



U.S. Office of Government Ethics
Program Review Division

Ethics Program Review

National Credit Union Administration

Report No.
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Results in Brief

The United States Office of Government Ethics (OGE) conducted a review of the National Credit Union Administration (NCUA) ethics program in February 2011. The results of the review found that while NCUA's ethics program has many strong program elements, improvements are needed within certain areas of the program to enable NCUA to more fully comply with ethics regulatory requirements. OGE believes that when these issues are addressed the ethics program will be in full compliance.

Highlights

- NCUA keeps employees knowledgeable of the ethics laws and regulations and assigns high priority to maintaining a strong training program.
- In-person, post-employment briefings are provided to those employees departing from Federal service as part of NCUA's employee check-out process.
- The Ethics Office maintains an intranet ethics program web site that serves as a very useful and comprehensive ethics tools for all employees.
- NCUA maintains written procedures that summarize the responsibilities of NCUA staff and supervisors to report misconduct to NCUA's Office of the Inspector General.

Concerns

- The Ethics Office does not maintain written procedures for administering its public and confidential financial disclosure systems.
- The Ethics Office does not have a system for tracking the progress made on each financial disclosure report to help ensure that financial disclosure reports are reviewed and certified timely.
- The Ethics Office does not consistently monitor the operations of the confidential financial disclosure system outside of the NCUA Central Office.

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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 NCUA's ethics program, OGE examined a variety of documents provided by ethics officials; other documents that NCUA forwarded to OGE, including the annual questionnaire; prior program review reports, and a sample of NCUA's public and confidential financial disclosure reports and advice and counsel provided to NCUA employees. In addition, members of OGE's Program Review Division met with NCUA ethics officials to obtain additional information about the strengths and weaknesses of NCUA's ethics program, seek clarification on issues that arose through the documentation analysis, and verify data collected.

Program Administration

NCUA's ethics program is organizationally located within the Office of General Counsel (OGC), hereafter referred to as the Ethics Office. The General Counsel serves as the agency's Designated Agency Ethics Official (DAEO) and has oversight responsibility for the ethics program. However, the day-to-day management of the program is carried out under the direction of the Associate General Counsel - Operations who serves as the agency's Alternate DAEO (ADAEO). Assisting the ADAEO are two other attorneys who support the program on a collateral-duty basis as Deputy Ethics Officers (DEOs) for the NCUA Central Office.

Additionally, the program relies on the cooperative efforts of a network of regional DEOs to help administer the ethics program within each of the five NCUA regions. Regional DEOs are senior-level management officials, chosen by the DAEO, who are responsible for establishing a system

for reviewing confidential financial disclosure reports, providing ethics counseling, initiating the initial ethics orientation training program, and ensuring that violations of the conflicts statutes or the standards of conduct are reported to investigatory authorities and, where appropriate, seeing that disciplinary action is taken. All five serve the ethics program on a collateral-duty basis.

Suggestion

- In view of NCUA's decentralized organizational ethics program structure, OGE suggests that NCUA consider incorporating ethics duties into the job descriptions and performance appraisals of all NCUA ethics officials, especially the regional DEOs.

Financial Disclosure

OGE found both the public and confidential financial disclosure reports it examined were generally filed, reviewed, and certified timely. However, several improvements are needed before the program can be considered effective. For example, NCUA does not have written procedures outlining the process for administering its financial disclosure systems as required by section 402(d)(1) of the Ethics Act. Beyond being required, written procedures are important in establishing consistency and efficiency in ensuring that agency ethics officials follow the same step-by-step procedures for administering their portion of the financial disclosure system. When properly used and updated, written procedures provide ethics officials with the opportunity to plan for system improvement. OGE recommends that NCUA develop these procedures to ensure compliance with the Ethics Act.

