



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

December 20, 2004

Robert E Feldman  
Designated Agency Ethics Official  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, NW  
Washington, DC 20429

Dear Mr Feldman

The Office of Government Ethics (OGE) has completed its review of the Federal Deposit Insurance Corporation's (FDIC) ethics program. The review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended. Our objective was to determine the program's compliance with applicable statutes and regulations. We also evaluated FDIC's systems and procedures for ensuring that ethics violations do not occur. The review was conducted in July and August 2004.

#### HIGHLIGHTS

FDIC has an exemplary ethics program administered by a very strong team of dedicated ethics officials. The program meets or exceeds all of our regulatory requirements. We found that FDIC thoroughly investigates potential ethics violations and takes prompt and effective action against those who are found to have committed violations. However, our report does note that FDIC did not promptly notify OGE of a referral to the Department of Justice concerning an alleged violation of 18 U.S.C. § 207. We do, however, acknowledge that FDIC has taken steps to ensure that OGE will be notified of all referrals in the future. The public and confidential financial disclosure systems are well administered. All required ethics training, including that mandated for Presidentially-appointed Senate-confirmed (PAS) employees, is provided. Additional training opportunities are readily available for all employees. We were also pleased to find that ethics officials quickly took action to inform employees of a change in the statute which affects certain provisions of FDIC's supplement to the Standards of Ethical Conduct for Employees of the Executive Branch (Standards). Since the ethics program is in compliance with regulatory requirements, our report makes no formal recommendations.

#### PROGRAM STRUCTURE

The current staffing level for the ethics program appears appropriate given the agency's size, organizational structure, and mission. As FDIC's Executive Secretary, you also serve as the DAEO. The Ethics Program Manager, who is also the Alternate DAEO, manages the program with the collaborative efforts of two Ethics Program Specialists, a Senior Program Assistant, and a Secretary. In addition, there are 71 Regional and Field Office Deputy Ethics Counselors (DEC) in place to assist

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in administering the program throughout FDIC This organization of resources appears to be highly effective in meeting the needs of FDIC employees for ethics-related services

## ENFORCEMENT

Ethics officials have an active and effective working relationship with the Office of the Inspector General (OIG), which allows them to review information developed by the OIG and to use the services of that office, as appropriate, in accordance with 5 C F R § 2638 203(b)(11) and (12) Through discussions with both ethics officials and the Inspector General (IG), it was clear that the two offices work closely to investigate cases of potential violations of the Standards and the criminal conflict of interest statutes We view this as important since it allows for the proper disposition of ethics-related violations

FDIC thoroughly investigates potential ethics violations and takes prompt and effective action against those who commit violations, as required by 5 C F R § 2638 203(b)(9) This conclusion is based on our review of documentation recording the actions taken by FDIC against nine employees in 2003 for violating the Standards The employees were found to have violated rules regarding gifts, misuse of position, misuse of Government resources and information, and indebtedness Actions taken ranged from admonishment to suspension FDIC's actions in these cases have served to enforce the Standards and demonstrate to all employees the consequences of unethical conduct

FDIC did, however, fail to provide OGE with concurrent notification, as required by 5 C F R § 2638 603, of a conflict of interest referral the agency made in 2003 to the Department of Justice (DOJ) During the course of the review, OGE was provided with the completed "Notification of Conflict of Interest Referral" form, on which FDIC also noted that DOJ had declined to prosecute the employee The referral was for an alleged violation of 18 U S C § 207 The case involved foreign entities and ongoing litigation, which were cited by ethics officials as factors which complicated making concurrent notification to OGE As soon as ethics officials became aware of the referral, they took action to see that OGE was notified It was the only referral made to DOJ since 1998

At the time the referral was made, there was a misunderstanding as to who was responsible for concurrently notifying OGE of referrals In discussing the failure to concurrently notify OGE, the IG explained that his office makes referrals to DOJ, but, he believed that concurrent notification to OGE was a "management" responsibility Accordingly, the IG did not notify ethics officials that the referral had been made As soon as ethics officials became aware that the referral had been made, they notified OGE It has since been decided that the IG will meet quarterly with ethics officials to specifically discuss employee investigations to identify any cases involving the potential violation of a criminal conflict of interest statute Ethics officials will now be aware of potential referrals and, if any of the investigations result in a referral, ethics officials will now be responsible for notifying OGE These quarterly meetings, coupled with the already ongoing exchange of information between the two offices, should ensure that FDIC meets the requirement to concurrently notify OGE of any future referrals

## FINANCIAL DISCLOSURE SYSTEMS

Both the public and confidential financial disclosure systems are well administered and meet relevant requirements. Ethics officials have developed procedures to efficiently manage both systems, assist filers as necessary in completing reports, and thoroughly review reports to detect conflicts of interest.

