



United States Office
Of Government Ethics

Report Number 09-015

Highlights

Model Practices

- Underscoring the importance of ATF's ethics program by having ATF's Senior Leadership Team meet with OGE's Director.
- Developing a self-assessment survey to assess the effectiveness of ATF's ethics program.
- Creating a review checklist to help ensure a consistent confidential financial disclosure review.
- Using web-based technology to ensure that all employees receive initial ethics orientation.
- Requiring all employees, not just financial disclosure filers, to receive ethics training at least once every three years.

OGE Recommends

- OGE recommends that ATF continue to monitor the results of its actions regarding the identification of new filers to ensure the actions are effective.

If you have comments or would like to discuss this report, please contact Dale Christopher, Associate Director, Program Review Division, at 202-482-9224.

Ethics Program Review Bureau of Alcohol, Tobacco, Firearms and Explosives Department of Justice

April 2009 Report

Executive Summary

The United States Office of Government Ethics (OGE) has completed its review of the ethics program at the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ). The purpose of a review is to identify and report on the strengths and weaknesses of a program by evaluating: (1) agency compliance with ethics requirements found in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures for administering the program.

OGE identified several model practices that ATF has implemented. First, senior leadership underscored the importance of ATF's ethics program by meeting with OGE's Director. Second, ATF ethics officials developed a self-assessment survey to assess the effectiveness of ATF's ethics program. Third, ATF ethics officials created a review checklist to help ensure a consistent confidential financial disclosure review. Fourth, ATF ethics officials use web-based technology to ensure that all employees receive initial ethics orientation. Finally, ATF requires all employees, not just financial disclosure filers, to receive ethics training at least once every three years.

At the time of its review, the OGE review team noted that the Administration and Ethics Division was not capturing new entrant financial disclosure report filers in a timely manner. The Administration and Ethics Division is in discussions with ATF's Human Resources Division regarding developing a monthly report listing new employees and employees that have received a salary action.

OGE recommends that ATF continue to monitor the results of its actions regarding the identification of new filers to ensure the actions are effective. OGE stands ready to assist ATF in implementing this recommendation as well as other initiatives that ATF may choose to undertake. OGE will follow up with ATF in six months.

This report has been sent to DOJ's Designated Agency Ethics Official and Inspector General.



**United States Office
Of Government Ethics**

Report Number 09-015

Ethics Program Review

**Bureau of Alcohol, Tobacco, Firearms and Explosives
Department of Justice**

April 2009 Report

Introduction

OGE MISSION

The United States Office of Government Ethics (OGE) provides leadership for the purpose of promoting an ethical workforce, preventing conflicts of interest, and supporting good governance initiatives.

PURPOSE OF A REVIEW

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 found in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures in place for administering the program.

REVIEW AUTHORITY AND SCOPE

OGE has the authority to evaluate the effectiveness of executive agency ethics programs. See Title IV of the Ethics in Government Act of 1978, as amended (the Ethics in Government Act), and 5 CFR part 2638. OGE's review of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), focused on the elements listed below.

- Leadership
- Program structure
- Self-assessment survey
- Financial disclosure systems
- Ethics training
- Ethics counseling
- Enforcement of ethics laws and regulations
- Travel payments from non-Federal sources

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The on-site fieldwork portion of the review was conducted at ATF headquarters in December 2008.

Program Elements

This report consists of descriptions, analyses, and conclusions regarding each program element reviewed.

LEADERSHIP

Commitment and action by agency leadership is the keystone for ensuring the integrity of an agency's ethical culture and for fostering public confidence in the decision-making processes of Government. Leadership involvement in the ethics program at ATF is evident. The ATF Senior Leadership Team, which consists of the Director, Deputy Director, the Assistant and Deputy Assistant Directors, and the Chief Counsel and Deputy Chief Counsel, underscored the importance of ATF's ethics program by meeting with OGE's Director in connection with OGE's review. OGE considers this display of leadership support to be a model practice.

PROGRAM STRUCTURE

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

ATF's ethics program is administered by the Administration and Ethics Division within the Office of the Chief Counsel. The Administration and Ethics Division is composed of four staff members, all of whom are attorneys. The Chief Counsel serves as the Deputy Designated Agency Ethics Official. The Associate Chief Counsel and Deputy Chief Counsel serve as senior ethics officials. An Attorney-Advisor is responsible for much of the day-to-day duties of the ethics program. OGE found that the Attorney-Advisor's performance work plan includes an evaluation of the execution of his ethics duties.