OGE also found it difficult to independently track the timeliness of both public and confidential reports since dates of filing progression were not being recorded. As a result, OGE recommends that NCUA develop a system that tracks the progress made on each financial disclosure report to help ensure that financial disclosure reports are reviewed and certified timely. An effective tracking system would include as appropriate the dates when (1) the filer was notified of the filing requirement, (2) the filer was provided with the financial disclosure report, (3) the report was filed, (4) the intermediate review commenced, (5) the intermediate reviewer signed and dated the report, (6) the final review commenced and (7) the reviewing official certified the report. Since all financial disclosure filers must receive annual ethics training, the tracking system could also be used to simultaneously track when filers are trained.

Several technical issues were also identified during OGE's examination of both the public and confidential reports. However, OGE is making no formal recommendation for improvement regarding these matters based on assurances received from the Ethics Office that these issues would be corrected during future filing cycles. Provided below are the issues that were brought to the attention of ethics officials.

- OGE noticed on both the public and confidential reports that were selected for examination that they had not been date stamped, as required by 5 CFR § 2634.605(a). Therefore, OGE based filing timeliness on the filers' signature dates. Using this method, OGE confirmed that all reports were filed timely. Since compliance with the filing due date had been met, OGE reminded ethics officials that a financial disclosure report is

considered filed when the agency receives it. Therefore, the agency date of receipt stamp is critical in determining timeliness with the filing due date and 60-day review requirements. OGE was assured that the practice of date-stamping both public and confidential reports would become routine during future filing cycles.

- During the review, OGE selected a judgmental sample of confidential reports filed within one of the five NCUA regions. During the examination of these reports OGE noticed that none of them had been certified by the regional DEO even though there appeared to be no evidence that additional information was being sought from the filer. OGE advised the ADAEO to go back to the regional DEO to have these reports certified. The ADAEO confirmed with OGE prior to the conclusion of this review that all reports had been certified.

In view of the importance that financial disclosure plays in preventing employees from committing ethics violations, this issue raises concern because untimely reviews or the lack of any review diminishes an agency's ability to provide timely and specific conflict-of-interest advice. Therefore, OGE recommends that the Ethics Office institute the practice of routinely conducting "ethics assistance reviews" as it relates to the confidential financial disclosure system outside of the NCUA Central Office to help ensure proper management focus and attention within the five NCUA regions. OGE also suggests that part of this review include checking confidential reports for completeness, accuracy and compliance with OGE requirements. Consistent monitoring of an agency's financial disclosure system operations and, when necessary, making adjustments to address any weaknesses, is essential in administering an effective decentralized confidential system.

Recommendation

- Establish written procedures for administering the public and confidential financial disclosure systems to comply with the requirements of section 402(d)(1) of the Ethics Act.
- Develop a system that tracks the progress made on each financial disclosure report to help ensure that financial disclosure reports are reviewed and certified timely.
- Institute the practice of routinely conducting "ethics assistance reviews" as it relates to the confidential financial disclosure system outside of the NCUA Central Office to help ensure proper management focus and attention within the NCUA regions.

Suggestion

- OGE encourages the Ethics Office to develop written procedures that reflect the current practices for administering other elements of NCUA's ethics program as well. OGE considers this to be a model agency practice and a valuable resource to both employees and ethics officials.

- In light of NCUA’s decentralized organizational ethics program structure, OGE suggests that a continuous learning strategy be developed for regional DEOs to help enhance the agency’s financial disclosure program. Consistent, timely, and accurate review of reports requires agencies to enhance reviewer experience and expertise by providing specialized training to reviewers.

General Observation

- During the review, the ADAEO shared that the Ethics Office was considering the benefits of using an agency-wide electronic filing system (e-filing system) to help with the administration of the financial disclosure program. OGE has learned that when agencies have implemented such systems they have found great efficiencies in time and resources, and the resources saved have been moved to other essential aspects of financial disclosure—such as conflicts analysis—and other aspects of the overall ethics program. OGE supports NCUA in the pursuit of this endeavor.

Ethics Agreement

OGE examined the screening arrangement for the Board Chairman, which described the steps that she intended to take to avoid any actual or apparent conflicts. OGE determined that it had been properly updated.

