a current agreement in place, when ethics issues have arisen that required outside inquiry, the FRTIB has entered into a memorandum of understanding with another agency's office of inspector general.