SELF-ASSESSMENT SURVEY

In an effort to assess the effectiveness of ATF's ethics program and to ensure that the program is meeting ATF's needs, the Administration and Ethics Division conducted a self-assessment in November 2008. The self-assessment consisted of conducting a survey of all ATF employees on a number of key ethics issues.

The Administration and Ethics Division designed the survey to ensure that it would be both informative for evaluative purposes and user-friendly for the respondents. The survey consisted of 10 questions. The questions focused on determining the respondents' knowledge of key agency ethics personnel and criminal ethics statutes, as well as determining if the

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respondents were satisfied with the training and advice supplied by ethics officials. The survey was sent to all 5,012 ATF employees.

The survey indicated that while the ethics program at ATF is operating successfully in accomplishing its goals of educating ATF employees regarding ethics rules and regulations, the visibility of the ethics program and ethics officials is an area that is in need of improvement. According to the Attorney-Advisor, the Administration and Ethics Division will focus on increasing the visibility of the ethics program and ethics officials with the aid of recently acquired web-based technology.

FINANCIAL DISCLOSURE SYSTEMS

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 demonstrate that they are able to carry out their duties without compromising the public trust by disclosing publicly their personal financial interests (SF 278). Title I also authorizes OGE to establish a confidential financial disclosure system for less senior executive branch personnel in certain designated positions to facilitate internal agency conflict of interest review (OGE Form 450).

Financial disclosure serves to prevent conflicts of interest and to identify potential conflicts by providing for a systematic review of the financial interests of both current and prospective officers and employees. The financial disclosure reports also assist agencies in administering their ethics programs and providing counseling to employees. *See* 5 CFR § 2634.104(b).

Public Financial Disclosure System (SF 278)

ATF uses DOJ's comprehensive written procedures for administering its public financial disclosure system. *See* 5 U.S.C. § 402 d(1). The written procedures cover the collection, review, retention, and public availability of financial disclosure reports. Successful written procedures allow for consistent and uninterrupted administration of the public financial disclosure system.

To evaluate ATF's public financial disclosure system, OGE examined all 68 public financial disclosure reports required to be filed at ATF in 2008. The following is a summary of OGE's examination of the 68 reports.

Type of Report

- 64 incumbent reports
- 3 new entrant reports
- 1 termination report

68 total

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Filing Timeliness

- All 68 reports were filed timely.

Review/Certification Timeliness

- All 68 reports were reviewed and certified timely.

Quality of Review

Written comments on the reports and documentation in the files indicated that the reports underwent a thorough review by the Administration and Ethics Division. In some cases there was also evidence of communication with the filer regarding follow-up questions.

Confidential Financial Disclosure System (OGE Form 450/A)

ATF has comprehensive written procedures for administering its confidential financial disclosure system. *See* 5 U.S.C. § 402 d(1). The written procedures contain detailed instructions that aid in the review of confidential financial disclosure reports. Successful written procedures allow for consistent and uninterrupted administration of the confidential financial disclosure system.

To evaluate ATF's confidential financial disclosure system, OGE examined 100 of the 776 confidential financial disclosure reports required to be filed at ATF in 2008. The following is a summary of OGE's examination of the 100 reports.

Type of Report

- 88 annual reports
- 12 new entrant reports

100 total

Filing Timeliness

- 91 reports were filed timely.
- 9 new entrant reports were filed late.

100 total

At the time of the review, the OGE review team noted that the Administration and Ethics Division was not capturing new entrant financial disclosure filers in a timely manner. The OGE review team communicated its concerns about the timely identification of new entrant filers to the Attorney-Advisor. Subsequently, the Attorney-Advisor notified the OGE review team that ATF was taking steps to correct this issue. According to the Attorney-Advisor, the Administration and Ethics Division is in discussions with ATF's Human Resources Division

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regarding the receipt of a monthly report listing new employees and employees that have received a salary action. The Administration and Ethics Division will also send monthly broadcasts to all agency employees regarding the requirement for new employees to file. OGE recommends that ATF continue to monitor the results of its actions regarding the identification of new entrant filers to ensure the actions are effective.