FDIC's National Employee Ethics Tracking System (NEETS), which we recognized in the report of our 1998 review of FDIC's ethics program, is a sophisticated management tool which allows ethics officials to closely track the filing of public and confidential reports, as well as ethics training completion, throughout FDIC. Although we only examined a small sample of the actual reports filed, a demonstration of the NEETS computer program showed that all public and confidential reports throughout FDIC were accounted for and that almost all were filed, reviewed, and certified timely. The system allows ethics officials to follow up with individuals or their supervisors to ensure covered employees file reports as required. We commend FDIC for maintaining such a highly effective system for tracking information concerning financial disclosure filing. We also note FDIC's generous offer to make NEETS available to other agencies and provide them with instruction in operating the system. We see this as another indication of ethics officials' dedication to the ethics program within the entire executive branch.

### Public System

We examined a sample of 30 of the 110 public reports required to be filed by non-PAS FDIC employees in 2004. All of the reports we examined were annual reports and only one was filed late, by less than 30 days. All reports were reviewed and certified timely. This is indicative of the efficiency with which ethics officials administer the ethics program in general, and the financial disclosure systems in particular. We identified no substantive issues on any of the reports we examined.

We were impressed with the great efforts made by ethics officials in determining whether disclosed interests represented real or potential conflicts of interest. Making these determinations is the most important part of reviewing reports and it was readily apparent that FDIC's ethics officials are very effective in doing so. We saw ample evidence of reviewers' notations and discussions with filers to conclude that ethics officials are dedicated to protecting both FDIC and individual filers from conflicts of interest.

We examined the four public reports required to be filed by FDIC's PAS employees in 2004. All of the reports were filed, reviewed, and certified timely. As with the non-PAS reports, it was apparent that they were thoroughly reviewed for conflicts of interest. The reports were transmitted to OGE pursuant to 5 C.F.R. § 2634.602 in a timely manner.

### Confidential System

We examined a sample of 49 of the 3,422 confidential reports required to be filed in 2003 and found that almost all were filed and reviewed timely. Consistent with our observations of the

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review of public reports, the review of confidential reports for conflicts of interest was thorough We identified no substantive issues in our review of the reports

### Supplemental Financial Disclosure Reporting

FDIC uses several well-designed supplemental financial disclosure report forms, approved by OGE, to help employees avoid conflicts of interest During our examination of public and confidential reports, we also examined the accompanying supplemental forms We found them to be properly completed and reviewed by ethics officials in accordance with established procedures

### ETHICS AGREEMENTS

There was only one ethics agreement created during the period January 2003 through July 2004 The agreement was created by a new PAS employee in 2003 and actions required to be taken pursuant to the ethics agreement were completed timely, in accordance with 5 C F R § 2634 802(b) Evidence of action taken was submitted timely to OGE, in accordance with 5 C F.R § 2634 804(a)

### ETHICS EDUCATION AND TRAINING

FDIC meets and in some ways exceeds OGE's ethics education and training requirements The 2003 and 2004 training plans were comprehensive and documented prior to the beginning of each calendar year FDIC provides required training to all covered personnel, including PAS and other senior employees who file public financial disclosure reports, confidential filers, and those employees who are new to the agency Training is tracked using certification statements completed by employees verifying they have received training The statements are also used to update the NEETS system so that ethics officials can easily determine which covered employees have not yet received required training

Exceeding requirements, FDIC makes ethics training videos available through the FDIC intranet directly to employees' computer monitors These videos are scheduled periodically so that employees may view them as their schedules allow They are in addition to the annual training and initial ethics orientation courses used to meet basic requirements Ethics officials often attend senior staff meetings to discuss ethics issues and provide guidance as necessary They also distribute bulletins discussing various ethics topics such as gifts, interaction with contractors, and political activities, to further inform FDIC employees

FDIC has also instituted a rigorous training program for its DEC's The program consists of a two-day course of formal instruction provided by senior FDIC ethics officials The course covers the spectrum of standard ethics program issues including roles and responsibilities of a DEC, the financial disclosure process, outside activities, ethics agreements, gifts, the Standards, impartiality, and other issues The course includes exercises and appears to be well-designed to prepare DEC's to fulfill their duties and provide excellent service to FDIC's employees

### Initial Ethics Orientation

FDIC ethics officials exceed requirements for providing initial ethics orientation by providing an in-person presentation for all new employees. The training is conducted once each pay period as part of a three-day general new employee orientation program. All required subject matter is covered and one hour is allowed for the in-person presentation and employee review of ethics materials.

FDIC ethics officials were able to document that all PAS employees appointed during the current and preceding three calendar years received initial ethics orientation. The in-person training was conducted one-on-one (which OGE considers to be a best practice) by the DAEO or the Alternate DAEO, and tailored to meet the needs of these senior employees.

### Annual Ethics Training For Public Filers

FDIC met all requirements for providing annual ethics training to public financial disclosure filers in 2003. All public filers received in-person verbal ethics training presented by a qualified instructor, usually the Alternate DAEO. The training met the content requirements established by 5 C F R § 2638 704(b) and lasted at least one hour.

Ethics officials were able to verify that all but one current PAS employee received annual training in each of the three previous calendar years<sup>1</sup>. Their training also met content requirements, lasted at least one hour, and was designed to meet the specific needs of those who were trained.

