



United States Office  
Of Government Ethics

Report Number 09-019

## Highlights

### Model Practices

- Including ethics duties in the position descriptions of the DAEO, ADAEO, Support Specialist, paralegals, and attorneys.
- Developing standard operating procedures for the administration of the ethics program to ensure the continuity of the program in the event of turnover in the ethics staff.
- Administering and ethics program self-assessment.
- Using standard review sheets to ensure consistency in the review of financial disclosure reports and appropriate communication among reviewers.
- Using tracking systems in the management of the financial disclosure systems.
- Using a tracking system for recusals executed by employees.
- Providing in-person training to new employees.
- Providing ethics training to contractors.
- Maintaining a database to track initial ethics orientation information for new employees.
- Providing annual ethics training to all Commission employees.
- Using a system to record and track the ethics counseling provided to employees.

If you have any comments or would like to discuss this report, please contact Dale Christopher, Associate Director, Program Review Division, at 202-482-9224 or [dachrist@oge.gov](mailto:dachrist@oge.gov)

# Ethics Program Review Federal Energy Regulatory Commission

September 2009 Report

## Executive Summary

The United States Office of Government Ethics (OGE) has completed its review of the ethics program at the Federal Energy Regulatory Commission (the Commission). 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 as set forth in relevant laws, regulations, and policies, and (2) ethics-related systems, processes, and procedures for administering the program.

OGE identified several model practices that the Commission has implemented related to program administration, financial disclosure, and ethics training and counseling.

This report has been sent to the Commission's DAEO and the Department of Energy Inspector General.



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## Ethics Program Review

# Federal Energy Regulatory Commission

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## 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.

### 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 as set forth in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures 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 Federal Energy Regulatory Commission (the Commission) focused on the elements listed below.

- Program structure
- Financial disclosure systems
- Ethics training
- Ethics counseling
- Supplemental regulation
- Enforcement of ethics laws and regulations
- Travel payments from non-Federal sources

OGE's review focused on the ethics program at the Commission's headquarters. The on-site fieldwork was conducted in March 2009.

## Program Elements

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

### PROGRAM STRUCTURE

The Commission's ethics program is administered within the Office of General Counsel, General and Administrative Law (GAL). The Associate General Counsel serves as the Designated Agency Ethics Official (DAEO) and the Deputy Associate General Counsel serves as the Alternate DAEO (ADAEO). A Supervisory Legal Support Specialist (Support Specialist) is involved in the day-to-day administration of the ethics program. Additionally, 2 paralegals and 10 attorneys work part-time in ethics. During OGE's review, the Commission's DAEO retired. The Commission is making arrangements to fill the position.

OGE found that ethics duties are included in position descriptions of the DAEO, ADAEO, Support Specialist, paralegals, and attorneys. OGE considers the inclusion of ethics duties in the position descriptions of ethics officials to be a model practice.

#### Succession Plan

Succession planning serves to maintain the consistent administration of an ethics program in the event of turnover in ethics staff. One aspect of succession planning is the development of standard operating procedures for program administration.

GAL created comprehensive procedures for administering the Commission's ethics program. The procedures should help ensure the continuity of the ethics program in the event of turnover in the ethics staff.

#### Self-Assessment

OGE encourages agencies to use self-assessment as a tool to evaluate their ethics programs. Self-assessments help ethics officials improve the efficiency of their programs by identifying areas of concern. GAL conducted a self-assessment of its internal controls for providing ethics advice, accepting travel reimbursement, and administering its financial disclosure system. The self-assessment revealed that GAL had a high degree of coordination with other offices within the Commission. The self-assessment also found that GAL instituted various systems to track the timeliness and completion of tasks such as financial disclosure filing and review and that GAL maintains sufficient review mechanisms to ensure the accuracy and effectiveness of its advice to its employees.

OGE considers the development of standard operating procedures and the administration of an ethics program self-assessment to be model practices.

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### 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).

#### General Comments

OGE's review found that the Commission's ethics officials conducted a thorough review of the public and confidential financial disclosure reports for conflicts of interest. The Commission ethics officials used standard review sheets to ensure consistency in the documentation and conflict of interest analysis of each financial disclosure report reviewed. They also utilized systems to track the dates of submission, review, and certification of the reports. OGE considers the use of standard review sheets and tracking systems in the management of the financial disclosure system to be model practices.

