



Office of Inspector General

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

September 27, 2016
FORMAL MANAGEMENT ADVISORY

TO: David Robbins
Executive Director

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Acting General Counsel

Christian White
Deputy General Counsel and Designated Agency Ethics Official

FROM: Roslyn A. Mazer
Inspector General

A handwritten signature in black ink, reading "Roslyn A. Mazer", is placed to the right of the printed name and title.

SUBJECT: Strengthening the FTC Ethics Program by Extending Mandatory Annual Ethics Training to Employees at or Below the GS-13 Grade Level Who Occupy High Risk Positions

I. Background

A recent FTC Office of Inspector General (OIG) investigation found that a veteran FTC employee in a "high risk position," as defined by the Office of Personnel Management (OPM), violated multiple provisions of the federal Employee Standards of Conduct and parallel FTC ethical standards.¹ These standards prohibit federal employees from, *inter alia*, using public office for private gain and from using government property and time for private activities. FTC policy affords a *limited use* exception to its employees to occasionally use government resources for personal purposes when certain conditions are met. In the OIG's recent investigation, we found that several of the employee's ethical infractions did not come within the *limited use* exception.

¹ The OPM designates a position as high risk if it has a "potential for adverse impact on the efficiency and integrity of the service." See <https://www.opm.gov/investigations/background-investigations/position-designation-tool/oct2010.pdf>; see also 5 CFR § 731.106.

Beginning in March 2000, the FTC has required initial agency ethics training for all FTC staff at new employee orientation. In accordance with federal ethics training requirements set out in the Government Employees Training Act (5 U.S.C. § 4118), Office of Government Ethics regulations (5 CFR Part 2638), and internal FTC policy, the FTC must provide annual ethics training to all employees at or above the General Schedule (GS)-14 grade level. Such employees, along with any additional employees specified by regulation or specially designated by the agency, are referred to as “covered” employees.²

Specifically, 5 CFR § 2638.701 provides that each executive agency must have an ethics training program to teach employees about ethics laws and rules. The training must include an initial agency ethics orientation for all employees and annual ethics training for covered employees. The agency must also direct staff on where to go for ethics advice. According to the FTC Office of General Counsel’s (OGC) Ethics Team, the FTC provides annual ethics training to “a few” specially designated employees below the GS-14 grade level pursuant to this regulation and also honors requests from managers to allow their staff to attend the training. However, there is no FTC policy requiring annual ethics training for non-covered employees who occupy positions designated as high risk, and no criteria or process in place to assist managers in periodically identifying other employees who should also be designated as high risk and considered for annual ethics training.

Of the approximately 1,192 employees currently employed by the FTC, about 866, or 73% percent, are at the GS-14 or higher grade level and are therefore required to take mandatory annual ethics training. However, unless the FTC specifically designates employees at or below the GS-13 grade level as “covered employees” based on their official duties, those employees receive no ethics training, apart from what they may elect to read on the OGC web site or other materials OGC generates for staff guidance. As of August 18, 2016, there were 326 permanent FTC employees at or below the GS-13 grade level, constituting 27% of the entire workforce. These include employees assigned to be confidential assistants and legal assistants to the Chairwoman and the Commissioners, information technology specialists in the Office of the Chief Information Officer, security specialists in the Security and Personnel Administrative Unit, and employees assigned to the Office of Congressional Relations and the Office of Public Affairs.

In addition, a sizeable number of employees at or below the GS-13 grade level commenced employment at the FTC prior to March 2000, when the FTC began to require ethics training at new employee orientation; some of these employees may qualify as being in “high risk positions” but, like the subject of the OIG’s recent investigation, would have never received any ethics training at the FTC.

² Covered employees are defined as: (1) employees appointed by the President; (2) employees of the Executive Office of the President; (3) employees defined as confidential filers in 5 CFR § 2634.904; (4) employees designated by their agency under 5 CFR § 2634.601(b) to file confidential financial disclosure reports; (5) contracting officers, as defined in 41 U.S.C. § 423(f)(5); and (6) other employees designated by the head of the agency or his or her designee based on their official duties. See 5 CFR § 2638.705.

