

United States Office of Government Ethics

Compliance Division

Ethics Program Review

Treasury Inspector General for Tax Administration

Results in Brief

The United States Office of Government Ethics (OGE) conducted a review of the ethics program at the Treasury Inspector General for Tax Administration (TIGTA). Program reviews entail an analysis of an agency's implementation of the basic statutory and regulatory elements for ethics programs in the executive branch, as well as unique elements of a program specific to the agency's mission. In the course of a program review, OGE's Compliance Division examines program elements such as ethics program structure and staffing, public financial disclosure, confidential financial disclosure, ethics training, ethics counseling, and mechanisms to address employees' employment or involvement with entities outside the government.

OGE initially conducted its review of TIGTA's ethics program in 2014. Based on the results of our review, OGE concludes that TIGTA's ethics program is in compliance with applicable laws, regulations, and policies. During the course of our review, OGE also identified several model practices implemented by TIGTA that other agencies may want to consider adopting.

Model Practices Identified

- Ethics officials have developed written procedures governing the ethics program that are tailored to the needs of the agency.
- Ethics officials are proactive in providing feedback to public filers by sending them a copy of their certified financial disclosure report and informing them how the report was reviewed for compliance.
- Ethics officials maintain a dedicated email address to receive ethics questions from employees.
- Ethics officials keep written ethics counseling files on a shared electronic drive which is organized by topic and accessible by all ethics officials.
- Written procedures were developed to ensure that post-employment counseling is routinely provided to departing employees.

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Objectives, Scope, and Methodology

OGE provides overall leadership and oversight of the executive branch ethics program which is designed to prevent and resolve conflicts of interest. OGE's Program Review Branch (PRB) carries out OGE's oversight responsibilities although onsite monitoring of agency ethics programs to ensure agencies are held accountable for compliance with applicable ethics requirements established by statutes, rules, regulations, and Executive Orders. PRB's oversight activities are also designed to mitigate program vulnerabilities, identify trends, and disseminate model practices as well as to advance OGE's overarching goals of uniformity, continuity and transparency. OGE has authority to evaluate the effectiveness of executive agency ethics programs pursuant to Title IV of the Ethics in Government Act and 5 C.F.R. part 2638.

To assess TIGTA's ethics program, OGE examined a variety of documents that were provided by agency ethics officials. These included: the annual ethics program questionnaire; public and confidential financial disclosure reports that were required to be filed in 2013; and advice and counseling provided to TIGTA employees. Other documents that TIGTA forwarded to OGE were also examined. In addition, members of OGE's Program Review Branch and OGE's Desk Officer assigned to the Department of the Treasury (Treasury or Department) met with agency ethics officials to obtain additional information about the strengths and weakness of TIGTA's ethics program, discuss and clarify certain matters, and verify the accuracy and origin of data collected.

Program Administration

Established under the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998, TIGTA is responsible for providing independent oversight of Treasury's matters involving IRS activities, the IRS Oversight Board, and the IRS Office of Chief Counsel. TIGTA oversees all aspects of activity related to the Federal tax system as administered by the IRS and is responsible for protecting the public's confidence in the tax system by identifying and addressing the IRS's management challenges and implementing the priorities of the Department.¹ Under the leadership and direction of the Inspector General, a Presidentially-appointed and Senate-confirmed appointee (PAS), TIGTA employs a staff of over 700 employees located throughout its headquarters office in Washington, D.C., and its seven field divisions located across the Nation to help carry out its mission.

The ethics program at TIGTA is located within the Office of Chief Counsel, hereafter referred to as the Ethics Office. TIGTA's Chief Counsel serves as the agency's Deputy Ethics Officer and has oversight responsibility for the ethics program. The day-to-day administration of the ethics program is carried out under the direction of the Deputy Chief Counsel. Assisting TIGTA's Chief Counsel and Deputy Chief Counsel are nine staff attorneys (Assistant Chief Counsels) and two branch chiefs (Associate Chief Counsels). Specifically, the Assistant and Associate Chief

¹ Although TIGTA is placed organizationally within Treasury and reports to the Secretary of the Treasury and to Congress, it functions independently from all other offices and bureaus within the Department.

Counsels review financial disclosure reports and outside activity requests and render advice to employees.

OGE notes that as a component of Treasury, TIGTA's ethics program is subject to oversight from Treasury's Designated Agency Ethics Official (DAEO) and Alternate DAEO. However, TIGTA's ethics program is administered with a high degree of autonomy. TIGTA responds to Treasury's periodic ethics-related requests for information. Additionally, TIGTA's Ethics Office may at times request aid from Treasury's Ethics Office in dealing with sensitive ethics issues.

