



United States Office  
Of Government Ethics

Report Number 09-025

## Highlights

### Model Practices

- ITC includes the ethics duties of the DAEO in his position description.
- ITC provides in-person training to new employees.
- ITC requires that all employees receive annual ethics training.

### OGE Suggests

- ITC reduce periods of inaction between contacting financial disclosure filers to resolve issues and certifying reports.

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

# Ethics Program Review United States International Trade Commission

September 2009 Report

## Executive Summary

The United States Office of Government Ethics (OGE) has completed its review of the ethics program at the United States International Trade Commission (ITC). 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 as set forth in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures for administering the program.

OGE identified several model practices that ITC has implemented. OGE found that ITC includes ethics duties in the position description of the Designated Agency Ethics Official (DAEO), provides in-person training to all new employees, and requires that all employees receive annual ethics training.

During the review, OGE noted that two public financial disclosure reports were certified late. OGE suggests that ITC reduce periods of inaction between contacting financial disclosure filers to resolve issues and certifying reports.

This report has been sent to ITC's DAEO and the Inspector General.



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## Ethics Program Review

# International Trade Commission

September 2009 Report

### Introduction

#### OGE MISSION

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

#### 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 as set forth in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures 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 International Trade Commission (ITC) focused on the elements listed below.

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

OGE's on-site fieldwork was conducted at ITC in June 2009.

## **Ethics Program Review: International Trade Commission**

### **Program Elements**

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

#### **PROGRAM STRUCTURE AND ADMINISTRATION**

ITC's ethics program is administered within the Office of General Counsel. The General Counsel serves as the Designated Agency Ethics Official (DAEO) and an Attorney-Advisor serves as the Alternate DAEO (ADAEO). The Assistant General Counsel for Administration serves as a Deputy DAEO. The ADAEO administers the day-to-day operations of the ethics program.

During a program review, OGE identifies and disseminates model practices to agency ethics officials. OGE found that ethics duties are included in the position description of ITC's DAEO. OGE considers the inclusion of ethics duties in the position descriptions of ethics officials to be a model practice.

Continuity and succession planning serve to maintain the consistent administration of an ethics program in the event of turnover in ethics staff. To foster continuity and succession planning, the review team provided the ADAEO with a sample succession plan.

OGE encourages agencies to use self-assessment as a tool to evaluate their ethics programs. Self-assessments help ethics officials improve the efficiency of their programs by identifying strengths and weaknesses. The review team provided the ADAEO with samples of self-assessments.

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

## **Ethics Program Review: International Trade Commission**

### General Comments

The review team found that ITC ethics officials conducted a thorough review of the public and confidential financial disclosure reports for conflicts of interest. Written comments and documented communication between the filers and the ADAEO indicate the reports underwent a thorough review. The ADAEO utilized a master list of filers to track the dates of submission (including extensions granted), review, and certification of the reports.

At the time of OGE's on-site fieldwork, ITC's ethics officials were scheduled to meet with the Human Resources (HR) office to discuss improvements in the way the ethics office is notified when a current employee is hired or promoted to a covered position. A breakdown in communication in the past between the two offices resulted in the late filing of new entrant reports for some covered employees. Since the completion of the on-site fieldwork, HR has implemented new procedures to notify the ethics office of new, promoted, and departed employees via a bi-weekly report.

### Written Procedures

Written procedures ensure consistency and accountability in the collection, review, and certification of financial disclosure reports. ITC has comprehensive written procedures for the administration of its public and confidential financial disclosure systems (including steps to follow in cases when a filer is delinquent) as required by section 402(d)(1) of the Ethics in Government Act.

### Public Financial Disclosure System (SF 278)

The DAEO certifies all public financial disclosure reports filed by Presidentially-appointed, Senate-confirmed (PAS) employees. The ADAEO acts as an intermediate reviewer on PAS reports. The ADAEO reviews and certifies all non-PAS reports. The ADAEO uses ITC's Electronic Document Information System (EDIS) as an aid in performing the conflict of interest analysis. EDIS is a repository for all documents filed in relation to an investigation conducted by ITC. In addition, for Industry Analysts who are experts in assigned industries, the ADAEO researches and compares the filer's financial interests with companies within the assigned industry.

To evaluate the filing, review, and certification of public reports at ITC, OGE examined the 41 public financial disclosure reports required to be filed by ITC employees in 2008. The following is a summary of OGE's examination.