Education & Training

OGE found NCUA’s education and training program to exceed the minimal training requirements found at subpart G of 5 CFR part 2638, as evidenced by the agency’s commitment to provide in-person, verbal annual ethics training each year to financial disclosure filers. (The Ethics Office advised OGE that non-covered employees are also welcome to participant in the training.) In addition to conducting the requisite initial ethics orientation and annual ethics training, OGE was also impressed with how NCUA keeps employees aware of ethics-related issues through a variety of methods including advertising the ethics program on custom-imprinted promotional items, developing a welcome booklet for new Board members that address NCUA’s administration of certain ethics provisions, conducting new supervisor training, and providing useful ethics information on the ethics section of NCUA’s Intranet page. Despite the program’s overall effectiveness, OGE did bring one issue to the attention of ethics officials which is described below in the “Annual Training Plan” section.

Annual Training Plan

OGE’s training regulation, at 5 CFR § 2638.706, has long-required that ethics officials develop a written plan at the beginning of each calendar year. The plan must contain a brief description of the agency’s annual ethics training and numerical estimates of the number of employees who will receive verbal and written training, broken out between public filers and non-public filers,

and estimates of the number of employees who will receive written training instead of verbal training, broken out according to the various exceptions to the verbal training requirements for public filers and non-public filers.

While NCUA has written plans for 2011, 2010, and 2009 we noticed that each year's plan provided only a written description of the agency's training plan and did not include the aforementioned numerical estimates. Although no formal recommendation is being made regarding this matter, OGE strongly suggests that to more fully meet the prescribed requirement and the overall intent of using the plan to prepare for each training cycle, NCUA should add the numerical estimates to all future plans, including the plan developed for this year.

Initial Ethics Orientation and Annual Ethics Training for Regular Employees

NCUA's Office of Human Resources (OHR) is responsible for notifying the Ethics Office of all new employees and for ensuring that all new Central Office employees receive an initial ethics orientation (IEO) within the required 90 days. The regional DEOs are responsible for ensuring that all new regional office employees receive their IEO. To accomplish IEO at NCUA, new employees are instructed to view a web-based training module delivered over NCUA's Intranet. Developed by the Ethics Office, this interactive training module covers the 14 Principles of Ethical Conduct for Government Officers and Employees (Principles), the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct), and addresses other pertinent ethics statutes, regulations, and principles. OGE confirmed that 171 new employees received IEO in 2010.

With regard to annual training, the Ethics Office is responsible for managing the annual training requirement for the entire agency. To satisfy the training requirement in 2010, the Ethics Office presented in-person training at two of the NCUA regional conferences that were held in Orlando, FL.¹ One-hour of official duty time was built into the conference agenda, and training consisted of an instructor-led interactive game show format based on the popular TV program, "Deal or No Deal." Prior to the start of each session, participants were provided with an overview of pertinent ethics statutes, regulations, and principles by ethics officials. Attendance at each session was tracked using sign-in sheets. For filers unable to attend, the Ethics Office provided several make-up sessions of the game show at the NCUA Central Office. Live video conferencing for Central Office and regional employees was also made available to those employees who needed to satisfy the annual training requirement. The Ethics Office indicated that all but one financial disclosure filer was trained in 2010.²

¹Annual training in 2011 will be presented in April at NCUA's leadership conference, which will be held in San Diego, CA.

²The one filer who was not trained in 2010 was out on extended sick leave.

Initial Ethics Orientation and
Annual Ethics Training for Board Members

For the three NCUA Board members, the agency's only Presidentially appointed, Senate-confirmed appointees, and their policy advisors, personal briefings are provided by the Ethics Office when they first come on board and annually, covering their responsibilities under the Standards, the conflict of interest statutes, and applicable executive orders including the Ethics Pledge. Training on seeking employment and post-employment issues are also emphasized with Board members and their policy advisors.

Model Practices Identified

- NCUA keeps employees knowledgeable of the ethics laws and regulations and assigns high priority in maintaining a strong training program.

