



U.S. Office of Government Ethics
Program Review Division

Ethics Program Review

U.S. Merit Systems Protection Board

Report No. 12-28
January 2012

Results in Brief

The United States Office of Government Ethics (OGE) conducted a review of the U.S. Merit Systems Protection Board (MSPB) ethics program in December 2011. The results of the review indicate that MSPB's ethics program appears to be effectively administered and in compliance with applicable laws, regulations, and policies. The ethics office is staffed by experienced officials and the program has the support of agency leadership.

Highlights

- MSPB leadership visibly supports the ethics program.
- MSPB ethics officials have created comprehensive standard operating procedures for all elements of the ethics program.

Concerns

- MSPB did not identify 2011 confidential new entrant filers in a timely manner.
- MSPB filers did not complete annual training by the end of the calendar year.

Contents

Objectives, Scope, and Methodology.....	3
Program Administration.....	3
Financial Disclosure.....	3
Education & Training.....	4
Advice & Counsel.....	5
Agency-Specific Ethics Rules.....	5
Conflict Remedies.....	5
Enforcement.....	5
1353 Travel Acceptances.....	6
Agency Comments.....	6

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 MSPB's ethics program, OGE examined a variety of documents provided by MSPB's ethics officials including the annual questionnaire, training materials, training session sign-in sheets, and written procedures. OGE examined all financial disclosure reports required to be filed in 2011. In addition, the OGE review team met with the Designated Agency Ethics Official (DAEO), the Alternate Designated Agency Ethics Official (ADAEO) and an attorney, to obtain additional information on MSPB's ethics program, seek clarification on issues, and verify data collected.

Program Administration

MSPB's centralized ethics program is administered within the Office of the General Counsel (OGC). The General Counsel serves as the DAEO. A general attorney serves as the ADAEO. The ADAEO is responsible for the day-to-day administration of the ethics program.

Commitment and action by agency leadership is a keystone for ensuring the integrity of an agency's ethical culture and for fostering public confidence in the decision-making processes of Government. The Board is composed of three presidentially appointed and senate confirmed (PAS) officials: the Chairman, Vice Chairman and a Member. The Chairman shows visible support of the ethics program by sending quarterly newsletters, in which ethics topics are discussed, to all employees, and attending annual training with other employees. Additionally, the DAEO has access to senior leadership and meets with the Chairman on a weekly basis.

Financial Disclosure

MSPB has comprehensive standard operating procedures for the administration of its financial disclosure program. The OGE review team examined all required public and confidential reports filed in 2011. The only new entrant confidential report was filed 65 days late. Ethics officials said they rely on supervisors and the human resources office to identify new entrant employees. Because the filer was not identified timely as a new entrant, the ethics office did not communicate financial disclosure filing requirement until two months after his appointment date.

The majority of annual financial disclosure reports reviewed by OGE were filed, reviewed and certified timely. While written comments on financial disclosure reports showed evidence of follow-up to clarify specific entries, OGE found that some reports were not technically sufficient. For example, underlying holdings of retirement benefit plans were not always

provided. In addition, other non-critical information such as the employee's date of appointment and the date the report was received by the agency was missing. Minor over-reporting was noted as well.

During its review of the financial disclosure files, OGE found that MSPB has retained financial disclosure reports beyond the six-year retention period specified by 5 C.F.R §§ 2634.603(g) and 2634.604(a). Consequently, the ADAEO destroyed copies of financial disclosure reports and supporting documents submitted by MSPB filers prior to 2005, unless required to be retained due to an ongoing investigation.

Suggestions

- Review internal controls to ensure timely identification and tracking of new entrant filers.
- Provide training or additional instructions for financial disclosure filers to improve completeness and accuracy of the reports.

Education & Training

All required employees received initial ethics orientation (IEO) in 2011. New employees completed the computer training module entitled *New Employee Ethics Orientation* prepared by the Department of Agriculture. The *New Employee Ethics Orientation* training module covered the Standards of Ethical Conduct, the conflict of interest statutes, and the 14 Principles. New employees were also provided a copy of MSPB's supplemental regulations and the contact information of the DAEO.

Annual ethics training is a vital component of an agency's ethics program. Annual ethics training is intended to assist employees carry out their official responsibilities in a manner consistent with ethics-related statutes and regulations. Additionally, annual training helps to prevent violations and maintain the public's positive perceptions of an agency and the executive branch.

MSPB's ethics officials provided annual training only in December. The review team observed one of the three sessions of annual ethics training conducted by the ADAEO. The training consisted of the presentation of the video: *Pardon the Interruption* prepared by the U.S. Department of Justice (DOJ). The video covered the criminal conflicts of interest statutes, the Standards of Ethical Conduct, and the 14 principles. Additionally, the ADAEO explained MSPB's supplemental regulations and travel acceptance from non-federal sources policy and reminded filers of her availability to provide advice.

The majority of covered employees received annual ethics training in 2011. Two PAS officials missed the annual training sessions due to scheduling conflicts in December and will receive annual training in early 2012 rather than in 2011 as required. Scheduling annual training in the last month of the calendar year makes it difficult to ensure that all covered employees, particularly the most senior, receive timely annual training as required.

Suggestion

- Initiate annual ethics training earlier in the year to provide filers more time to complete the training by the end of the calendar year.

