



U.S. Office of Government Ethics
Program Review Division

Ethics Program Review

Export-Import Bank of the United States

Report No. 11-002
January 2011

Results in Brief

The United States Office of Government Ethics (OGE) conducted a review of the ethics program at the Export-Import Bank of the United States (EX-IM) between October and November, 2010. The results of the review indicated that the EX-IM ethics program was generally effectively administered and in compliance with applicable laws, regulations, and policies.

Highlights

- EX-IM provides live, verbal ethics training to all filers annually and offers targeted training to specialized groups of employees, including advisory committee members.
- EX-IM conducts a self-assessment to evaluate the strengths and weaknesses of the ethics program.

Concerns

- EX-IM did not certify some of its financial disclosure reports in a timely manner.
- EX-IM did not have a written plan for annual ethics training per the requirements found at 5 CFR § 2638.706.

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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 EX-IM's ethics program, OGE examined a variety of documents provided by ethics officials; other documents that EX-IM forwarded to OGE, including the Agency Ethics Program Questionnaire; prior program review reports; and a sample of EX-IM's public and confidential financial disclosure reports and advice and counsel provided to EX-IM's employees.

In addition, members of OGE's Program Review Division met with the Alternate Designated Agency Ethics Official (ADAEO) and the Ethics Counsel to obtain additional information about the strengths and weaknesses of EX-IM's ethics program, seek clarification on issues that arose through the documentation analysis, and verify data collected.

Program Administration

EX-IM's ethics program is administered within EX-IM's Office of Legal Affairs and General Counsel, Administrative Law Group. The General Counsel serves as the Designated Agency Ethics Official (DAEO). The Assistant General Counsel serves as the ADAEO. An attorney serving as the Ethics Counsel is the primary, day-to-day administrator of the ethics program. In addition, a Program Specialist assists with the administration of the ethics program, as needed. EX-IM ethics officials indicated that they have recently hired an additional attorney who will perform ethics duties on a full-time basis.

It is noteworthy that EX-IM's ethics officials conduct an informal self-assessment of the program to identify areas of strength as well as weakness. OGE considers conducting a self-assessment to be a model practice.

Financial Disclosure

Public financial disclosure reports were generally submitted by filers and certified by the Ethics Counsel in a timely manner, and it appears that EX-IM is conducting a thorough conflict of interest analysis. However, a few of the reports were certified late and there was no documentation in the file to indicate that ethics officials were awaiting additional information from the filer or planning to take remedial action. Financial disclosure reports are to be reviewed and certified within 60 days of the date of filing. Final certification may, of necessity, occur later where additional information is being sought or remedial action is being taken. (See 5 CFR § 2634.605(a) and OGE's DAEOgrams DO-10-006 and DO-09-018, dated April 27, 2010, and May 14, 2009, respectively.)

There were also a number of confidential financial disclosure reports that were certified late. Most of these reports were filed before the February 15th deadline. This delay in certification could be remedied if EX-IM ethics officials develop a process for tracking the certification date of reports that are filed early.

OGE found that a number of confidential financial disclosure reports were filed late, though mostly only by a few days. EX-IM's written procedures indicate that a reminder is sent to filers the day before reports are due. EX-IM ethics officials stated that in practice, a reminder is also sent two weeks before reports are due. EX-IM should update its written procedures to reflect the two-week reminder.

The timeliness issues OGE found in the financial disclosure element are likely because in 2010 one ethics official was responsible for the review and certification of the financial disclosure reports required to be filed at EX-IM. With the addition of the new attorney, OGE hopes that EX-IM will be able to collect and certify all financial disclosure reports on time.

Suggestions

- Document all instances of information requested from filers on the reports.
- Develop a process to ensure timely certification of reports that are filed early.
- Update written procedures to include the practice of sending reminders to filers two weeks before reports are due.

Education & Training

EX-IM's ethics training program exceeds relevant requirements in a number of areas. EX-IM provides live, verbal training to both public and confidential filers each year. Additionally, EX-IM provides targeted training to groups of employees such as the Board of Directors, political appointees, and the Transportation Division. EX-IM's specialized training for political appointees includes instruction on the Ethics Pledge. EX-IM also developed a pocket-sized reference card on the gift rules. OGE considers these training efforts to be model practices.

However, during its examination of EX-IM's materials, OGE determined that EX-IM did not have a formal written plan for annual ethics training. Rather, EX-IM ethics officials follow a general formula for training each year. OGE reminded EX-IM ethics officials that a written plan is required per 5 CFR § 2638.706. EX-IM ethics officials agreed to develop a written plan for annual training.

All required employees received Initial Ethics Orientation in 2009. EX-IM also reported that all required employees, except one on extended military leave, received annual training in 2009. OGE has no recommendations or suggestions for this program element.

Advice & Counsel

EX-IM has written policies and procedures for the provision of ethics advice and counsel, including timeframes for responding to inquiries. OGE commends EX-IM for developing written procedures for this element of the ethics program. Additionally, EX-IM provides in-person post-employment counseling to public filers and sometimes to confidential filers and non-filers. All departing employees are provided post-employment letters detailing relevant restrictions and obligations. EX-IM provides advice and counseling to political appointees regarding their restrictions and obligations under the Ethics Pledge at all stages of their employment.