#### Type of Report

- 37 annual reports
- 2 new entrant reports
- 2 termination report

41 total

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### Filing Timeliness

- 39 reports were filed timely.
- 1 annual report was filed late.
- 1 termination report was filed late.

41 total

### Review/Certification Timeliness

- 39 reports were reviewed and certified timely.
- 2 annual reports were certified late.

41 total

### Quality of Review

Written comments on reports and review sheets, documentation in files, and conversations with the ADAEO indicated that the public financial disclosure reports underwent a thorough review. OGE identified minor technical errors on some of the reports such as over-reporting of holdings.

Notwithstanding the thorough review that was conducted on the reports, the review team identified two annual reports that were certified late. The ADAEO explained that she completed an initial review of the reports on the day that they were received but did not follow up until a later time with the filers to seek further information. Final certification of reports may occur later than 60 days after the date of filing where additional information is being sought or remedial action is being taken in accordance with 5 CFR § 2634.605(a). However, action was not taken to seek more information or to reconcile the problems for months between conducting the initial review of the reports, contacting the filers, and certifying the reports. OGE suggests that ITC reduce periods of inaction between contacting financial disclosure filers to resolve issues and certifying reports.

### Confidential Financial Disclosure System (OGE Form 450)

The ADAEO reviews and certifies all confidential financial disclosure reports. The ADAEO uses EDIS and conducts other research to perform a conflict of interest analysis.

To evaluate the confidential financial disclosure system at ITC, OGE examined 58 of 220 confidential financial disclosure reports required to be filed by ITC employees in 2009. The following is a summary of OGE's examination.

## Ethics Program Review: International Trade Commission

### Type of Report

- 46 annual reports
- 12 new entrant reports

58 total

### Filing Timeliness

- 55 reports were filed timely.
- 2 new entrant reports were filed late.
- 1 annual report was filed late.

58 total

### Review/Certification Timeliness

- All 58 reports were reviewed and certified timely.

### Quality of Review

Written comments on reports and review sheets, documentation in files, and conversations with ethics officials indicated that the confidential financial disclosure reports underwent a thorough review.

## ETHICS AGREEMENTS

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.

Six Commissioners entered into written ethics agreements. One of the six Commissioners' ethics agreements was filed with the public financial disclosure reports and both the ITC and OGE copies of the agreement were accidentally destroyed. The ADAEO has stated that, in the future, the ethics agreement will not be destroyed until the filer has completed his or her term of office, usually nine years.

### Screening Arrangements

ITC's Commissioners are PAS employees and are the decision-makers in all ITC investigations. For import injury investigations, which include antidumping, countervailing duty, and safeguard investigations, the Commissioners vote on whether to institute the investigation, preside over hearings, and vote on whether there has been injury or a threat of injury to U.S. industries. In five year reviews of the antidumping and countervailing duty orders, the Commissioners vote on whether revocation of an outstanding antidumping or countervailing

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duty order would be likely to lead to continuation or recurrence of material injury to the U.S. industry within a reasonably foreseeable time. In intellectual property-based import investigations, the Commissioners vote on whether to institute an investigation based on a complaint and vote on whether to review the initial determination of the administrative law judge. Where review of all or part of the initial determination is conducted, the Commissioners vote on whether the respondent violated the complainant's intellectual property rights and the appropriate remedy, which is subject to approval of the President.

In June 2006, ITC developed comprehensive written procedures for screening PAS and Senior Executive Service (SES) employees for ethics issues. The Deputy DAEO develops a list of holdings based on an employee's public financial disclosure report that could potentially raise conflicts. Every month, the list is sent to the Office of Investigations and the Applied Economics Division of the Office of Economics. The investigator and the economist assigned to an investigation or review compare the list of holdings to the parties of the investigation to determine if any of the holdings are "interested parties." The investigator informs the Deputy DAEO if there are any "interested parties" involved. The Deputy DAEO then advises the employee of any potential conflicts or appearance concerns.

Three of the six Commissioners who entered into ethics agreements have separate written screening arrangements. The three Commissioners without separate written screening arrangements entered into their ethics agreements prior to the implementation of the June 2006 screening procedures. The ADAEO explained that although a written screening arrangement does not exist for these employees, all PAS and SES employees' work is screened based on the procedures. The review team encouraged the ADAEO, and the ADAEO agreed, to work with the remaining three Commissioners to develop their own separate written screening arrangements.