The FTC has many employees who have been with the agency for two or three decades or more.³ The OIG's recent investigation revealed that almost all of these veteran employees -- some of whom occupy FTC positions designated as high risk -- have never received any ethics training because they began employment at the FTC prior to 2000 and occupy positions at or below the GS-13 grade level. This represents a vulnerability and risk for the FTC that can be readily addressed by extending mandatory annual ethics training to such employees.⁴

The OIG concluded this investigation and developed this management advisory to identify opportunities to strengthen the FTC Ethics Program by providing managers with assistance in periodically identifying non-covered employees at or below the GS-13 grade level who occupy positions designated as high risk and ensuring that OGC provides mandatory annual ethics training to this cohort. Doing so will alert the employees to federal ethics rules, reduce the likelihood of ethics violations, and protect the FTC's integrity and reputation. We note that the responsibility would be on the managers to identify and inform the Ethics Team of the employees that fall into the aforementioned category and ensure that the employees complete the annual ethics training.

II. The FTC Ethics Training Program

Office of Government Ethics regulations under 5 CFR § 2638.706 require agencies to develop, at the beginning of each year, a plan for annual ethics training.⁵ The plan must contain a brief description of the agency's annual training, and it requires all "covered" employees to 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 CFR §§ 2638.704 and 705.

In accordance with federal regulations, the FTC developed a plan for annual ethics training as follows:

- Commissioners and Senior Executive Service employees: mandatory live annual training
- GS-14 and GS-15: mandatory live training every three years, with computer training in alternate years
- GS-13 and below: optional training depending upon job sensitivity

³ The Human Capital Management Office was unable to provide the OIG with an approximation of the number of current FTC employees who are in this category. However, at the FTC's 2016 Annual Awards Ceremony on September 8, 2016, 62 employees were honored for having been with the FTC for 15 years or more.

⁴ There may be overlap between the two categories of employees discussed in this advisory.

⁵ A routine OGE Ethics Inspection monitors the agency training plan. In its last review in 2014, OGE assessed that the FTC is compliant with federal ethics training requirements. See [https://www.oge.gov/Web/OGE.nsf/Program%20Review%20Reports/D276594BB3F9C89485257EA40070E44B/\\$FILE/59fa42af2703441aa78088e232ad0cec1.pdf?open](https://www.oge.gov/Web/OGE.nsf/Program%20Review%20Reports/D276594BB3F9C89485257EA40070E44B/$FILE/59fa42af2703441aa78088e232ad0cec1.pdf?open).

- All new FTC staff: mandatory live training during mandatory orientation

In addition, FTC OGC Ethics officials conduct routine outreach to educate staff on various ethics issues, such as laws and regulations, financial disclosure, outside employment, gifts and payments, political activities, and pro bono work. They do this in a variety of ways from newsletters to online training.

As a result of the OIG’s FY 2016 investigation into violations of the federal ethics laws and regulations by a veteran agency employee, in June 2016, the FTC OGC introduced *Fwitter*, the FTC’s first online ethics training program for employees at or below the GS-13 grade level. According to the introductory memorandum, the *Fwitter* program “provides a refresher on federal ethics principles for staff who may not have received formal federal ethics training since they first arrived at the agency.” OGC encourages all staff at and below the GS-13 grade level to take this optional refresher course, noting that *Fwitter* will not satisfy the annual training requirement for those selected for mandatory training.

Fwitter is a welcome and necessary expansion of agency ethics training, but it relies on supervisors requiring otherwise optional training for staff who might not have received ethics training or may have not received it for some time. OGC reports, based on available records, that prior to *Fwitter*, only about two employees at or below the GS-13 grade level had mandated ethics training. One of the two employees is in the Financial Management Office’s Acquisitions Branch, which administers FTC contracts, and the other is in the library, which handles many FTC research accounts. OGC also reports that from June to August 2016, 56 employees took the new *Fwitter* training.