Among other ethics duties, the Deputy Inspector General (IG) and Counsel to the IG has been delegated authority to provide advice and counsel to employees within the Office of the Inspector General (OIG). Ethics officials stated that the Deputy IG would consult with the ethics office within the Office of Legal Affairs and General Counsel on a case-by-case basis regarding ethics matters. While the Deputy IG has delegated authority for elements of the ethics program, the DAEO holds responsibility for oversight of the entire ethics program. As the delegation to the Deputy IG is relatively new, it would be helpful for EX-IM to document the circumstances that would trigger OIG consultation with the ethics office regarding ethics matters. Solidifying the relationship among these two entities in writing will facilitate coordination and will help to ensure consistency in the provision of ethics advice and counsel.

Suggestion

- Develop policies and procedures for coordination between the OIG and the ethics office within the Office of Legal Affairs and General Counsel on ethics matters.

Agency-Specific Ethics Rules

EX-IM's supplemental regulations require prior written approval for outside activities. OGE found approvals on file for all outside activities reported on financial disclosure reports, as required. OGE has no recommendations or suggestions for this program element.

Ethics Agreements

OGE records indicate that all Presidentially appointed, Senate-confirmed (PAS) nominees who entered into an ethics agreement during the last calendar year complied with the terms of their agreement, as required. EX-IM also has one non-PAS employee who has entered into an ethics agreement. The Ethics Counsel has been intimately involved in providing assistance to this employee's office and to other officials with screening arrangements pursuant to their ethics agreement. OGE commends EX-IM for its diligence in monitoring compliance with ethics agreements, particularly those with arrangements to screen for potential conflicts of interests. OGE has no recommendations or suggestions for this program element.

Enforcement

EX-IM reported no disciplinary actions based wholly or in part upon violations of the standards of conduct provisions (5 CFR part 2635) or the criminal conflict of interest statutes, 18 U.S.C §§ 203, 205, 207, 208, and 209 in the past year. EX-IM made no referrals to the Department of Justice of potential violations of the criminal conflict of interest statutes in the past year. The OIG and the ethics office within the Office of Legal Affairs and General Counsel appear to have a good sense of their respective roles regarding enforcement of ethics rules. OGE has no recommendations or suggestions for this program element.

Advisory Committees

EX-IM has two advisory committees. The committee charters refer to its members as representatives of industry, communities, or State government. While not special Government employees, EX-IM provides briefings and written guidance to the members of the advisory committees regarding obligations of positions of public trust as they relate to the agency. OGE commends EX-IM for this practice. OGE has no recommendations or suggestions for this program element.

1353 Travel Acceptances

EX-IM's ethics office performs a conflict of interest analysis on requests to accept travel payments from non-Federal sources. During this process, ethics officials communicate with the requesting employee, as necessary. In the case of a potential conflict, ethics officials confer with the DAEO. The ethics office maintains a copy of all sponsored travel requests submitted for approval. Lastly, EX-IM submitted to OGE in a timely manner the required semi-annual reports of payments accepted from non-Federal sources. OGE has no recommendations or suggestions for this program element.

Agency Comments

EX-IM provided written and verbal comments, some of which were integrated into this report. The comments included information regarding the two week notice provided to filers before their financial disclosure reports are due; clarification relative to OGE's review of financial disclosure reports; and a few non-substantive comments regarding language.



United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC, 20005-3917

January 6, 2011

Jonathan A. Cordone
Designated Agency Ethics Official
Export-Import Bank of the United States
811 Vermont Avenue, N.W.
Washington, DC 20571

Dear Mr. Cordone:

The United States Office of Government Ethics (OGE) has completed its review of the ethics program at the Export-Import Bank of the United States (EX-IM). OGE's primary objective was to identify and report on the strengths and vulnerabilities of the 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.

The results of the review indicated that EX-IM's ethics program was generally effectively administered and in compliance with applicable laws, regulations, and policies. OGE highlighted model practices that the EX-IM ethics office has implemented. Additionally, we made suggestions in the areas of financial disclosure and ethics advice and counsel to help improve the ethics program. A report on the results of the review is enclosed.

If you would like to discuss the report, please contact me at 202-482-9286.

Sincerely,

A handwritten signature in cursive script, appearing to read "Patricia C. Zemple".

Patricia C. Zemple
Associate Director
Program Review Division

Enclosure



United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

January 6, 2011

Oswaldo Luis Gratacós
Inspector General
Export-Import Bank of the United States
811 Vermont Avenue, N.W.
Washington, DC 20571

Dear Mr. Gratacós:

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Patricia C. Zemple
Associate Director
Program Review Division

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United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

January 6, 2011

Fred P. Hochberg
President
Export-Import Bank of the United States
811 Vermont Avenue, N.W.
Washington, DC 20571

Dear Mr. Hochberg:

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