Review/Certification Timeliness

- All 100 reports were reviewed and certified timely.

Quality of Review

Filers submit their confidential financial disclosure reports to their supervisors who conduct the initial conflict of interest review. While reviewing the confidential financial disclosure reports, supervisors must fill out a review guide checklist which they then sign. The use of a review guide is a model practice that helps to ensure a consistent review. Final review and certification is conducted by the Administration and Ethics Division. Written comments on the reports and documentation in the files indicated that the reports underwent a thorough review. In most cases there was evidence of communication with filers regarding follow-up questions.

ETHICS TRAINING

An ethics training program is essential to raising awareness among employees about ethics laws and rules and informing them that an agency ethics official is available to provide ethics counseling. Each agency's ethics training program must include at least an initial ethics orientation for all employees and annual ethics training for covered employees.

ATF's Administration and Ethics Division annually creates an ethics training plan in accordance with 5 CFR § 2638.706.

Initial Ethics Orientation

Within 90 days from the time an employee begins work for an agency, the agency must provide the employee with an initial ethics orientation. An initial ethics orientation must include:

- the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) and any agency supplemental standards;
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials; and
- at least one hour of official duty time to review the items described above. See 5 CFR § 2638.703.

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To meet the initial ethics orientation requirement, within 90 days from the time an employee begins work at ATF, the employee is provided with an hour-long initial ethics orientation via an online module called *learnatf*. According to the Chief of the Learning Technologies Branch, the Administration and Ethics Division is responsible for the content of the online module but the Learning Technologies Branch is tasked with maintaining the online module. When new employees begin at ATF, the *learnatf* system creates an account for the new employee based on a human resources database. New employees log into the *learnatf* account in order to complete a variety of courses. The online module provides several hyperlinks to the ATF Ethics Intranet page where employees have access to the Standards, agency supplemental standards and the name, title, office address and phone number for the Attorney-Advisor. If the employee has not completed initial ethics orientation within 60 days, the *learnatf* system sends out a reminder to the employee. The Administration and Ethics Division generates a monthly report from *learnatf* in order to ensure that all new employees have received initial ethics orientation. The *learnatf* system can serve as a model for efficient integration of technology at other agencies.

Annual Ethics Training

Public financial disclosure filers are required to receive verbal annual ethics training. *See* 5 CFR § 2638.704(a). Verbal training includes training prepared by a qualified instructor and presented by telecommunications, computer, audiotape, or videotape. *See* 5 CFR § 2638.704(c)(2). Other covered employees (e.g., confidential filers) are required to receive verbal ethics training at least once every three years and may receive written training in the intervening years. *See* 5 CFR § 2638.705(c). The content requirements for both public filers and other covered employees are the same. Agencies are encouraged to vary the content of annual training from year to year but the training must include, at least, a review of:

- the 14 Principles of Ethical Conduct;
- the Standards;
- any agency supplemental standards;
- the Federal conflict of interest statutes; and
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials. *See* 5 CFR § 2638.704(b).

To meet the annual ethics training requirement, covered employees are provided:

- the 14 Principles of Ethical Conduct;
- the Standards;
- supplemental standards;
- the Federal conflict of interest statutes; and
- the name, title, office address, and phone number of the Attorney-Advisor.

OGE's review of ATF's annual ethics training materials found they meet content requirements.

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In addition to providing required initial ethics orientation and annual ethics training for covered employees, the Administration and Ethics Division requires all employees to receive annual ethics training and verbal ethics training at least once every three years. Requiring annual ethics training for non-covered employees is a model practice.

ETHICS COUNSELING

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

OGE's assessment of an ethics counseling program focuses on five factors: (1) accuracy, (2) timeliness, (3) transparency, (4) accountability, and (5) consistency. To determine whether an agency's counseling program successfully addresses these factors, OGE reviews and assesses the program's processes and written procedures. Further, OGE reviews selected samples of advice to assess whether processes and written procedures are effective.

To meet the counseling requirements at ATF, ethics-related counseling is provided to employees primarily by the Attorney-Advisor. To evaluate the counseling provided, OGE examined a sample of written determinations rendered during the period covered by the review. The counseling was primarily in the areas of gifts, post-employment, misuse of government property, and outside activities. In general, OGE found that the counseling rendered accurately addressed applicable statutes and regulations and was timely and consistent.