Advice & Counsel

OGE's examination of the advice and counseling services found NCUA complying with 5 CFR § 2638.203(b)(7) and (8) by developing and conducting a counseling program for employees concerning all ethics matters, including post employment, wherein records are kept, where appropriate, on advice rendered. OGE also found NCUA's advice and counseling services to be timely which is important in preventing conflicts of interest and other ethics violations from occurring. Employees are encouraged to contact the Ethics Office via all forms of communication, including e-mail, telephone, and in-person. However, most inquiries are made and advice rendered via e-mail correspondence. Regional DEOs also dispense ethics advice to employees within their respective regions on routine matters, often after consulting first with the Ethics Office.

OGE also found the Ethics Offices' approach to providing guidance on the relevant Federal post-Government service employment restrictions to departing NCUA employees to be a model agency practice. The Ethics Office provides in-person, post-employment briefings to those departing from Federal service as part of NCUA's employee check-out process. In addition to the briefing, employees are provided with written materials that outline the basic post-employment restrictions. These post-employment reference guides include OGE's Rules of the Road and The Revolving Door: How Ethics Rules Apply To Job Seeking and Post-Government Employment Activities.

Additionally, OGE notes that when it last reviewed NCUA's ethics program in 2003, we encouraged the Ethics Office to occasionally distribute topical ethics-related information to all NCUA employees as a way to heighten awareness of ethics rules and regulations. To accomplish this goal, we advocated that NCUA establish an ethics intranet Web site. OGE is pleased to see in its current review that the Ethics Office is now maintaining a very useful and informative Intranet ethics Web site to help enhance its counseling and advice program.

Model Practices Identified

- In-person, post-employment briefings are provided to those departing from Federal service as part of NCUA's employee check-out process
- The Ethics Office maintains an intranet ethics program Web site that serves as a very useful and comprehensive ethics tools for all employees.

Enforcement

Consistent with 5 CFR § 2638.203(b)(12), it appears that an effective working relationship has been established between the Ethics Office and NCUA's Office of the Inspector General (IG). Based on our discussions with the ADAEO and the Counsel to the IG, we are satisfied that procedures are in place to effectively exchange ethics-related information and to resolve ethics issues.

During the period covered by OGE's review, there were no recent violations of the criminal conflict-of-interest laws referred for prosecution to a U.S. Attorney's Office or to the Public Integrity Section within Justice's Criminal Division. We were advised that in the event a referral had been made, either the Ethics Office or the IG would be responsible for concurrently notifying OGE of any such referrals in accordance with 5 CFR § 2638.603, depending upon which office is primarily responsible for the case. In addition, there were no reported disciplinary actions taken for violations of the standards of conduct in 2010.

Model Practice Identified

- NCUA maintains written procedures that summarize the responsibilities of NCUA staff and supervisors to report misconduct to the IG, as well as the general authority and responsibilities of the IG to investigate allegations of criminal misconduct and violations of the standards of conduct. NCUA also maintains policy and procedures that govern the disciplinary and adverse action process at the agency.

1353 Travel Acceptances

NCUA does not allow its employees to accept payments, on behalf of the agency, from non-Federal sources for travel, subsistence, and related expenses incurred on official travel under 31 U.S.C. § 1353. With the exception of the most recent semiannual report covering the period from April 1, 2010 through September 30, 2010, all negative reports submitted by NCUA had been forwarded timely to OGE using the required GSA standard form (SF) 326. The one report filed late was due to agency oversight.

Agency Comments

OGE provided a draft of this report to NCUA on March 15, 2011 for its review and comment. The DAEO's response is provided below:

“We appreciate the opportunity to work with the Office of Government Ethics in its review of our ethics program. As we shared with OGE staff, we believe the training and counseling components of our ethics program to be our strongpoint. OGE stated in its review that our education and training program exceeded the minimal requirements and noted several model practices in these areas as well as in the enforcement area. We understand that there is room for improvement in the tracking portion of the financial disclosure component of our program. We strive to improve our ethics program and find OGE's suggestions and recommendations clarifying and helpful. We will work diligently to adopt the recommendations and suggestions.”