Financial Disclosure

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 publicly disclose their personal financial interests using the OGE Form 278. Title I also authorizes OGE to establish a confidential financial disclosure system, in which less senior executive branch personnel in certain designated positions may be required to complete the OGE Form 450. Financial disclosure serves to prevent, identify, and resolve conflicts of interest by providing for a systematic review of the financial interests of officers and employees. The financial disclosure reports assist agencies in administering their ethics programs and also assist in providing counseling to employees. See 5 C.F.R. part 2634.

Written Procedures

Section 402(d)(1) of the Ethics in Government Act requires that each executive branch agency establish written procedures for collecting, reviewing, evaluating, and where applicable, making publicly available financial disclosure reports filed by the agency's officers and employees. The Treasury DAEO develops written procedures for all components of the agency.

While Treasury's written procedures for its public and confidential financial disclosure systems generally meet the requirements of the Ethics in Government Act, they had not been updated to include guidance on collection, review, evaluation, and public availability of OGE Form 278-Ts under the Stop Trading on Congressional Knowledge Act of 2012, Pub. L. No. 112-105 (2012) (STOCK Act). As a result, OGE recommended that Treasury update its written procedures to include such guidance during a 2014 program review of Treasury's headquarters ethics program.

Beyond the overarching procedures developed by Treasury's DAEO, TIGTA has also established its own written procedures which are tailored to the needs of the financial disclosure programs as they are administered for TIGTA employees. The additional written procedures are set forth within TIGTA's Operations Manual 700-30, which contains guidelines for every component of the ethics program within TIGTA. Going beyond minimum requirements to develop tailored procedures is a model practice. Moreover, TIGTA's procedures appear to be effective.

Confidential System

OGE selected for review 45 of the 340 confidential financial disclosure reports that were required to be filed at TIGTA in 2013. Of the 45 reports reviewed, 3 were new entrant reports and 42 were annual reports. OGE reviewed the selected reports to determine the timeliness of submission, review and certification. OGE found the vast majority of the confidential reports selected for review (89%) were filed timely. All of the reports were certified timely. It also appeared that the reports were reviewed for conflicts by the Ethics Office, as evidenced by reviewer annotations during follow-ups with some filers.

Of the confidential reports that were filed late, 3 were new entrant reports and two were annual reports. All 3 new entrant reports were filed by current TIGTA employees who were acting in a covered position. During the on-site portion of this review, the Ethics Office acknowledged having some challenges in receiving timely notice when a current employee is promoted to a "covered position" or is reasonably expected to act in a covered position for more than 60 days during a calendar year. In discussions with ethics officials, OGE suggested that the Ethics Office consider relying on supervisors to assist in identifying employees who are acting in a covered position. OGE suggested one way to do this is was by sending out emails quarterly to all supervisors reminding them of the filing requirement and requesting the names of any employees who are acting in covered position.

During OGE's follow-up discussion with ethics officials in December 2014, OGE was advised that quarterly reminders are now routinely provided to all supervisors requesting this information. Since the Ethics Office has taken action, OGE makes no formal recommendation for improvement.

Public System

In 2013, TIGTA had twenty public financial disclosure filers, including the agency's one PAS official, the Inspector General, and the agency's Chief Counsel/Deputy Ethics Officer. The public reports filed by these two employees are required to be forwarded to Treasury for final review and certification. Upon Treasury's certification, the Inspector General's report is forwarded to OGE for additional review and certification. OGE confirmed that the annual report filed by the Inspector General in 2013 was timely forwarded to OGE pursuant to 5 C.F.R. § 2634.602.

OGE examined the remaining public reports that were required to be filed and retained at TIGTA. OGE found 90 percent of these reports to have been filed timely and all reports were certified timely. OGE also did not find any substantive areas of concern regarding TIGTA's review and certification of these reports.

Model Practices Identified

OGE identifies model practices and shares them when it appears they may benefit an agency's ethics program. The following are model practices OGE noted TIGTA implemented to enhance its financial disclosure program:

- Ethics officials have developed written procedures governing the ethics program that are tailored to the needs of the agency.
- The Ethics Office provides feedback to public filers by sending them a copy of their certified report and informing them how the report was reviewed for compliance.