### Annual Ethics Training For Other Covered Employees

Annual training was provided to other covered employees in 2003. Approximately one-third of FDIC's 3,422 confidential filers were given in-person verbal ethics training. The rest were given written ethics training. Training via both methods met content requirements. Both verbal and written ethics training was prepared by a qualified instructor. Verbal training was also presented by a qualified instructor. Ethics officials were available during training to answer questions.

## ETHICS COUNSELING AND ADVICE

Ethics counseling and advice services meet the requirements of 5 C F R § 2638.203(b)(7) and (8). While ethics advice is sometimes given orally, it is most often dispensed in written form, usually by e-mail. We examined all of the written determinations provided to FDIC's current PAS employees and a sample of approximately 35 other written determinations provided to other employees during the period covered by this review. In addition, we examined a number of informational bulletins provided through general distribution. Overall, we found that the advice and information was accurate and consistent with applicable statutes and regulations.

We also acknowledge and commend the additional measures you have taken to meet the needs of FDIC's employees for ethics-related guidance. These measures include (1) aggressively

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<sup>1</sup> One PAS employee, confirmed in December 2003, received annual training in 2004.

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advertising the availability of ethics officials to answer employees' questions; (2) regularly issuing bulletins concerning topics of general concern, (3) requiring all departing employees to out-process through your office to ensure post-employment training is provided if appropriate, and (4) surveying employees concerning the quality, usefulness, and timeliness of the counseling and advice you provide. We encourage you to continue these practices as a means of preventing inadvertent violations of the Standards and criminal conflict of interest statutes.

#### FDIC ADVISORY COMMITTEE ON BANKING

Ethics officials have determined that members of the Advisory Committee on Banking, FDIC's only advisory committee, are all representatives, rather than special Government employees. Ethics officials used the appropriate guidance in making their determination, including, the committee's charter, a review of the Federal Advisory Committee Act, OGE's DAEOgrams, and other guidance provided by our Office. They also consulted directly with OGE staff in making their determination. FDIC's Chairman chairs the committee, determines the number of members on the committee, and appoints them. The committee members have each been apprised of their status as representatives. They were further advised of their individual roles as committee members, e.g., to represent and advocate for the banking industry, the financial services community, the public affairs community, etc. Since members are representatives, they are not required to file financial disclosure reports or receive ethics training.

#### SUPPLEMENTAL REGULATIONS

FDIC has issued, with concurrence from OGE, a supplement to the Standards, at 5 C.F.R. part 3201. The supplemental regulation addresses a variety of ethics issues unique to FDIC and was discussed in the report of our 1998 review. On December 19, 2003 the President signed S. 1947, the *Preserving Independence of Financial Institution Examinations Act of 2003* (the Act), the passage of which requires, at a minimum, that FDIC amend the supplemental regulation to remove outdated language.

The Act amends sections 212 and 213 of title 18 of the United States Code. While these sections continue to prohibit a financial institution from extending a loan to anyone who examines or has authority to examine that institution, the new legislation amends the criminal code to allow for some narrow exceptions. These exceptions allow FDIC examiners to obtain credit cards and primary residential home loans from institutions they examine or have the authority to examine, provided that they are obtained under the same terms and conditions as are available to other cardholders and borrowers. FDIC was prompt in providing notification of these changes to all FDIC employees and in issuing its "Interim FDIC Ethics Policy on Credit Cards and Home Mortgages" (Interim Policy). The Interim Policy provides a detailed explanation and guidance for using the new exceptions.

We discussed the amendment of FDIC's supplemental regulation with ethics officials, confirming that OGE would have to concur in any amendment to the supplement to remove outdated language (as well as to add any new provisions implementing the changes to the criminal code). However, the Act constitutes independent statutory authority for FDIC to establish its own regulation implementing the changes to the criminal code. Thus, while FDIC would have to obtain OGE concurrence to remove outdated language, which is largely a formality since it is superseded by the

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new legislation, the new provisions may be put in place as an FDIC regulation, independent of the supplemental regulation. At our last meeting, ethics officials were undecided on whether they would seek to issue an implementing regulation under FDIC's own authority, or seek OGE's concurrence to implement the new provisions through a change to its supplemental regulation. While we await FDIC's decision on this issue, we commend ethics officials' efforts to immediately make employees aware of the changes and issue an interim policy.

**TRAVEL PAYMENTS FROM  
NON-FEDERAL SOURCES**

FDIC does not accept payments for travel, subsistence, and related expenses from non-Federal sources under 31 U.S.C. § 1353. FDIC consistently provides OGE with timely (negative) semiannual reports.

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In closing, I wish to thank you and your staff for all of your efforts on behalf of the ethics program. A brief follow-up review is typically scheduled within six months from the date of this report. However, as this report contains no formal recommendations to improve the program, no such follow-up will be necessary. A copy of the report is being forwarded to FDIC's IG via transmittal letter. Please contact Doug Chapman at 202-482-9223, if we can be of further assistance.

Sincerely,

  
Jack Covalleski  
Deputy Director  
Office of Agency Programs

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