



United States Office
Of Government Ethics

Report Number 08-006

Highlights

Model Practices

- USTDA provides annual ethics training to all agency employees.
- USTDA sends out timely guidance to all agency employees throughout the year.
- USTDA plans to provide one-on-one initial ethics orientation and annual ethics training for the agency's Presidentially-appointed, Senate-confirmed Director.

OGE Suggests

- That when additional information is requested of a financial disclosure report filer to assist in proper certification of the report, the request should identify a specific date on which the information should be provided to the reviewing official in accordance with 5 CFR § 2634.605(b)(3).

Ethics Program Review United States Trade and Development Agency

May 2008 Report

Executive Summary

The Office of Government Ethics (OGE) has completed its review of the ethics program at the United States Trade and Development Agency (USTDA). The purpose of a review is to identify and report on the strengths and weaknesses of a program by evaluating: (1) agency compliance with ethics requirements found in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures for administering the program. OGE determined that there is reasonable assurance that the performance and management of USTDA's ethics program is effective.

OGE's review identified several model practices that USTDA has implemented or plans to implement. The model practices include:

- providing annual ethics training to all agency employees,
- sending out timely guidance to all agency employees throughout the year, and
- providing one-on-one initial ethics orientation and annual ethics training for the agency's Presidentially-appointed, Senate-confirmed Director.

OGE suggests that when additional information is requested of a financial disclosure report filer to assist in proper certification of the report, the request should identify a specific date on which the information should be provided to the reviewing official in accordance with 5 CFR § 2634.605(b)(3).

This report has been forwarded to USTDA's Designated Agency Ethics Official.



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Ethics Program Review

United States Trade and Development Agency

May 2008 Report

Introduction

OGE MISSION

The U.S. 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 an ethics program by evaluating: (1) agency compliance with ethics requirements found in relevant laws, regulations, and policies and (2) 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 ethics programs. *See* Title IV of the Ethics in Government Act of 1978, as amended (the Ethics in Government Act), and 5 CFR part 2638. OGE's review of the United States Trade and Development Agency (USTDA) focused on the elements listed below.

- Program structure
- Financial disclosure systems
- Ethics education and training
- Ethics agreements
- Ethics counseling
- Enforcement of ethics laws and regulations
- Travel payments from non-Federal sources

OGE's review focused on the ethics program at USTDA's headquarters and the on-site fieldwork was conducted in March 2008.

Program Elements

This report consists of descriptions, analyses, and conclusions regarding each program element reviewed.

PROGRAM STRUCTURE

USTDA's ethics program is administered within the Office of the General Counsel. The General Counsel serves as the Designated Agency Ethics Official (DAEO). The Assistant General Counsel serves as the Alternate DAEO (ADAEO) and is closely involved in the administration and much of the day-to-day duties of the ethics program. An additional Assistant General Counsel provides occasional technical and administrative support to the ethics program.

FINANCIAL DISCLOSURE SYSTEMS

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 (SF 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).

OGE's review found that both the confidential and public financial disclosure systems at USTDA are managed effectively; however, both systems could benefit from some improvements.

Prior to OGE's review, USTDA's ethics officials had not developed written procedures for managing the financial disclosure systems. Written procedures should contain detailed instructions to aid in the review and administration of public and confidential financial disclosure systems. Written procedures also help to ensure that all information provided on financial disclosure reports is analyzed to identify real or potential conflicts of interest. OGE suggested that USTDA create written procedures for its financial disclosure systems. OGE provided the ADAEO with OGE's DAEOgram entitled *Guidelines for Developing Written Procedures* and a sample of written procedures from a similar-sized agency to help USTDA develop written procedures. USTDA's ADAEO subsequently provided OGE with a draft copy of written procedures.

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Public Financial Disclosure System (SF 278)

The ADAEO routinely updates the list of public financial disclosure report filers by consulting with the agency's Resource Advisor, a senior agency official responsible for personnel matters. As soon as a determination is made that a new employee holds a public filing position, the ADAEO provides the new employee with a memorandum discussing the new entrant report and initial ethics orientation requirements applicable to that employee. The ADAEO encloses a copy of a blank public financial disclosure report with that memorandum.

The ADAEO distributes to each incumbent public financial disclosure report filer a memorandum concerning the report the filer must submit in May. The ADAEO encloses with that memorandum a blank public financial disclosure report as well as a copy of the report that the filer submitted in the previous year.

