



United States
Office of Government Ethics
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Washington, DC 20005-3917

August 9, 1995

Mary S. Elcano
General Counsel and Vice President
United States Postal Service
475 L'Enfant Plaza, SW., Room 6006
Washington, DC 20260-1100

Dear Ms. Elcano:

The Office of Government Ethics (OGE) has completed its fifth review of the U.S. Postal Service's (Postal Service) ethics program. This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended. Our objectives were to determine the ethics program's effectiveness and compliance with applicable laws and regulations. We also sought to determine whether improvements were made since OGE's last review in 1993. To achieve our objectives, we examined the following program elements: public and confidential financial disclosure systems, ethics education and training, counseling and advice services, and the relationship with the Postal Inspection Service (PIS). This review was conducted intermittently from December 1994 through April 1995, and included the Postal Service headquarters and Memphis Field Office.

Our review disclosed that, while the Postal Service has made some improvements to its ethics program since our last review, more work remains to be done to develop an effective program. Virtually all program elements require improvement, including the public financial disclosure system, ethics education and training, counseling and advice services, and the relationship with the PIS. Moreover, because of the decentralized nature of the ethics program within components, there is a need for closer monitoring of the activities of headquarters ethics liaisons and field counsels.

PRIOR OGE REVIEWS

The fourth review, conducted in 1993, concluded that the Postal Service did not have an effective ethics program. We noted that some improvements had been made to the public financial disclosure system and the education and training program, but that more improvements were needed to strengthen these elements as well as the confidential financial disclosure system. Moreover, consistent management oversight and support were needed to ensure that our recommendations were implemented.

WRITTEN PROCEDURES FOR ADMINISTERING THE
FINANCIAL DISCLOSURE SYSTEMS NEED TO BE
DEVELOPED

Pursuant to section 402(d)(1) of the Ethics in Government Act of 1978, as amended, the Postal Service is required to develop written procedures for collecting, reviewing, evaluating, and making publicly available financial disclosure reports. Our review disclosed that the Postal Service has not developed written procedures for its public and confidential financial disclosure systems.

PUBLIC FINANCIAL DISCLOSURE SYSTEM

Although ethics officials have implemented some of OGE's recommendations from the last review, several areas of the public financial disclosure system continue to need improvement. The Postal Service has a centralized public financial disclosure system which is administered by the Law Department. The Corporate Personnel Office is responsible for the distribution and collection of annual, new entrant, and termination public reports. The Law Department's paralegal specialist is responsible for the initial review of reports. The Chief Counsel, Ethics and Information Law, is responsible for conducting the final review and certification.

During the 1994 filing cycle, 692 employees were required to file public reports. We examined 145 public financial disclosure reports filed during 1994. Our sample consisted of 106 incumbent, 26 new entrant, and 13 termination reports. We found no substantive deficiencies and few technical deficiencies.

Our examination disclosed that 117 reports were filed in a timely manner. The remaining 28 reports were filed late. Of the reports filed late, 17 were new entrant reports, 10 were incumbent reports, and 1 was a termination report. Forty-four reports from the sample were not reviewed in a timely manner. Of the reports reviewed untimely, 34 were incumbent, 5 were termination, and 5 were new entrant reports. According to ethics officials, the \$200 late filing fee was imposed on only two filers. The remaining late filers were not assessed the late filing fee nor did they request waivers of the fees from OGE.

CONFIDENTIAL FINANCIAL DISCLOSURE SYSTEM

Overall, the Postal Service's confidential financial disclosure system is generally effective. Our review disclosed that most reports were filed and reviewed in a timely manner.