In some instances, especially regarding post-employment, OGE found the counseling was too general, which could result in employees construing the prohibitions to be broader than they actually are. By tailoring the individual counseling to the specific situation, ATF can help to ensure that employees do not unnecessarily restrict their actions.

ENFORCEMENT

The DAEO is required to ensure that (1) information developed by internal audit and review staff, the Office of the Inspector General, or other audit groups is reviewed to determine whether such information discloses a need for revising agency standards of conduct or for taking prompt corrective action to remedy actual or potential conflict of interest situations and (2) the services of the agency's Office of the Inspector General are utilized when appropriate, including the referral of matters to and acceptance of matters from that Office. *See* 5 CFR § 2638.203(b)(11) and (12).

ATF has no Office of the Inspector General (OIG); however, as a component of DOJ, ATF is in direct communication with DOJ's OIG. At ATF, potential violations of the criminal conflict of interest laws or of the Standards are first referred to ATF's Office of Professional Responsibility and Security Operations (OPRSO). OPRSO, in consultation with the Administration and Ethics Division, will contact the DOJ OIG liaison if necessary. The OGE

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review team interviewed the OPRSO liaison to the Administration and Ethics Division. According to the OPRSO liaison, the Administration and Ethics Division coordinates with OPRSO as necessary on ethics-related matters. The OPRSO liaison explained that the Administration and Ethics Division, OPRSO, and OIG have a successful working relationship. OGE found that ATF is meeting the requirements of 5 CFR § 2638.203(b)(11) and (12).

There were no criminal conflict of interest violations referred to DOJ during 2008. During the same period, there were 11 substantiated violations of the Standards. Nine of the substantiated violations of the Standards resulted in suspensions that ranged from two to fourteen days. The remaining two substantiated violations of the Standards resulted in a reprimand and a notice of caution.

ACCEPTANCE OF TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

An employee may accept payment of travel expenses from non-Federal sources on behalf of the employee's agency for official travel to a meeting or similar function when specifically authorized to do so by the agency. Agencies must submit semiannual reports of travel payments from non-Federal sources in excess of \$250 to OGE. *See* 31 U.S.C. § 1353.

At ATF, employees are instructed to complete a memorandum prior to the anticipated date of travel. The memorandum is to outline all the pertinent information regarding the payment of travel expenses. The memorandum must be reviewed by the employee's first and second level supervisors, the Deputy Chief Counsel, and the Assistant Director of Management/Chief Financial Officer.

The OGE team reviewed the three semiannual reports sent to OGE covering the periods from October 1, 2006 to March 31, 2008. All three semiannual reports were sent to OGE in a timely manner using the appropriate SF 326 Form. As part of its review, the OGE review team examined a sample of the payments accepted and supporting documentation. All of the payments OGE examined were approved prior to the occurrence of travel and appeared to have been properly authorized under 31 U.S.C. § 1353.

Summary

OGE identified model practices that the Administration and Ethics Division at ATF has implemented to administer the ethics program. The model practices include:

- underscoring the importance of ATF's ethics program by having ATF's Senior Leadership Team meet with OGE's Director;
- developing a self-assessment survey to assess the effectiveness of ATF's ethics program;
- creating a review checklist to help ensure a consistent confidential financial disclosure review;
- using web-based technology to ensure that all employees receive initial ethics orientation; and

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- requiring all employees, not just financial disclosure filers, to receive ethics training at least once every three years.

At the time of its review, the OGE review team noted that the Administration and Ethics Division was not capturing new entrant financial disclosure report filers in a timely manner. According to the Attorney-Advisor, the Administration and Ethics Division is in discussions with ATF's Human Resources Division regarding developing a monthly report listing new employees and employees that have received a salary action.

Recommendation

- OGE recommends that ATF continue to monitor the results of its actions regarding the identification of new filers to ensure the actions are effective.

OGE stands ready to assist ATF in implementing this recommendation as well as other initiatives that ATF may choose to undertake. OGE will follow up with ATF in six months.

If you have comments or would like to discuss this report, please contact Dale Christopher, Associate Director, Program Review Division, at 202-482-9224.