OGE's review also found that one termination report and a few new entrant reports were filed late. Timely submission of financial disclosure reports allows ethics officials to more readily identify and resolve real or potential conflicts of interest, protecting both employees and the Government.

At the time of OGE's review, the Commission's ethics officials recently established a new process in which the Human Resources office (HR) would notify GAL weekly of any employees who entered into or departed from a covered position, allowing for the timely identification of new entrant and termination financial disclosure report filers.

#### Written Procedures

Written procedures ensure consistency and accountability in the collection, review, and certification of financial disclosure reports. The Commission has comprehensive written procedures for the administration of its public and confidential financial disclosure systems as required by section 402 (d)(1) of the Ethics in Government Act.

#### Public Financial Disclosure System (SF 278)

A Commission database called *Paralegal Reports* is used to track the status and assignment of reports. The *Paralegal Reports* database also tracks the submission date of reports

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by filers, filing extensions granted to filers, and the receipt of the reports for certification by the DAEO.

GAL attorneys review all reports and the DAEO certifies them. The reviewers use a prohibited sources list to conduct a substantive review of the reports for conflicts of interest. A review sheet called *Financial Disclosure Report: Conflict of Interest Required Follow-Up* is attached to the reports for use by reviewers to ensure consistency and appropriate communication. The review sheet contains the filer's name, the reviewer's name, the date the report was received, the date the review was started, the dates the filer was contacted for additional information, and any required actions to resolve potential conflicts of interest.

To evaluate the filing, review, and certification of public reports at the Commission, OGE examined 44 of 95 public reports required to be filed by Commission employees in 2008. The following is a summary of OGE's examination.

### Type of Report

- 35 annual reports
- 8 new entrant reports
- 1 termination report

44 total

### Filing Timeliness

- 41 reports were filed timely.
- 2 new entrant reports were filed late.
- 1 termination report was filed late.

44 total

### Review/Certification Timeliness

- All 44 reports were reviewed and certified timely.

### Quality of Review

Written comments on reports and review sheets, documentation in files, and conversations with ethics officials indicated that the public financial disclosure reports underwent a thorough review. OGE identified minor technical errors on some of the reports such as missing dates of appointment and termination.

### Confidential Financial Disclosure System (OGE Form 450)

The Support Specialist tracks the status and assignment of reports to reviewers from the *Paralegal Reports* database. The *Paralegal Reports* database also tracks the submission date of

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reports by filers, filing extensions granted to filers, and the receipt of reports for certification by the DAEO.

GAL attorneys review all reports. The reviewers use a prohibited sources list to conduct a substantive review of the reports for conflicts of interest. As described under the Public Financial Disclosure System section of this report, all reviewers use the review sheet *Financial Disclosure Report: Conflict of Interest Required Follow-Up* to ensure consistency in the review of the reports and appropriate communication among reviewers.

To evaluate the confidential financial disclosure system at the Commission, OGE examined 58 of 546 confidential reports required to be filed by Commission employees in 2008. The following is a summary of OGE's examination.

### Type of Report

- 46 annual reports
- 12 new entrants

58 total

### Filing Timeliness

- 54 reports were filed timely.
- 4 new entrant reports were filed late.
- 1 annual report was filed late.

58 total

### Review/Certification Timeliness

- All 58 reports were reviewed and certified timely.

### Quality of Review

Written comments on reports and review sheets, documentation in files, and conversations with ethics officials indicated that the confidential financial disclosure reports underwent a thorough review. OGE identified minor technical errors in some of the reports such as unchecked boxes for type of report.

## SUPPLEMENTAL STANDARDS

The Commission's supplemental standards of ethical conduct set forth at 5 CFR part 3401 prohibit an employee and the spouse or minor child of an employee from acquiring or holding any securities of: a natural gas company, an interstate oil pipeline, a hydroelectric licensee or exemptee, a public utility, any electric utility engaged in the wholesale sale or transmission of electricity or having obtained an interconnection or wheeling order under Part II of the Federal Power Act, or the parent company of any of these entities.

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Additionally, the Commission's supplemental standards require employees, other than special Government employees, to obtain written approval from the DAEO through normal supervisory channels before engaging in outside employment with any person who is a "prohibited source" as defined at 5 CFR § 2635.203(d).