The Postal Service had not administered an agencywide confidential financial disclosure system in many years, notwithstanding previous OGE recommendations to do so. In order to

correct this problem, the Designated Agency Ethics Official (DAEO), in November 1992, issued a memorandum which addressed the restructuring of the ethics program. In the ensuing restructuring, senior management officials were designated to serve as Associate Ethical Conduct Officers. These officers subsequently appointed within headquarters components ethics liaisons who were to actually implement the new confidential financial disclosure system. In consultation with personnel managers, senior ethics officials at headquarters (i.e., the DAEO, Alternate DAEO, and Chief Counsel, Ethics and Information Law) determined agencywide which positions would be subject to confidential financial disclosure. For the 1994 filing cycle, confidential filers were granted an extension of the filing deadline until February 1, 1995.

The Postal Service Information Systems Service Center in Minneapolis, Minnesota is responsible for distributing the confidential reporting forms and filing instructions to non-headquarters filers. The 17 headquarters ethics liaisons are responsible for distributing the confidential reporting forms to headquarters filers within their functional area and collecting the completed reports.

Financial Disclosure Reports Were Generally
Filed And Reviewed In A Timely Manner

During the 1994 filing cycle, 3,735 employees were required to file confidential reports. We examined a sample of 367 reports which included 329 annual reports and 18 new entrant reports. Twenty filers did not indicate their filing status. We examined reports from the Engineering, Marketing, Operations Support, Labor Relations, and Purchasing components at the Postal Service headquarters. We also examined reports which had been filed and reviewed at the Memphis Field Office.

Our examination disclosed that 329 reports were filed in a timely manner and 38 reports were filed untimely. Of the late filers, 19 were annual reports and 18 were new entrant reports. The filing status of one late report could not be determined. We determined that new entrant reports at the Memphis Field Office were filed during the annual cycle rather than within 30 days of entering covered positions. In addition, 36 reports were not reviewed in a timely manner. The confidential reports we examined did not disclose any substantive deficiencies. Some of the reports contained technical deficiencies, such as the family names of various mutual funds being indicated rather than the specific names and other instances of incomplete information.

Headquarters Ethics Officials Need to Monitor
Components' And Areas' Administration of the
Ethics Program

Our review disclosed that ethics officials do not routinely monitor the activities of the ethics liaisons and field counsels. While there is occasional liaison/counsel-initiated contact to obtain advice, senior headquarters ethics officials do not provide feedback concerning the operation of the program at the component levels. Overall, we believe that more communication is needed between headquarters ethics officials and the ethics liaisons and field counsels.

While most ethics liaisons were aware of the need to perform technical and substantive reviews of financial disclosure reports, we found that in some instances ethics liaisons were not provided sufficient guidance. According to the Engineering ethics liaison, he was not provided adequate training or specific instructions from senior ethics officials on how to conduct substantive or technical reviews, and viewed his role regarding the confidential reports as "custodial." Furthermore, our examination disclosed that the Engineering ethics liaison had reviewed and certified his own report. Ethics liaisons in the components generally conduct reviews to identify potential conflicts of interest based on their personal knowledge of a filer's position and duties and the firms with which the filer interacts. While the Postal Service has a contractor list, it is seldom, if ever, used as part of the review process. The availability of an up-to-date contractor list for use by ethics liaisons could help improve the quality of the conflict-of-interest analyses.

SPECIAL GOVERNMENT EMPLOYEES'
FINANCIAL DISCLOSURE

Most of the financial disclosure reports filed by members of the Board of Governors were not certified and appeared not to have been reviewed.

The Governors are not subject to the public reporting requirements because they are special Government employees (SGE) who work less than 61 days in each calendar year. Although the Governors are not considered public filers, the Postal Service requires that they file annual reports using the public reporting form (SF 278) but which are treated as confidential reports and not releasable to the public.

If the Postal Service believes that a Governor will not work more than 60 days during the year, but recognizes the possibility of his or her going over 60 days, it can offer the Governor the opportunity to file confidentially on an SF 278 which would be marked "not for public release." If the Governor does go over 60

days, a second report would not have to be completed and the SF 278 would become publicly available. Furthermore, in determining whether or not the 60-day threshold has been exceeded, the Postal Service should count the days on which a Governor actually worked. If the Governor works part of a day, or a Saturday, Sunday, or a holiday, then that day counts as one day in determining the number of days worked. Finally, in its DAEOgram of April 11, 1995, OGE advised agencies that for confidential reports being filed at the time of reappointment/redesignation as an SGE, agencies could collect them all at one time (e.g., May 15), rather than on the anniversary of each employee's initial appointment.