Education and Training

Initial Ethics Orientation

OGE regulation requires that all new agency employees receive ethics official contact information along with the following material within 90 days of beginning work for an agency: (1) the Standards of Ethical Conduct for Employees of the Executive Branch (the Standards) and any agency supplemental Standards to keep or review; or (2) summaries of the Standards, any agency supplemental Standards, and the Principles of Ethical Conduct (the Principals) to keep. Employees must receive one hour of official duty time to review the material. *See* 5 C.F.R. § 2638.703.

OGE determined that all new TIGTA employees received IEO within 90 days in 2013. New employees are required to attend the agency's New Employee Orientation Program (NEOP) which is designed to acclimate new employees to TIGTA. To satisfy the IEO requirement, new employees are required to view a TIGTA-developed computer-based training presentation. The presentation met the content requirements for IEO. Training completion is tracked through Treasury's Learning Management System, which is a Department-wide system that manages training records and provides verification that filers completed training.

Annual Ethics Training Plan

OGE regulations at 5 C.F.R. § 2638.706 require agencies to develop, at the beginning of each year, a written plan for annual ethics training. The plan must contain a brief description of the agency's annual training and include estimates of the number of employees who will receive verbal and written training. As a component of Treasury, TIGTA provides input to Treasury for inclusion in Treasury's overall annual training plan.

Annual Ethics Training

OGE regulation requires all covered employees receive annual ethics training consisting of a review of: (1) the Principles; (2) the Standards; (3) any agency supplemental Standards; (4) the criminal conflict of interest statutes; and (5) ethics official contact information. Training length and delivery method vary by an employee's financial disclosure filing status. *See* 5 C.F.R.

§ 2638.704 and 705. Annual ethics training is a vital component of an agency's ethics program and is intended to assist employees in carrying 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 confidence that Government officials act impartially and free of conflicts of interest.

In 2013, TIGTA provided annual ethics training that met the contents requirements to all covered employees. In-person annual ethics training was required for public filers and computer-based training was used to satisfy the annual training requirement for confidential filers under the provision of 5 C.F.R. § 2638.705(c)(1). OGE confirmed that all public and confidential filers were trained in 2013.

Advice and Counsel

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 C.F.R. § 2638.203. The DAEO may delegate to one or more deputy ethics officials the responsibility for developing and conducting the counseling program. *See* 5 C.F.R. § 2638.204.

OGE found TIGTA's ethics counseling and advice services to meet the requirements of 5 C.F.R. § 2638.203. OGE also found that records are kept, where appropriate, on advice rendered, as required by 5 C.F.R. § 2638.203(b)(8). All advice and counseling examined during the review appeared to be consistent with applicable regulations and statutes and was provided timely. To evaluate TIGTA's advice and counseling program, OGE examined 10 pieces of advice provided in writing in 2013 on matters pertaining to gift acceptance, widely attended gatherings, and the criminal conflict of interest statutes.

At the time of OGE's onsite examination, ethics officials acknowledged that post-employment counseling was not routinely provided to departing public filers as part of TIGTA's out-processing procedures. Instead, post-employment counseling was provided only upon the request of the departing employee. During the review, ethics officials acknowledged this to be a vulnerability of the program and took prompt action to correct this matter. Ethics officials reached out to all public filers who had departed the agency since the beginning of calendar year 2013 to provide them with information on the post-employment restrictions. Additionally, ethics officials developed new employee exit clearance procedures. The new procedures, together with the outreach to former employees, adequately addressed OGE's concerns regarding post-employment counseling.

Model Practices Identified

The following are model practices OGE noted that TIGTA implemented to enhance its advice and counseling program:

- Ethics officials keep written ethics counseling files on a shared electronic drive which is organized by topic and accessible by all ethics officials. This helps to facilitate timely,

uniform responses to employees' questions and concerns, particularly when counseling is rendered by more than one ethics official.

- Ethics officials maintain a dedicated email address to receive ethics questions from employees. This automatically creates a record which can be easily saved.
- Written procedures were developed to ensure that post-employment counseling is routinely provided to departing employees.

Agency-Specific Ethics Rules

As authorized by Executive Order 12674 and implemented by 5 C.F.R. § 2635.105, an agency may modify or supplement the Standards of Ethical Conduct, with the concurrence of OGE, to meet the particular needs of that agency. A supplemental agency regulation is issued jointly by the agency and OGE and is published in title 5 of the Code of Federal Regulations.

Treasury's supplement to the standards of conduct regulation at 5 C.F.R. § 3101 requires all Treasury employees to obtain written approval before engaging in any outside employment or business activity, with or without compensation, unless the employing bureau issues instructions exempting an activity or class of activities from this requirement.² TIGTA employees who wish to engage in outside employment for which advanced authorization is needed are required to do so by submitting an "Outside Employment or Business Activity Request" form.