There are, however, more non-covered FTC employees at or below the GS-13 grade level who occupy positions designated as high risk; the OIG recommends that they have mandated ethics training. For example, each Commissioner generally employs a legal assistant and a confidential assistant at this level. Other Bureaus and Offices employ non-covered staff in high risk positions, such as the Office of the Chief Information Officer and the Personnel Security Unit.

The following tables show the current coverage of the FTC Ethics Program via checkmarks next to the employee categories. The highlighted areas show the categories of currently non-covered employees addressed in this advisory.

Mandatory Annual Ethics Training	
Presidential Appointees	<input checked="" type="checkbox"/>
Senior Executives	<input checked="" type="checkbox"/>
GS-14s and 15s	<input checked="" type="checkbox"/>
Specially Designated Employees per 5 CFR §§ 2638.705(a)(4) and (6)	<input checked="" type="checkbox"/>
GS-13s & Below in Positions Designated as High Risk	<input type="checkbox"/>

One-time Ethics Training		
	Hired Prior to 2000	Hired After 2000
All GS-13s and below who have not received any one-time mandatory ethics training via the new employee orientation.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

III. Recommendations

To augment the FTC's recent efforts to strengthen OGC's Ethics Program, the OIG recommends the following steps to further address an area of vulnerability and risk for the FTC. These steps will alert additional FTC employees who occupy positions designated as high risk to the federal ethics rules, reduce the likelihood of ethics violations, and protect the FTC's integrity and reputation. The OIG recommends:

1. That OGC augment its Ethics Program by doing the following:
 - a. consulting with managers in the Bureaus and Offices to identify employees at or below the GS-13 grade level who should be subject to annual ethics training due to the fact they occupy positions designated as high risk but are not currently listed as "covered employees," with the responsibility being on the managers to identify and inform the Ethics Team of these employees and ensure they complete the annual ethics training; and
 - b. providing one-time training to those employees at or below the GS-13 grade level hired prior to 2000 who never received mandatory ethics training at new employee orientation, regardless of their position risk designations.

2. That OGC use its Intranet web site, the FTC Daily, the Ethicist, and other work force communications to inform the work force of the modification to the OGC Ethics Program.
3. That OGC incorporate these policy changes as appropriate into its internal Ethics Team policies.

Thank you for considering these recommendations. Kindly provide management's response to these recommendations within sixty (60) days.



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the
General Counsel

November 25, 2016

MEMORANDUM

TO: Roslyn A. Mazer
Inspector General

FROM: Christian S. White *CSW*
Deputy General Counsel and Designated Agency Ethics Official

SUBJECT: Extending Mandatory Annual Ethics Training to Employees at or Below the GS-13 Grade Level in High Risk Positions

This memorandum responds to recommendations the Office of Inspector General (OIG) made in connection with a recent investigation of a long-term lower graded employee, in which the OIG determined that FTC employees who joined the agency before March 2000 and are at the GS-13 level or below likely have never received formal federal ethics training.¹

Ensuring public confidence in the integrity of FTC operations is paramount. Each employee must uphold the highest standards of ethical behavior and has a key role in maintaining the public's trust. The FTC Ethics Team agrees with OIG's recommendations. The recommendations support the Ethics Team's continued focus on ensuring that all employees are aware of federal ethics constraints and know whom to contact for guidance.