Most of the Governors' annual reports filed in 1994 as well as in previous years had not been certified. The Alternate DAEO, who is responsible for reviewing and certifying the Governors' reports, stated that the reports were reviewed for conflicts of interest but he did not always document actions that resolved the issues.

ETHICS EDUCATION AND TRAINING

The education and training program needs improvement. Our review disclosed that the initial agency ethics orientation provided to new employees does not appear to meet the requirements of 5 C.F.R. § 2638.703. On the other hand, annual training was conducted agencywide during 1994 and appeared to meet the requirements of § 2638.704.

At headquarters, new employees are shown only the Postal Service's modified Department of Defense (DOD) videotape summarizing 5 C.F.R. part 2635, entitled "Ethics and You," without being provided with the names, titles, office addresses, and telephone numbers of the DAEO and other agency ethics officials. Furthermore, in view of the fact that the videotape was considered simply a summary of 5 C.F.R. part 2635, the Postal Service was not ensuring that copies of the complete text of part 2635 were being retained and readily accessible in the employees' immediate offices.

We found similar problems with the initial ethics orientation in two Postal Service districts under the Memphis Field Office. According to the Human Resource Specialist at the Postal Employee Development Center (PEDC) in the district of Tennessee, new employees were shown the modified DOD videotape and provided with a booklet containing Executive Order 12674, as modified by Executive Order 12731, and the names, titles, office addresses, and telephone numbers of the DAEO and other ethics officials at headquarters and in the district. Once again, the Postal Service was not ensuring that copies of the complete text of 5 C.F.R. part 2635 were being retained and readily accessible in the employees' immediate offices.

According to the Human Resource Specialist at the PEDC in Alabama, the initial ethics orientation simply consisted of new employees being informed that they could obtain, at the nearest "associate post office," the complete text of Executive Order 12674 and part 2635, along with the names, titles, office addresses, and telephone numbers of the DAEO and other ethics officials. In this case, new employees were neither given a copy of part 2635, furnished a copy of part 2635 for the purposes of review only, nor given materials which summarize Executive Order 12674 and part 2635. Furthermore, it appears likely the initial ethics orientation in Alabama fails to meet the one hour of official duty time requirement found at 5 C.F.R. § 2638.703(a)(3).

COUNSELING AND ADVICE

The Postal Service's counseling and advice were generally consistent with applicable laws and regulations. However, according to senior ethics officials, most advice is oral.

We reviewed the written determinations for 1994 and 1995. The Alternate DAEO provides most of the counseling at headquarters. The DAEO and attorneys in Ethics and Information Law also provide ethics advice. In addition, ethics liaisons at headquarters provide advice to headquarters employees, and counsels and ethics resource persons in the field provide advice to non-headquarters employees.

Employees seeking advice on complex issues are urged to do so in writing and are provided written responses. According to the Chief Counsel, Ethics and Information Law, post-employment advice is given upon request in the form of a written summary of post-employment restrictions.

While written advice which we reviewed was generally consistent with applicable laws and regulations, we identified one instance where, perhaps, a written determination should have been rendered in advance. One of the Governors was a principal in a company when it was merged into another company which was in the process of obtaining a Postal Service contract. The Governor served as a member of the board of directors of the successor company for a short period of time after the contract was let and before resigning from the company.

Part 10 of 39 C.F.R., which has been "grandfathered" pending the issuance of the Postal Service's supplemental standards of conduct regulation, states at section 10.22(a) that:

No Governor may have a financial interest, direct or indirect, that conflicts substantially, or appears to conflict substantially, with his or her duties and responsibilities to the Postal Service. For the purposes

of this Code, a Governor's interests include those of his or her spouse, his or her minor child or children, and other individuals related to the Governor by blood who are residents of the Governor's household.