### Matters from the Previous Review

OGE conducted an ethics program review at the Commission in 2005. In the report on the review dated May 26, 2005, OGE recommended the Commission evaluate if the prohibition and waiver elements of the supplemental regulation were necessary to ensure the integrity of the Commission's ethics program and, if so, begin consistently enforcing the prohibition on holding certain securities and, as appropriate, granting written waivers. Otherwise, the Commission was advised to remove these elements from the supplemental regulation and/or, with the approval of OGE, amend the regulation accordingly to conform to the current practice of not granting waivers and allowing employees to keep prohibited financial interests if they agreed to execute a recusal to comply with the supplemental standards.

The Commission decided to maintain their supplemental standards and start a prospective program of granting written waivers where appropriate. The employees would also be required to sign a written recusal in accordance with 5 CFR § 3401.102(a).

### Recusal and Waiver System

During its on-site fieldwork, the OGE review team examined all recusals accompanying public and confidential financial disclosure reports in the reviewed sample. OGE found that all filers who reported financial interests that were listed on the prohibited securities list executed recusals and were granted written waivers from the DAEO that permitted them to keep their prohibited holdings.

Employees who execute recusals are required to give a copy of the recusals to their supervisors. Additionally, a paralegal tracks all waivers and recusals granted to employees in an MS-Access database called *Recusals- Stock Waivers*. OGE considers the use of a tracking system for recusals and waivers to be a model practice.

### Outside Employment

The OGE review team identified nine instances of outside employment reported on the sample of public and confidential financial disclosure reports examined. The OGE review team compared the outside employment reported against the Commission's prohibited sources list which they call "prohibited securities list" and found that none of the outside employment reported involved a prohibited source and therefore did not require prior written approval from the DAEO. Nonetheless, one public filer requested a recusal from all proceedings with the Commission while seeking employment opportunities outside of the agency.

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### ETHICS AGREEMENTS

If potential or actual conflicts of interest exist, public and confidential financial disclosure filers may be required to enter into ethics agreements. Generally, employees entering into ethics agreements are required to comply with those agreements within three months of the agreement or of Senate confirmation, if applicable. *See* subpart H of 5 CFR part 2634.

Four Presidentially-appointed, Senate-confirmed (PAS) employees from the Commission entered into written ethics agreements in 2006 and 2007. In one instance, a PAS employee failed to fully comply with his ethics agreement in a timely manner. The matter was addressed in consultation with OGE. After this incident, the Commission's ethics officials established a practice of including in all PAS employee ethics agreements the 90-day (three-month) compliance requirement when a divestiture is needed to resolve conflicts of interest. Also, upon confirmation of the PAS employee, the DAEO or ADAEO, and the attorney who reviewed the SF-278 for the PAS employee and drafted the ethics agreement, will meet with the PAS employee to ensure awareness about the ethics agreement. Additionally, the Commission's ethics officials will make multiple reminders to the PAS employee, in writing, to ensure compliance with all ethics agreements.

### 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.

#### Training Plans

The Commission provided documentation, recorded in August 2008, detailing plans for 2008 annual ethics training. The Commission developed an annual ethics training plan for 2009 prior to OGE's on-site fieldwork in March 2009. OGE reminds the Commission to continue the development of annual ethics training plans by the beginning of each calendar year, 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 (IEO). 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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The Commission exceeds the minimum IEO requirement by providing an in-person IEO to all new employees. Although not required, contractors are provided the opportunity to attend IEO. OGE considers the in-person training of new employees and contractors to be a model practice and encourages the Commission to continue this practice.

The IEO for non-PAS employees, provided weekly by attorneys from GAL, consists of a PowerPoint presentation and material that cover ethical principles, conflict of interest, the Commission's supplemental standards, and the Standards. In addition, attendees are provided with a bound Employees Ethics Manual, which includes:

- the Standards;
- the Commission's supplemental standards;
- information on financial disclosure filing requirements;
- information on bribery, graft, and conflict of interest;
- the Hatch Act; and
- the names, titles, office addresses, and telephone numbers of the ethics officials.

Attendees are also provided a laminated ethics office contact card with the names and phone numbers of ethics officials. Attendees are required to sign acknowledgements of receipt of IEO that are filed in GAL. GAL maintains a database that tracks IEO of new employees and contractors including, entrance on duty date, IEO date, position level, and employee filing status. OGE considers the use of a system to track IEO a model practice.

PAS employees receive one-on-one IEO from the DAEO or ADAEO. According to the Commission's ethics officials, IEO was provided to all new employees who began work at the Commission in 2008.

### 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 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 (Principles),
- 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).