### **ETHICS 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 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 an initial ethics orientation (IEO). An initial ethics orientation must include:

- the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) and 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.*

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ITC exceeds the minimum IEO requirement by providing an in-person IEO to all new employees. OGE considers the in-person training of new employees to be a model practice and encourages ITC to continue this effort.

On the first day of employment, each employee receives an ethics packet which includes:

- the Standards,
- the 14 Principles of Ethical Conduct (Principles),
- Compilation of ethics statutes,
- information on financial disclosure filing requirements, and
- the names, titles, office addresses, and telephone numbers of the ethics officials.

IEO also consists of a monthly presentation by the ADAEO which includes a discussion of the ethics packet and a showing of the OGE film, "Integrity in Public Service: Earning the Public's Trust." ITC tracks the completion of IEO through the use of sign-in sheets. According to the ADAEO, IEO was provided to all new employees who began work at ITC in 2008.

### Annual Ethics Training

Public financial disclosure filers are required to receive verbal annual ethics training. *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 ethics training at least once every three years and receive written 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 Principles,
- the Standards,
- 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).

Annual training is mandatory for all ITC employees. According to the ADAEO, one non-PAS employee did not receive annual ethics training in 2008. The ADAEO indicated that the employee was on extended sick leave but did complete the training upon his return. All other employees received annual ethics training in 2008. OGE considers the training of all employees to be a model practice and encourages ITC to continue this effort.

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In 2008, the ADAEO sent an email to ITC employees instructing them to review the following three United States Department of Agriculture's computer-based training modules:

- Conflicting Interests
- Gifts Between Employees
- Seeking Non-Federal Employment

In addition, ITC employees were instructed to review the following documents:

- the Principles,
- the 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).

The ADAEO requested that all public filers notify her when they began training to ensure that a qualified instructor was available throughout the training. Employees are provided with a certificate of completion which they are required to sign and return to the ADAEO.

### 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 advice to assess whether processes and written procedures are effective.

OGE reviewed a sample of 43 pieces of memorialized counseling rendered by ITC's ethics officials. The ADAEO provided the majority of the written counseling. The counseling primarily involved screening procedures for conflicts, invitations, and gifts. OGE found the counseling to be complete, accurate, and consistent with applicable statutes and regulations.

### ENFORCEMENT

The DAEO is to ensure that (1) information developed by internal audit and review staff, the Office of the Inspector General (OIG), 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

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services of the agency's OIG 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).

There were no potential violations of the criminal conflict of interest statutes referred to the Department of Justice (DOJ) in 2008. There were no disciplinary actions taken based on violations of the Standards during that time.

ITC's Inspector General stated that her office is responsible for making referrals to DOJ and conducting investigations of alleged ethics violations. The ADAEO stated that the DAEO and the Chairman may also make referrals to the DOJ, and the ethics office is responsible for notifying OGE of any referrals to DOJ.

The ethics office communicates with the OIG to gather enforcement-related data needed to complete OGE's Agency Ethics Program Questionnaire. The review team provided the ADAEO with a sample of a memorandum of understanding between an agency and the OIG to facilitate communication between each office in the event an ethics violation occurs.

### **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 to OGE of travel payments from non-Federal sources in excess of \$250. *See* 31 U.S.C. § 1353.

ITC has comprehensive written procedures to implement 31 U.S.C. § 1353. To evaluate ITC's compliance with the requirements of 31 U.S.C. § 1353 and its written procedures, the review team examined 12 travel payments in excess of \$250 accepted by employees on behalf of ITC for the period covered by OGE's review. The review team found that comprehensive conflict of interest analyses were performed prior to the acceptance of each payment.

The semiannual reports submitted to OGE covering the period from October 1, 2007 through March 31, 2009 were submitted in a timely manner.

### **Summary**

OGE's review identified several model practices that ITC has implemented. OGE identified the following model practices:

- including the ethics duties of ITC's DAEO in his position description,
- providing in-person training to new employees, and
- requiring that all employees receive annual ethics training.

## **Ethics Program Review: International Trade Commission**

### **Suggestion**

To enhance ITC's ethics program, OGE suggests that ITC reduce periods of inaction between contacting financial disclosure filers to resolve issues and certifying reports.

If you have any comments or would like to discuss the report, please contact Dale Christopher, Associate Director, Program Review Division, at 202-482-9224.