To determine compliance with Treasury's supplemental regulation, OGE examined the outside activities that were reported on the financial disclosure reports that OGE examined. OGE identified 7 outside employment activities that were listed on the appropriate part of the confidential reports it examined and found all filers to have received prior approval, when appropriate, before engaging in the outside activity. OGE also found each form to have appropriate supervisory and ethics official approval and concurrence.

Conflict Remedies

The Ethics in Government Act expressly recognizes the need for PAS nominees to address actual or apparent conflicts of interest by requiring written notice of the specific actions to be taken in order to alleviate the conflict of interest. See 5 U.S.C. app. § 110. Additionally, the criminal conflict of interest law at 18 U.S.C. § 208 prohibits an employee from participating in an official capacity in a particular matter in which he or she has a financial interest. Congress included two provisions that permit an agency to issue a waiver of the prohibition in individual cases. Under

² Pursuant to 5 C.F.R. § 3101.1 04(b), TIGTA has determined that the following types of activities do not require written approval: 1) membership and volunteer services; 2) uncompensated services as a notary public; 3) a sale to co-workers, friends, relatives, and neighbors not involving a sale to, and solicitation of, the general public, provided that such sales does not constitute a business activity and is not solicited or transacted during duty hours or in space occupied by TIGTA offices; 4) rental of personally-owned real or personal property, provided the employee is not engaged in a commercial business venture, and 5) minor services and odd jobs for friends, relatives, or neighbors.

Executive order 12674, agencies must consult with OGE prior to issuing a waiver under section 208. OGE confirmed that TIGTA's current PAS official is in compliance with his ethics agreement. The filer's ethics agreement does not require any divestitures or resignations.

Enforcement

TIGTA is responsible for conducting internal investigations relating to allegations of misconduct, impropriety, conflict of interest, or other violations of Federal statutes by IRS employees. It is also the agency responsible for making criminal conflict of interest referrals to the Department of Justice (Justice) and concurrently notifying OGE of the referral of IRS employees.

Internally, TIGTA has established written procedures for the administration of the enforcement element for their own employees. OGE confirmed that no referrals of alleged violations of the conflict of interest laws were made on behalf of TIGTA employees to Justice in 2013. In addition, there were also no reported disciplinary actions taken based wholly or in part upon violations of the standards of conduct in 2013.

1353 Travel Acceptances

Federal agencies may allow employees to accept payments from non-Federal sources for travel, subsistence, and related expenses incurred on official travel under the authority of the General Services Administration (GSA) regulation at 41 C.F.R. chapter 304, implementing 31 U.S.C. § 1353. Semiannual reports of payments accepted under 31 U.S.C. § 1353 must be submitted to OGE by May 31 and November 30 of each year.

The procedures for accepting travel payments from non-Federal sources under the authority of 31 U.S.C. § 1353 are specified in Treasury Directive 12-24 (Acceptance of Payments for Travel Expenses from a Non-Federal Source).³ Although TIGTA allows its employees to accept payments under this authority, ethics officials acknowledged that gifts of travel have rarely been accepted under this authority. As a result, OGE was not able to inspect instances of travel acceptances to verify adherence with written procedures.

To evaluate compliance with the semi-annual reporting requirement, OGE examined TIGTA's two semiannual reports covering October 1, 2012 through September 30, 2013. OGE confirmed the timely receipt of negative reports for the reporting periods of October 1, 2012 through March 31, 2013 and April 1, 2013 through September 30, 2013. As a component of Treasury, TIGTA submits their semiannual reports to Treasury for inclusion in Treasury's semiannual report to OGE.

³ This directive delegates authority to the heads of Treasury's bureaus to approve acceptance of travel payments offered by non-Federal sources.

Agency Comments

TIGTA provided the following comments after reviewing a draft of this report:

TIGTA appreciates the comprehensive review of its ethics program undertaken by the Office of Government (OGE). As an Office of Inspector General, TIGTA welcomed the opportunity to have our program evaluated by an independent organization composed of subject matter experts. The input offered by OGE during the review enabled TIGTA to improve its ethics program, specifically relating to identification of employees acting in positions designated for filing confidential financial disclosure reports and post-employment counseling for public filers. We are pleased that the review found TIGTA's ethics program in compliance with applicable laws, regulations, and policies. We also note that OGE identified several model practices implemented by TIGTA.

TIGTA will strive to maintain, and improve upon, its efforts to promote the highest ethical standards of its workforce.”