Annual training is mandatory for all Commission employees, not just public and

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confidential filers, as directed by the Commission's Chairman. According to the Commission's ethics officials, all employees received annual ethics training in 2008. OGE considers the training of all employees to be a model practice and encourages the Commission to continue this effort.

In 2008, the Commission provided employees with interactive computer-based training. During the training season, GAL ensured that there was an ethics official assigned and available to respond to questions regarding annual training.

The Commission's 2008 annual ethics training included a review of the following topics:

- the Principles,
- the Standards,
- the Commission's 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).

Completion of training is tracked electronically. GAL coordinates with the Commission's information technology office and HR to ensure that all employees complete annual ethics training.

### 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.

OGE reviewed a sample of 25 pieces of memorialized counseling rendered by the Commission's ethics officials. The counseling involved gifts, post-employment, impartiality, outside employment, misuse of position, non-Federal sources of travel, and the Hatch Act. OGE found the counseling to be complete, accurate, and consistent with applicable statutes and regulations.

### Tracking System

All ethics counseling dispensed by GAL attorneys (including via telephone, email, and memorandum) is memorialized in writing, documented in the *GAL Assignments Database*, and

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given an assignment number. The database tracks and is searchable by the assignment number, name of the employee who received counseling, and the subject of the counseling.

The *GAL Assignments Database* has a feature under the “notes” tab that has limited capacity to store the actual written counseling provided. Most copies of written counseling are stored in a file room. If an attorney wishes to see a copy of prior written counseling provided to an employee on a particular subject, the attorney would obtain the assignment number from the *GAL Assignments Database* and request a paralegal to pull the piece of written counseling from the file room using the assignment number. OGE considers the use of a system to record and track the ethics counseling provided to employees to be a model practice.

### ENFORCEMENT

The DAEO is to ensure that (1) information developed by internal audit and review staff, the Office of the Inspector General (OIG), 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).

The Commission currently uses the services of the Department of Energy’s OIG. According to data reported to OGE on the Commission’s 2008 Agency Ethics Program Questionnaire, there were no potential violations of the criminal conflict of interest statutes referred to the Department of Justice (DOJ) in 2008. There was one disciplinary action taken based on a violation of the Standards during that time.

The ADAEO stated that he, the DAEO, the General Counsel, and the Commission’s Executive Director have the authority to make referrals to DOJ and concurrently notify OGE of such referrals. OIG representatives stated that their office is responsible for conducting investigations of alleged ethics violations and, if an alleged violation is covered by the criminal conflict of interest statutes, would notify OGE of any referrals to DOJ.

GAL does not communicate with the OIG frequently. OIG representatives were not familiar with GAL. The review team provided the ADAEO with a sample of a memorandum of understanding between an agency and the OIG to facilitate communication between each office in the event an ethics violation occurs.

### 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 to OGE of travel payments from non-Federal sources in excess of \$250. *See* 31 U.S.C. § 1353.

The Commission has comprehensive written procedures to implement 31 U.S.C. § 1353. To evaluate the Commission’s compliance with the requirements of 31 U.S.C. § 1353 and its

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written procedures, the review team examined five travel payments in excess of \$250 accepted by employees on behalf of the Commission for the period covered by OGE's review. The review team found that comprehensive conflict of interest analyses were performed prior to the acceptances of each payment.

All of the semiannual reports submitted to OGE covering the period from October 1, 2007 through September 30, 2008 were submitted in a timely manner.

### Summary

OGE's review identified several model practices that the Commission has implemented. The model practices include:

- including the ethics duties of the Commission's DAEO, ADAEO, Support Specialist, paralegals, and attorneys in their position descriptions;
- developing standard operating procedures for the administration of the ethics program to ensure the continuity of the program in the event of turnover in the ethics staff;
- administering an ethics program self-assessment;
- using standard review sheets to ensure consistency in the review of financial disclosure reports and appropriate communication among reviewers;
- using tracking systems in the management of the financial disclosure systems;
- using a tracking system for recusals executed by employees;
- providing in-person training to new employees;
- providing ethics training to contractors;
- maintaining a database to track IEO information for new employees and contractors, including entrance on duty date, IEO date, position level, and employee filing status;
- providing annual ethics training to all Commission employees; and
- using a system to record and track the ethics counseling provided to employees.

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



### PRD ROUTING/APPROVAL SHEET

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MTI	KSR	6/2	changes made
CMG	MTI	6/9	All good to go!
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