



Memorandum from the Office of the Inspector General

February 29, 2016

Sherry A. Quirk, WT 6

REQUEST FOR FINAL ACTION – AUDIT 2015-15312 – TVA’S ETHICS PROGRAM

An organization’s culture plays a major role in the way employees respond and react when dealing with ethical dilemmas. According to internal Tennessee Valley Authority (TVA) Ethics Program documentation,¹ TVA’s program uses a compliance-centered and values-based² approach. We included a review of TVA’s Ethics Program on our annual audit plan due to the increased awareness of businesses with poor ethical climates potentially having greater strategic risks. Our audit objectives were to determine if TVA’s Ethics Program (1) is in compliance with applicable statutes and regulations, and (2) management has identified and incorporated best practices.

In summary, we did not identify any areas where TVA’s Ethics Program did not comply with requirements of Title 5, Code of Federal Regulations § 2638.203 (5 CFR §2638.203) for federal agencies’ ethics programs. Additionally, TVA’s Ethics Program has incorporated many of the best practices identified, with the exception of having embedded ethics champions throughout the organization. We also found references in TVA’s Code of Conduct to an Ethics Council but found the Council has been inactive since at least 2011.

We recommend TVA’s Executive Vice President and General Counsel, Designated Agency Ethics Official (DAEO): (1) consider having ethics champions embedded throughout the organization who could emphasize the importance of ethical conduct at an individual and organizational level and (2) consider reinstating the Ethics Council or removing references to it from the TVA Code of Conduct. TVA management agreed with the audit findings and recommendations in this report and plans to take corrective actions. See the Appendix for TVA management’s complete response.

BACKGROUND

The Office of the General Counsel (OGC) and Human Resources and Communications (HR&C) collaborate to carry out the duties of the Ethics Program using a compliance-centered and values-based approach. Horizontal collaboration between the OGC and HR&C, in addition to shared resources, allows the Ethics Program to expand its programmatic focus to six areas—corporate responsibility, compliance, awareness and

¹ TVA Ethics Program: A Two-Pronged Approach, 2015.

² For purposes of this report compliance-centered means ensuring compliance with rules, laws, etc., and values-based means doing what is right regardless of what the law requires.

training, investigations, metrics and reporting, and advice and counsel. Governance and most of the oversight responsibilities for the Ethics Program resides within OGC. HR&C is responsible for some of the program's oversight and much of the program's execution and support.

The Office of Government Ethics (OGE) oversees the executive branch ethics programs and works with executive branch agencies in carrying out effective ethics programs. OGE publishes its own chapter of regulations each year in 5 CFR, Chapter XVI, which describes responsibilities relating to the administration of the executive branch ethics program. The DAEO is an officer or employee who is designated by the head of the agency to coordinate and manage the agency's ethics program in accordance with the provisions found in 5 CFR §2638.203. Currently, TVA's DAEO resides in OGC and also serves as TVA's Executive Vice President and General Counsel. While the DAEO has ultimate responsibility for overall management and coordination of TVA's Ethics Program, TVA's Ethics Manager, who currently resides in HR&C, is responsible for day-to-day management of the Ethics Program. Duties of the Ethics Manager include advising on applicable ethics laws and standards, financial disclosure reporting, and managing the ethics training program.

OBJECTIVES, SCOPE, AND METHODOLOGY

Our audit objectives were to determine if TVA's Ethics Program (1) is in compliance with applicable statutes and regulations, and (2) management has identified and incorporated best practices. The objectives of this audit were not related to TVA's system of internal control; therefore, internal controls were not tested as part of this audit. To achieve our objectives, we reviewed TVA's compliance with applicable federal regulations regarding the agency's ethics program. To determine applicable statutes and regulations, we interviewed the Office of the Inspector General (OIG) Legal Counsel and OGC attorneys and found our focus should be on 5 CFR §2638.203, which establishes the requirements for the DAEO in carrying out the agency's ethics program and identifies 14 program elements required of an ethics program. The required program elements can be summarized into four general areas:

1. Liaison with the OGE.
2. Review of financial disclosure reports.
3. Initiation and maintenance of ethics education and training programs.
4. Monitoring administrative actions and sanctions.

We (1) researched professional organization's Web sites, read print publications on ethics, and consulted with the OIG's Legal Counsel to identify best practices, and (2) narrowed our focus to eight industry best practices that showed up multiple times in our research. We then compared these eight best practices to TVA's Ethics Program to determine whether TVA had incorporated these best practices into its Ethics Program.

The scope of our audit was ethics program activities for calendar years 2013 and 2014. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

FINDINGS

We did not identify any areas where TVA's Ethics Program did not comply with requirements of 5 CFR §2638.203 for federal agencies' ethics programs. Additionally, TVA's Ethics Program has incorporated many of the best practices identified, with the exception of having embedded ethics champions throughout the organization. We also found references in TVA's Code of Conduct to an Ethics Council but found the Council has been inactive since at least 2011.

COMPLIANCE WITH FEDERAL REQUIREMENTS

We interviewed TVA's Ethics Manager and reviewed documentation to determine if the 14 program elements required by 5 CFR §2638.203 were completed during the audit period. We did not identify any areas where TVA's Ethics Program did not comply with requirements of 5 CFR §2638.203 for federal agencies' ethics programs.