To evaluate the filing, review, and certification of public reports at USTDA, OGE examined all 11 public reports required to be filed in 2007. These 11 reports consisted of:

Type of Report

- 7 incumbent reports
- 2 new entrant reports
- 2 termination reports

11 total

Filing Timeliness

- All 11 reports were filed timely.

Review Timeliness

- All 11 reports were reviewed timely.

Certification Timeliness

- All 11 reports were certified timely.

Quality of Review

Written comments on the reports and documentation in the files indicated that the reports underwent a thorough review by USTDA's ethics officials.

Confidential Financial Disclosure System (OGE Form 450)

USTDA's Administrative Program Analyst informs the ADAEO by e-mail as soon as new employees join USTDA. The ADAEO immediately determines whether any new employee

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holds a confidential filing position. As soon as a determination is made that a new employee holds a confidential filing position, the ADAEO provides to the new employee with a memorandum discussing the new entrant report and initial ethics orientation requirements applicable to that employee. The ADAEO encloses a copy of a blank report with that memorandum. According to the ADAEO, the ethics office routinely reassesses confidential disclosure covered positions to ensure the positions meet the filing requirements.

The ADAEO distributes a memorandum to each incumbent filer concerning the report that the filer must file in February. The ADAEO encloses with that memorandum a blank report as well as a copy of the report that the filer filed in the previous year.

To evaluate the confidential financial disclosure system at USTDA, OGE examined all 33 confidential reports required to be filed in 2007. These 33 reports consisted of:

Type of Report

- 32 annual reports
- 1 new entrant report

33 total

Filing Timeliness

- All 33 reports were filed timely.

Review Timeliness

- All 33 reports were reviewed timely.

Certification Timeliness

According to 5 CFR § 2634.605(a), all reports shall be reviewed within 60 days from the date of filing. Final certification may, of necessity, occur later, when additional information is being sought. While all 33 reports were reviewed timely, OGE found that most of the reports awaited certification pending the receipt of additional information from the filer. To help ensure that significant periods of time do not elapse between initial review and certification, OGE suggests that when additional information is required of the filer to assist in proper certification of the report, the information should be submitted to the reviewing official by a specified date in accordance with 5 CFR § 2634.605(b)(3).

Quality of Review

Written comments on the reports and documentation in the files indicated that the reports underwent review by USTDA's ethics officials.

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ETHICS EDUCATION AND TRAINING

An ethics education and 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 for all employees and annual ethics training for covered employees.

Initial Ethics Orientation

Within 90 days from the time an employee begins work for an agency, the agency must provide the employee with initial ethics orientation. Initial ethics orientation must include:

- the Standards of Ethical Conduct for Employees of the Executive Branch (Standards);
- any agency supplemental standards;
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials; and
- at least one hour of official duty time to review the items described above. *See 5 CFR § 2638.703.*

To meet the initial ethics orientation requirement, within 90 days from the time an employee begins work at USTDA, the employee is provided with:

- the Standards;
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials; and
- at least one hour of official duty time to review the items described above.

According to USTDA's ethics officials, initial ethics orientation was provided to all new employees who entered on duty during 2007.

Annual Ethics Training

Public financial disclosure filers are required to receive verbal annual ethics training each year. *See 5 CFR § 2638.704(a).* Verbal training includes training prepared by a qualified instructor and presented by telecommunications, computer, audiotape, or videotape. *See 5 CFR § 2638.704(c)(2).* Other covered employees (e.g., confidential filers) are required to receive verbal annual ethics training at least once every three years and may receive written annual training in the intervening years. *See 5 CFR § 2638.705(c).* The content requirements for both public filers and other covered employees are the same. Agencies are encouraged to vary the content of annual training from year to year but the training must include, at least, a review of:

- the 14 Principles of Ethical Conduct;
- the Standards;

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- any agency supplemental standards;
- the Federal conflict of interest statutes; and
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials. *See* 5 CFR § 2638.704(b).

OGE's review of these materials found them to meet the annual ethics training content requirements.

USTDA provides annual ethics training to all employees. USTDA ensures that covered and non-covered employees use an hour of official duty time to participate in online training and review written ethics materials each year. USTDA tracks the completion of training via e-mail certification. Additionally, USTDA will provide one-on-one initial ethics orientation and annual ethics training for the agency's Presidentially-appointed, Senate-confirmed (PAS) Director.

ETHICS AGREEMENT

If potential or actual conflicts of interest exist, public and confidential financial disclosure filers may be required to enter into ethics agreements. Generally, employees entering into ethics agreements are required to comply with those agreements within three months of the agreement or of Senate confirmation, if applicable. *See* subpart H of 5 CFR part 2634.