The Ethics Team continually evaluates its training program and develops new tools to help all FTC employees understand the rules. The FTC Ethics Team has a strong record of meeting and exceeding regulatory requirements. For example, the U.S. Office of Government Ethics (OGE) last formally inspected the FTC's ethics program in 2014 and determined it met all benchmarks and exceeded legal requirements. OGE specifically took note of the FTC Ethics Team's proactive approach to educational outreach, identifying the following model practices (among others not relevant to this memorandum):

The FTC Ethics Office distributed an Ethics Pocket Guidebook, a "plain English" guide to the federal ethics laws and regulations. This initiative was announced by the Chief of Staff and every senior official and all GS-14 and 15 employees received individual copies of the guide. Every office within FTC also received multiple copies of the guide to use as a resource for all

¹ Since March 2000, the FTC has required initial agency ethics training for all new hires. In accordance with legal requirements and FTC policy, all employees at the GS-14 grade level and above are required to take annual federal ethics training.

staff. To help underscore the importance of adhering to ethical principles, the Ethics Office posts pertinent ethics information on its Ethics intranet page. Resources on this page include, among other things, hyperlinks to the Standards of Conduct, the 14 General Principles for employees, the criminal conflict of interest statutes, FTC's supplemental ethics regulation, information regarding the Stock Act, and other relevant links to pages on OGE's website. The Ethics intranet page is discussed during initial ethics orientation and annual ethics trainings.

OGE Inspection Report: Douglas Chapman, *Federal Trade Commission Ethics Program Inspection Results* (2014).

More recently, the Ethics Team has taken the following steps to maintain its state-of-the-art ethics training and awareness program:

- (1) provided annual ethics training to approximately 94.4% of all employees required to take the training in CY 2015;²
- (2) provided initial ethics orientation to 100% of employees required to attend in CY 2015;
- (3) issued four quarterly newsletters per year on a variety of ethics topics;
- (4) conducted an agency-wide contest to feature the dogs of FTC employees providing ethics tips to staff on large posters in common areas/entryways and in the Ethics Team's quarterly newsletters; and
- (5) released the FTC's first online training tailored to employees at the GS-13 level and below.³

The Ethics Team also recently announced its latest educational tool—a hardcopy ethics calendar for CY 2017 featuring the pups and dogs of FTC employees—and will continue to expand its outreach to all employees with a particular focus on the recommendations made by the OIG.

Recommendations: *To augment the FTC's recent efforts to strengthen the OGC's Ethics Program, further address an area of vulnerability and risk, alert additional FTC employees who occupy positions designated as "high risk"⁴ to the federal ethics rules, reduce the likelihood of*

² Discrepancies were due to separations from the agency, being on extended medical leave, or serving on a detail to another agency.

³ This optional training program was largely prompted by the positive feedback the Ethics Team received from GS-14 and 15 staff. The Ethics Team tailored one of its prior online training programs to provide an optional ethics refresher for staff at the GS-13 level and below (recognizing that such persons are not legally required to obtain annual ethics training). Given resource constraints, the Ethics Team's efforts to deploy the training took longer than originally anticipated. Coincidentally, the optional training launched after the Ethics Team learned of the OIG investigation. The Ethics Team then reviewed the program to ensure it covered ground raised by the OIG investigation; and then took those same steps to ensure the adequacy of the mandatory training provided to employees at the GS-14 levels and above.

⁴ OIG references OPM's designation of a position as high risk if it has a "potential for adverse impact on the efficiency and integrity of the service." Memo: Roslyn A. Mazer, *Strengthening the FTC Ethics Program by Extending Mandatory Annual Ethics Training to Employees at or Below the GS-13 Grade Level Who Occupy High*

ethics violations, and protect the FTC's integrity and reputation, the FTC should:

Recommendation 1: Consult with Managers in the Bureaus and Offices to identify employees at or below the GS-13 grade level who should be subject to annual ethics training due to the fact that they occupy positions designated as “high risk” but are not currently listed as “covered employees,”⁵ with the responsibility being on the managers to identify and inform the Ethics Team of these employees and ensure they complete the annual ethics training.

Responsible Officials: Christian S. White, Lorielle L. Pankey

Action Plan: The Ethics Team concurs with this recommendation. The FTC Ethics Team will treat all full time employees (FTEs) who work for Commissioners as “high risk.”⁶ Also, the Ethics Team will get feedback from agency managers and create a list of staff to be trained.