ETHICS PROGRAM HAS INCORPORATED MOST BEST PRACTICES

To determine the best practices for Ethics programs we researched professional organization's Web sites, read print publications on ethics, and consulted with the OIG's Legal Counsel. We narrowed our focus to eight industry best practices that showed up multiple times in our research. We interviewed TVA's Ethics Manager and obtained documentation to determine if TVA's Ethics Program had incorporated any of these eight best practices.³ During our testing, we found that TVA's Ethics Program had incorporated seven of the eight best practices as follows:

1. Participates in third party surveys that incorporate several ethics questions.
2. Investigates and responds to ethics-related employee concerns.
3. DAEO possesses organizational credibility and influence.
4. DAEO maintains indirect reporting relationships with TVA's Board of Directors.
5. Reports summary data to management and the TVA Board on a regular basis.
6. Has several easily accessible ways for employees to confidentially report violations.
7. Has an ethics training program that reaches all employees.

³ For the purposes of this audit, best practice refers to any business trend that is not required but has been incorporated by many companies looking to better their ethics and compliance programs.

The eighth best practice was to have ethics champions embedded throughout the organization.⁴ TVA's Ethics Manager informed us TVA has not considered having embedded ethics champions and that TVA's managers and supervisors are (1) expected to model ethical behaviors and (2) be able to answer employees' ethics concerns or direct employees to the Ethics Program for guidance. We believe champions could emphasize the importance of ethical conduct and provide consistent, visible leadership for supporting ethical conduct at an individual and organizational level.

When champions talk about ethics it directly affects whether employees feel encouraged to talk openly about this issue. It influences their willingness to come forward voluntarily when they see behaviour they know is wrong.⁵

While ethics compliance and program execution appear to be functioning properly and TVA has implemented many of the best practices identified, TVA employees' perception of an ethical climate at TVA is a concern. The DAEO informed TVA employees that results of a recent employee engagement survey found that only 65 percent of TVA employees rated TVA as being an ethical company worthy of public trust. The DAEO also pointed out this score was lower than scores typically seen in other organizations. Accordingly, having ethics champions embedded throughout the organization could help change employees' perception of the ethical climate at TVA.

ETHICS COUNCIL INACTIVE SINCE 2011

We found reference to an Ethics Council in TVA's Code of Conduct but were told the Council has been inactive since at least 2011. According to TVA's Code of Conduct, the Ethics Council is to consist of senior executives from across TVA appointed by the Chief Executive Officer to assist the DAEO in maintaining and enhancing a TVA culture embracing the highest ethical values and compliance with applicable legal and regulatory requirements, industry standards, the TVA Code of Conduct, and other TVA compliance-related policies and procedures. The Code of Conduct also states the "Ethics Council and DAEO shall assess and report to the CEO and Board of Directors on the health of TVA's compliance culture and effectiveness of TVA's ethics program."

In our opinion, the Ethics Council as described in the TVA Code of Conduct could help the DAEO in developing the desired ethical culture at TVA, not only by performing reviews of TVA actions and making recommendations, but by acting as examples to the rest of TVA. The importance of the "Tone at the Top," or executives modeling desired behaviors, has been shown to be a driver for organizations achieving any kind of major change. Executives can send a strong message to the rest of the company by their actions and showing what "doing the right thing" means in practice. However, a code of conduct or ethics training may make little difference if senior leaders do not model the expected behaviors.

⁴ Ethics champions are "those who can bring life to the company's core values and its ethical principles... They use their status influence or enthusiasm to persuade others that business ethics are important." Andrew Leigh, *Ethical Leadership: Creating and Sustaining an Ethical Business Culture*, 2013, p. 136.

⁵ Andrew Leigh, *Ethical Leadership: Creating and Sustaining an Ethical Business Culture*, 2013, p. 137.

RECOMMENDATIONS

We recommend TVA's Executive Vice President and General Counsel, DAEO:

1. Consider having ethics champions embedded throughout the organization who could emphasize the importance of ethical conduct at an individual and organizational level.
2. Consider reinstating the Ethics Council or removing references to it from the TVA Code of Conduct.

TVA Management's Comments – TVA management agreed with the audit findings and recommendations in this report and stated the Ethics team will develop and implement a plan to cultivate embedded ethics champions throughout TVA and to reinstate the Ethics Council no later than September 30, 2016.

See the Appendix for TVA management's complete response.

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This report is for your review and final action. Your written comments, which addressed your management decision and actions planned or taken, have been included in the report. Please notify us when final action is complete. In accordance with the Inspector General Act of 1978, as amended, the OIG is required to report to Congress semiannually regarding audits that remain unresolved after 6 months from the date of report issuance.

Information contained in this report may be subject to public disclosure. Please advise us of any sensitive information in this report that you recommend be withheld.

If you have any questions or wish to discuss our observations, please contact me at (865) 633-7373 or Rick C. Underwood, Director, Financial and Operational Audits, at (423) 785-4824. We appreciate the courtesy and cooperation received from your staff during the audit.



David P. Wheeler
Assistant Inspector General
(Audits and Evaluations)
ET 3C-K

MCC:BSC
Attachment
cc (Attachment):

TVA Board of Directors
Janda E. Brown, WT 7C-K
Susan E. Collins, LP 3A-C
William D. Johnson, WT 7B-K
Dwain K. Lanier, MR 3K-C
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Richard W. Moore, ET 4C-K
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OIG File No. 2015-15312

February 26, 2016

David P. Wheeler, ET 3C-K

REQUEST FOR COMMENTS - DRAFT AUDIT 2015-15312 - TVA'S ETHICS PROGRAM

TVA management has reviewed the report of the OIG's audit regarding TVA's Ethics Program and agreed with the findings. The Ethics team will develop and implement a plan to cultivate embedded ethics champions throughout TVA and to reinstate the Ethics Council no later than September 30, 2016.

Please let me know if you have any questions.



Sherry A. Quirk
Executive Vice President
and General Counsel
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