



United States Office
Of Government Ethics

Report Number 09-021

Highlights

Model Practices

- Ethics duties are included in the Designated Agency Ethics Official's (DAEO) position description.
- Ethics officials created a comprehensive succession plan to ensure the continuity of the ethics program in the event of turnover in the ethics staff.
- Ethics officials provide annual ethics training to all MMC employees.

OGE Recommends

- MMC collect follow-on new entrant OGE Forms 450 from special Government employees 30 days prior to MMC's Committee of Scientific Advisors on Marine Mammals annual meeting each year.
- MMC collect delinquent OGE Forms 450 from special Government employees.
- MMC collect OGE Forms 450 required to be filed in 2007 from regular employees.

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

Ethics Program Review Marine Mammal Commission

September 2009 Report

Executive Summary

The United States Office of Government Ethics (OGE) has completed its review of the ethics program at the Marine Mammal Commission (MMC). 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.

During its ethics program reviews, OGE identifies model practices that agencies have implemented to enhance their ethics program. OGE's review of MMC identified several model practices relating to program structure and ethics training.

To enhance MMC's ethics program, OGE makes three recommendations related to the confidential financial disclosure system.

This report has been sent to MMC's Designated Agency Ethics Official and the Department of Commerce Inspector General. OGE will follow-up with MMC within six months from the date of this report's issuance.



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Ethics Program Review
Marine Mammal 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 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 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 Marine Mammal Commission (MMC) focused on the elements listed below.

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

On-site fieldwork for OGE's review of MMC was conducted in October 2008.

Program Elements

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

PROGRAM STRUCTURE

MMC's ethics program is administered within the MMC Office of General Counsel. The General Counsel serves as the Designated Agency Ethics Official (DAEO). The Executive Director serves as the Alternate DAEO (ADAEO). OGE found that government ethics expertise is included in the position description of the General Counsel in MMC's Succession Management Framework. OGE considers including government ethics duties in the position description section and the succession plan to be model practices. These practices enhance accountability and ensure continuity in the Ethics Office.

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).

At the time of OGE's on-site fieldwork, MMC did not have written procedures for the administration of its public and confidential financial disclosure systems as required by section 402(d)(1) of the Ethics in Government Act. Written procedures ensure consistency in the collection, review, and certification of financial disclosure reports. Moreover, written procedures are essential for an effective succession plan. The review team advised the DAEO of the requirement to have written procedures for financial disclosure. The DAEO subsequently created comprehensive written procedures for the administration of the public and confidential financial disclosure systems.

Public Financial Disclosure System (SF 278)

With the exception of the DAEO's financial disclosure report, all of MMC's public financial disclosure reports are reviewed and certified by the DAEO. (The DAEO's report is reviewed and certified by the ADAEO.) The DAEO has attended OGE reviewer training and contacts MMC's OGE desk officer for assistance when needed.

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To evaluate the public financial disclosure system at MMC, OGE examined all 6 public reports that were required to be filed by MMC's Chairman and employees in 2007 and 2008. The following is a summary of OGE's examination of the 6 reports:

Type of Report

- 6 annual reports

Filing Timeliness

- 5 reports were filed timely.
- 1 report was filed late.

6 total

Review/Certification Timeliness

- 3 reports were reviewed and certified timely.
- 3 reports were reviewed and certified late.

6 total

Quality of Review

The DAEO's 2007 public report was certified more than 130 days late. According to the DAEO, the delay occurred because of his ^{5 USC § 552(b)(6)} and the appointment of a new ADAEO. OGE notes the written comments on the DAEO's 2008 public report indicate a thorough review of the report by the ADAEO for conflicts of interest.

The Chairman's 2007 report was also certified after an extended period. According to the DAEO, the delay occurred because he was working to obtain all the required information from the chairman and MMC's OGE desk officer.

Confidential Financial Disclosure System (OGE Form 450)

The DAEO reviews and certifies all of MMC's confidential financial disclosure reports. The DAEO is aware of the staff responsibilities and thus the potential for conflicts of interests. The DAEO has attended OGE reviewer training and contacts MMC's OGE desk officer for assistance when needed.

To evaluate the confidential financial disclosure system at MMC, OGE examined 4 of the 6 confidential reports required to be filed by MMC's employees in 2008. Two employees did not file confidential financial disclosure reports in 2008 as required. The following is a summary of OGE's examination of the 4 reports:

Ethics Program Review: MMC

Type of Report

- 3 annual reports
- 1 new entrant report

4 total

Filing Timeliness

- 3 reports were filed timely.
- 1 report was filed late.

4 total

Review/Certification Timeliness

- 3 reports were reviewed and certified timely.
- 1 report was not certified.

4 total

Quality of Review

At the time of OGE's fieldwork, one report had not yet been certified. According to the DAEO, the report has since been reviewed and certified in a timely manner. The DAEO appeared to have conducted a thorough review for conflicts of interest on all of the reports. However, OGE identified missing dates of receipt on three of the reports.