Advice & Counsel

MSPB has written procedures for ethics-related advice and counsel. Most ethics advice is rendered in writing by the ADAEO and is tracked using an ethics log. The DAEO reviews all the advice before it is provided. Written advice and counsel samples reviewed by OGE were thorough and issued in a timely manner.

Agency-Specific Ethics Rules

MSPB's agency-specific ethics rules contained in 5 CFR § 7401.101 and 102 require employees to obtain written approval from their supervisors, with the concurrence of the DAEO or the ADAEO, before engaging in an outside employment with or without compensation. The requirement is made known to employees during IEO, annual training, and in the Chairman's quarterly newsletters.

The review team identified two employees who reported outside activities in their public financial disclosure reports. The review team requested evidence of prior authorization for the outside positions. The ADAEO learned that one of the employees failed to seek prior approval for his outside positions. Consequently, the ADAEO immediately requested the filer to seek approval for his outside positions. In the future, the ethics office will keep copies of outside positions authorizations granted in the filer's individual financial disclosure file.

Conflict Remedies

All PAS officials and the DAEO have satisfied the terms of their ethics agreements. Screening arrangements for recusals are in place to avoid any actual or apparent conflict of interest. The PAS screening arrangements are enforced by their Chief Counsels. The DAEO's screening arrangement is enforced by a paralegal.

MSPB reported no waivers of 18 U.S.C. § 208 were issued in the last two years. The DAEO is aware of the requirement to consult with OGE on 18 U.S.C. § 208 waivers.

Enforcement

MSPB does not have a separate Office of Inspector General. MSPB's Office of General Counsel is responsible for investigative functions under the Inspector General Act of 1978. MSPB has standard operating procedures regarding the enforcement of ethics laws and regulations. According to the procedures, the DAEO would make the referral to the DOJ and concurrently notify OGE, upon notification of a potential violation of a criminal conflict of interest statute or of the Standards of Conduct. During the last two years MSPB reported no violations of the

criminal conflict of interest statutes, and made no referrals to the DOJ of potential violations of the criminal conflict of interest statutes.

1353 Travel Acceptances

MSPB submitted the required semi-annual reports of payments accepted from non-Federal sources to OGE in a timely manner. MSPB's procedures require employees to obtain approval of the DAEO prior to the acceptance of travel.

Agency Comments

Comments provided by MSPB are attached in their entirety.



U.S. MERIT SYSTEMS PROTECTION BOARD

Office of the General Counsel
1615 M Street, NW
Washington, DC 20419-0002

Phone: (202) 254-4487; Fax: (202) 653-6203; E-Mail: James.Eisenmann@mspb.gov

Office of General Counsel

January 25, 2012

Ms. Rashmi Bartlett
Associate Director
Program Review Division
U.S. Office of Government Ethics
1201 New York Avenue, N.W.
Suite 500
Washington DC 20005-3917

Dear Ms. Bartlett:

We appreciate the opportunity to comment on your draft ethics program review report, issued on January 17, 2012. It was a pleasure working with Ciara Guzman and James Macon during the review. Below please find our comments for incorporation into the final ethics program review report.

In the "Results in Brief" section, you note the following concerns: (1) MSPB did not identify 2011 confidential new entrant filers in a timely manner; and (2) MSPB filers did not complete annual ethics training by the end of the calendar year. These events occurred because of a period of transition in the administration of the day-to-day operations of our ethics program.

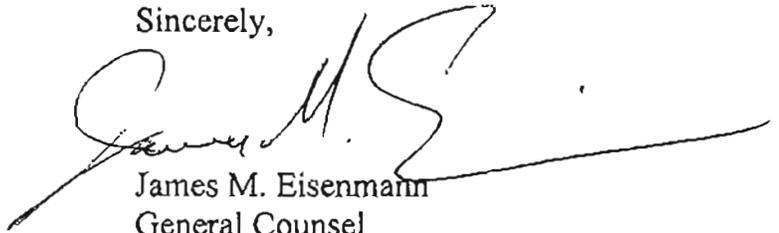
In June 2011, upon the retirement of the ADAEO, an attorney in the Office of General Counsel (OGC) was temporarily assigned some of the ADAEO duties. Nearly four months after the retirement of the ADAEO, we hired a new attorney in OGC. The Chairman subsequently appointed her as the new ADAEO on November 7, 2011. With the absence of a designated ADAEO for nearly four-months, we were unable to schedule annual ethics training until December. In addition, staff shortages in OGC, including the absence of a designated ADAEO, impacted our ability to identify one new confidential entrant filer in a timely manner. However, we view last year as an anomaly in the administration of our ethics program because of the transition period between designated ADAEO and staff shortages in OGC. In the future, we expect to schedule annual ethics training no later than the third quarter. This will ensure adequate time for all filers to complete the required ethics training each year. We will also ensure the ADAEO

continues to work with supervisors and the human resources office to identify any new entrant filers in a timely manner.

Thank you again for the opportunity to provide comments on your draft ethics program review report. We look forward to your continued support of our ethics program.

If you should have any questions, please contact me or Lindsey Schreckengost, Alternate Designated Agency Ethics Official, at (202) 254-4518.

Sincerely,

A handwritten signature in black ink, appearing to read "James M. Eisenmann", with a long horizontal flourish extending to the right.

James M. Eisenmann
General Counsel
Designated Agency Ethics Official