USTDA's one PAS public filer entered into a written ethics agreement on March 13, 2008. In accordance with 5 CFR § 2634.803(b), the ethics agreement shall specify that the individual must complete the action which he or she has agreed to undertake within a period not to exceed three months from the date of the agreement. At the time of OGE's review, the ethics office had not yet implemented a screening arrangement to ensure compliance with the ethics agreement. However, the ADAEO assured OGE that a screening arrangement will be in place within the required timeframe. The ADAEO has agreed to provide OGE with written compliance documentation that the screening arrangement is in place.

ETHICS COUNSELING

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 assessment of an ethics counseling program focuses on five factors: (1) accuracy, (2) timeliness, (3) transparency, (4) accountability, and (5) consistency. To determine whether an agency's counseling program successfully addresses these factors, OGE reviews and assesses the program's processes and written procedures. Further, OGE reviews selected samples of counseling to assess whether processes and written procedures are effective.

OGE examined samples of memorialized ethics counseling and widely attended gathering determinations. The counseling sample reviewed mostly concerned gifts, seeking employment,

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and post employment. The counseling reviewed was timely and generally complied with applicable laws, regulations, and interpretive guidance. Further, in a few cases the ethics official provided a detailed analysis to the requesting employee when it was necessary to advise the employee not to take a particular action.

The ethics officials at USTDA exceed compliance in the area of counseling by sending out timely office-wide guidance during the course of the year. Also, the ADAEO utilizes a uniform template for widely attended gathering analyses; this practice ensures that the analyses are uniform and that all necessary information is collected.

ENFORCEMENT

The DAEO is to ensure that (1) information developed by internal audit and review staff, the Office of the Inspector General, or other audit groups is reviewed to determine whether such information discloses a need for revising agency standards of conduct or for taking prompt corrective action to remedy actual or potential conflict of interest situations and (2) the services of the agency's Office of the Inspector General are utilized when appropriate, including the referral of matters to and acceptance of matters from that Office. *See* 5 CFR § 2638.203(b)(11) and (12).

USTDA does not have an Inspector General. Therefore, either the Director or the General Counsel of USTDA is likely to be the first USTDA official who receives information indicating that a USTDA employee has (1) been involved in a violation of Federal criminal law, (2) willfully failed to file a public financial disclosure report or information required on such a report, or (3) willfully falsified any information required to be reported on a public or confidential financial disclosure report. If neither the Director nor the General Counsel is the first USTDA employee to receive such information, current practices are such that the information will be reported to both the Director and the General Counsel promptly, who will then refer the matter to the U.S. Department of Justice, as appropriate.

There were no criminal conflict of interest violations referred to the Department of Justice during 2007. During the same period, there were no substantiated violations of the Standards of Ethical Conduct for Employees of the Executive Branch.

ACCEPTANCE OF TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

An employee may accept payment of travel expenses from non-Federal sources on behalf of the employee's agency for official travel to a meeting or similar function when specifically authorized to do so by the agency. Agencies must submit semiannual reports of travel payments from non-Federal sources in excess of \$250 to OGE. *See* 31 U.S.C. § 1353.

USTDA accepts travel payments from non-Federal sources under the authority of 31 U.S.C. § 1353. The procedures for requesting and receiving authorization for acceptance of travel payments from a non-Federal source are outlined in USTDA internal operating procedures. Employees must provide specific information regarding the offer of payment in advance.

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OGE reviewed two semiannual reports sent to OGE covering the period from October 1, 2006 through September 30, 2007. Both semiannual reports were submitted in a timely manner using the appropriate SF 326. As part of its review, OGE examined all of the supporting documentation for the four reported payments. OGE found that all four payments were approved prior to the occurrence of travel and were properly authorized. Conflict of interest analyses were conducted as part of the approval process for each payment.

Summary

OGE's review determined that there is reasonable assurance that the performance and management of USTDA's ethics program is effective.

OGE's review identified several model practices that USTDA has implemented or plans to implement. The model practices include:

- providing annual ethics training to all agency employees,
- sending out timely guidance via e-mail to all agency employees throughout the year, and
- providing one-on-one initial ethics orientation and annual ethics training for the agency's PAS Director.

Suggestion

To enhance USTDA's ethics program, OGE suggests:

- that when additional information is requested of a financial disclosure report filer to assist in proper certification of the report, the request should identify a specific date on which the information should be provided to the reviewing official in accordance with 5 CFR § 2634.605(b)(3).

If you have comments or would like to discuss this report, please contact Dale Christopher, Associate Director for Program Reviews, at 202-482-9224.