Once the “high risk” determinations have been made, the Ethics Team will include those employees in the same training cycle as GS-14 and 15 employees (i.e., they will receive live training every third year and online training in the interim years). Finally, as noted by OIG, the Ethics Team will provide the training but management and the agency head should help ensure the training is completed (i.e., if designated employees don’t show up for live training or take the required online training, supervisors should take appropriate action).

Live annual ethics training for GS-14 and 15 employees typically takes place from spring to fall each calendar year. Online annual ethics training for GS-14 and 15 employees ordinarily takes place from fall to winter of each calendar year. All annual ethics training must be completed by December 31. The Ethics Team will work with management to have an initial list of newly designated “high risk” employees by March 31, 2017, to ensure that designated employees can participate in the Ethics Team’s next annual training cycle.⁷

Expected Completion Date: Initial list of designees created by March 31, 2017. Annual training completed by December 31, 2017.

Recommendation 2: Provide one-time training to those employees at or below the GS-13 grade level hired prior to 2000 who never received mandatory ethics training at new employee orientation, regardless of their position risk designations.

Risk Positions, 1 n.1 (2016) (citing <https://www.opm.gov/investigations/background-investigations/position-designation-tool/oct2010.pdf> and 5 CFR Part 731.106).

⁵ For these purposes, “covered employees” includes persons already required to obtain annual ethics training at the FTC.

⁶ This will not include temporary hires such as interns. However, Commissioners may require their interns or other temporary hires to participate in annual ethics training. Given the limited scope of their tenure, responsibilities, and access to nonpublic information, the Ethics Team will not automatically designate interns as “high risk” employees.

⁷ Given the change in the Administration, the Ethics Team expects there may be dramatic changes in staffing after March 31, 2017. The Ethics Team will reach out to management at various points throughout the calendar year to ensure all appropriate persons have the opportunity to receive annual training before December 31, 2017.

Responsible Officials: Christian S. White, Loriele L. Pankey

Action Plan: The Ethics Team concurs with this recommendation. The Ethics Team will deploy online training to this group. The Ethics Team will modify an existing annual training program (used for GS-14 and 15 employees) to ensure its suitability for this audience. Once the Ethics Team is ready to deploy the training, the Ethics Team needs the Human Capital Management Office to provide a list of persons who fall into this category.⁸ As the OIG recognizes, the Ethics Team will provide the training but management and the agency head should help ensure the training is completed (i.e., if designated employees don't take the required online training, supervisors should take appropriate action).

Expected Completion Date: The online training will be issued by June 30, 2017, and completed by December 31, 2017.

Recommendation 3: Use the FTC Ethics Intranet website, the FTC Daily, the quarterly *FTC Ethicist* newsletter, and other work force communications to inform staff of the modifications to the FTC Ethics Program.

Responsible Officials: Christian S. White, Loriele L. Pankey

Action Plan: The Ethics Team concurs with this recommendation. The Ethics Team will continue to use such avenues to inform Commissioners and FTC staff of this and other important ethics information.

Expected Completion Date: With respect to Recommendation #2, December 2017, otherwise N/A. These efforts will begin in CY 2017 but most of them will continue indefinitely. The Ethics Team will ask management to identify "high risk" employees periodically.

Recommendation 4: Incorporate these policy changes as appropriate into the FTC's Ethics Team policies.

Responsible Officials: Christian S. White, Loriele L. Pankey

Action Plan: The Ethics Team concurs with this recommendation. Although execution will take place in CY 2017, the Ethics Team has already incorporated these changes into its policies.

Expected Completion Date: Completed.

⁸ It is not clear the Ethics Team will be able to obtain an accurate listing. "The Human Capital Management Office was unable to provide the OIG with an approximation of the number of current FTC employees who are in this category." Memo: Roslyn A. Mazer, *Strengthening the FTC Ethics Program by Extending Mandatory Annual Ethics Training to Employees at or Below the GS-13 Grade Level Who Occupy High Risk Positions*, 3 n.3 (2016). The Ethics Team will depend on the Human Capital Management Office to identify employees who fall into this category.