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 initial ethics orientation. 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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The DAEO provides new MMC employees with an initial ethics orientation at the agency's headquarters. The orientation includes the provision of ethics officials' contact information and the Standards. The DAEO feels that he can easily track new employees requiring an orientation because of the small number of employees at MMC and low staff turnover.

The DAEO provides an in-person orientation to the Committee of Scientific Advisors at its annual conference.

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 may 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 14 Principles of Ethical Conduct,
- 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 at MMC is provided by the DAEO. The annual ethics training materials include the ethics officials' contact information and the Standards. The annual training also consists of videos, sanitized information from real-life case studies, and verbal presentations. The DAEO also uses games and computer-based programs to engage the participants during training.

Public and confidential filers receive their annual ethics training simultaneously at the annual session attended by all MMC employees and special Government employees (SGE). Providing annual training to all agency employees is a model practice.

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

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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.

The DAEO makes employees aware of his availability to provide ethics counseling by providing his contact information each year at the annual meeting of the Marine Mammal Commission's Committee of Scientific Advisors on Marine Mammals. He assured OGE that due to the small size of MMC, all employees know how to contact him.

Counseling is dispensed orally, via e-mail, or by formal memorandum. The most frequent topic is outside employment activities. The DAEO makes an effort to provide post-employment counseling and written materials to departing employees.

To evaluate the ethics counseling provided by MMC, OGE reviewed a sample of six pieces of memorialized counseling rendered by the MMC DAEO. The counseling involved policy positions, conflicts of interest, impartiality, seeking employment, misuse of position, outside activities, and writing character reference letters. OGE found the counseling to be accurate and consistent with applicable statutes and regulations.

ENFORCEMENT

The DAEO is required 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 (IG) 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).

If necessary, MMC would utilize the services of the Inspector General of the Department of Commerce. The DAEO is responsible for making referrals to the Department of Justice of alleged violations of the criminal conflict of interest statutes and for concurrently notifying OGE of the referrals. According to the DAEO, there were no alleged violations of the criminal conflict of interest statutes referred to DOJ in 2008. There were also no identified violations of the Standards.

SPECIAL GOVERNMENT EMPLOYEES

In OGE's 2000 review of MMC's ethics program, OGE recommended that MMC "collect follow-on SGE reports annually on May 15 for the convenience of collecting SGE reports and public reports at the same time and the opportunity to review information prior to the annual meeting of the Commission and the Committee of Scientific Advisors on Marine Mammals." It was then agreed upon in 2002 and in subsequent OGE follow-up reviews in 2004 that a September 30 filing deadline would ensure the timely collection and review of SGE reports before the annual meetings that, at the time, took place in October. However, since 2006, MMC has changed the month of their annual meeting from October to mid-September (2006), late August (2007), and early December (2008).

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The OGE review team examined the available SGE reports required to be filed by members of the MMC and the Committee of Scientific Advisors in 2007. Only 8 of the required 11 reports were filed with MMC. Of the eight filed, seven were filed before the annual meeting and one was filed after the annual meeting. Three reports were reviewed and certified before the meeting while five reports were reviewed and certified after the annual meeting. OGE also reviewed the new entrant SGE reports required to be filed in 2008. We found that only 8 of the 10 required reports were filed with MMC. All eight were filed, reviewed, and certified before the meeting.

If MMC intends to continue to move the date of its annual meeting, it appears that the previously established filing deadline of September 30 may not always be appropriate. OGE recommends that MMC establish an annual filing deadline of 30 days prior to each scheduled annual meeting. Establishing such a moving deadline will help to ensure that all required SGE reports are filed, reviewed, and certified in a timely manner, irrespective of when the annual meeting takes place.

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.

MMC rarely accepts payments under 31 U.S.C § 1353. MMC accepted only two offers for travel payments from non-Federal sources in 2007. Nonetheless, OGE received the semiannual reports listing the payments late.

Summary

OGE's review team identified three model practices at MMC: including Government ethics expertise in the position description of the General Counsel, developing MMC's Succession Management Framework, and providing annual ethics training to all employees.

Recommendations

The Marine Mammal Commission continues to have difficulty collecting, reviewing, and certifying follow-on new entrant OGE Forms 450 from SGE members of MMC's Committee of Scientific Advisors on Marine Mammals prior to their annual meeting. OGE recommends that MMC take the following actions:

1. Collect follow-on new entrant OGE Forms 450 from special Government employees 30 days prior to MMC's Committee of Scientific Advisors on Marine Mammals annual meeting each year.
2. Collect delinquent OGE Forms 450 from special Government employees.
3. Collect OGE Forms 450 required to be filed in 2007 from regular employees.

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MMC's DAEO is to advise OGE within 60 days of the specific actions MMC has taken or plans to take on OGE's recommendations. OGE stands ready to assist MMC in implementing the recommendations, as well as other program initiatives that MMC may choose to undertake. OGE will follow-up with MMC in six months.

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