Further, section 10.22(b) of 39 C.F.R. states that:

No Governor shall enter into a contract with the Postal Service or otherwise have an interest in any contract with the Postal Service unless there has been a prior determination by an ethics official that the interest is so minor that no realistic possibility of a conflict of interest, or the appearance of a conflict of interest, exists.

According to the Alternate DAEO, he did not provide a written determination although he acknowledged in retrospect that one may have been warranted. Nevertheless, he stated that (1) while Governors have authority over broad Postal Service policies, they did not get involved with specific contracts; (2) he expected that this Governor would be leaving the Postal Service shortly, as her term has expired, although she continues to sit pending the appointment of a replacement; (3) he believed he had provided oral advice to her; and (4) the above-cited sections of the Postal Service's standards of conduct will be rescinded by the supplemental standards.

RELATIONSHIP WITH POSTAL INSPECTION SERVICE

The working relationship between senior ethics officials and the PIS needs improvement, as senior ethics and PIS officials do not appear to routinely coordinate with each other.

Our examination of the ethics files disclosed a number of conflict-of-interest and standards of conduct allegations which had been referred to the PIS for investigation. However, ethics officials had not followed up to determine the results of the investigations.

When questioned about the outcome of the investigations, the Alternate DAEO acknowledged that the PIS had not communicated with senior ethics officials in some time regarding these matters and that, likewise, senior ethics officials had not followed up to determine whether violations had occurred and what actions had been taken. Senior ethics officials are to report any alleged standards of conduct or conflict-of-interest violations to the PIS and follow up to determine the results of the investigations.

According to the PIS Counsel, OGE is not concurrently notified of referrals to the Department of Justice (DOJ) of criminal

conflict-of-interest violations and their disposition, as required by 5 C.F.R. § 2638.603(b) and (c). According to the PIS Counsel, he is aware of the requirement but has waited for the DOJ to actually decline the case before notifying OGE or senior ethics officials regarding the case. As for coordination with senior ethics officials generally, although no formal agreement exists, the PIS Counsel meets with the Alternate DAEO at least quarterly to share information.

CONCLUSION

Ethics officials have made some progress in improving the ethics program but continue to have difficulty in administering an effective agencywide ethics program that is in compliance with applicable laws and regulations. As noted in our last review, the DAEO must provide consistent oversight and strong support to ensure that the ethics program continues to improve. The public financial disclosure system, education and training, and coordination with the PIS all require more consistent oversight to ensure that improvement continues. Moreover, we believe that you and the senior ethics staff need to be more active in coordinating with ethics liaisons.

RECOMMENDATIONS:

We recommend you ensure that:

1. Written procedures are developed for administering the public and confidential disclosure systems.
2. Public reports are filed in a timely manner.
3. The \$200 late filing fee is collected, or the public filers request waivers from OGE.
4. The initial ethics orientation meets the requirements of 5 C.F.R. § 2638.703.
5. Ethics officials improve coordination with the PIS and follow up on referrals for investigation.
6. OGE is concurrently notified of any referrals to the DOJ of alleged conflict-of-interest violations and their disposition.

In closing, I wish to thank you for all of your efforts on behalf of the ethics program. Please advise me within 60 days of the actions you have taken or plan to take on each of the recommendations in our report. A brief follow-up review will be

Ms. Mary S. Elcano
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scheduled six months from the date of this report. In view of the corrective action authority vested with the Director of the Office of Government Ethics under subsection 402(b)(9) of the Ethics in Government Act, as implemented in subpart D of 5 C.F.R. part 2638, it is important that our recommendations be implemented in a timely manner. Please contact Mike Berry at 202-523-5757, extension 1215, if we can be of further assistance.

Sincerely,



Jack Covalesski
Associate Director
Office of Program Assistance
and Review

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