



United States Office
Of Government Ethics

Report Number 09-003

Highlights

OGE Recommends

- The Foundation provide annual ethics training to all SGEs in accordance with 5 CFR § 2638.705(a).
- The Foundation make a formal written determination as to the status of the scholarship review panel readers based on the provisions of 18 U.S.C. §202(a)
- The Foundation create written procedures for the public financial disclosure system pursuant to section 402 (d)(1) of the Ethics in Government Act.
- The Foundation create an annual training plan in accordance with 5 CFR § 2638.706.

OGE Suggests

- The Foundation increases awareness among employees of the DAEO's availability to provide ethics advice.

If you have any comments or would like to discuss this report, please contact Dale Christopher, Associate Director for Program Reviews, at 202-482-9224 or dachrist@oge.gov

Ethics Program Review Barry M. Goldwater Scholarship and Excellence in Education Foundation

January 2009 Report

Executive Summary

The Office of Government Ethics (OGE) has completed its review of the ethics program at the Barry M. Goldwater Scholarship and Excellence in Education Foundation (Foundation). 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 in place for administering the program.

To enhance the Foundation's ethics program, OGE makes four recommendations. The recommendations relate to the Foundation's ethics training program, public financial disclosure system, and scholarship review panel.

OGE also suggests that the Foundation increase awareness among employees of the Designated Agency Ethics Official's (DAEO) availability to provide ethics advice.

This report has been sent to the Foundation's DAEO. OGE will follow-up with the Foundation within six months from the date of this report's issuance.



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Ethics Program Review

Barry M. Goldwater Scholarship and Excellence in Education Foundation

January 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 Barry M. Goldwater Scholarship and Excellence in Education Foundation (Foundation) focused on the elements listed below.

- Program structure
- Special Government employees
- Public financial disclosure system
- Ethics training
- Ethics counseling
- Travel payments from non-Federal sources

OGE's onsite fieldwork was conducted at the Foundation in June 2008.

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Program Elements

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

PROGRAM STRUCTURE

The Foundation's ethics program is administered exclusively by the Executive Secretary who is also the Designated Agency Ethics Official (DAEO). At the time of OGE's review the Foundation had not appointed an Alternate DAEO (ADAEO) in accordance with 5 CFR § 2638.202(b). The review team advised the DAEO of the requirement to appoint an ADAEO. Subsequently, the DAEO, as the Foundation's Executive Secretary, appointed his assistant as the ADAEO.

SPECIAL GOVERNMENT EMPLOYEES

A special Government employee (SGE) is defined in 18 U.S.C. § 202(a) as "an *officer or employee...* who is retained, designated, appointed, or employed" by the Government to perform temporary duties, with or without compensation, for not more than 130 days during any period of 365 consecutive days. Accordingly, SGEs are Government employees for purposes of certain conflict of interest laws.

The Foundation is directed by the Board of Trustees (Board) which is comprised of 13 members. As outlined in 20 U.S.C. § 4703(b), the Board includes two members from the Senate, two members from the House of Representatives, and the Secretary of Education. The remaining eight members are appointed by the President, by and with the advice and consent of the Senate.

In 1995, the Office of General Counsel (OGC) for the Department of Education (Education) issued an ethics opinion in which it determined that the eight members of the Board who are appointed by the President by and with the advice and consent of the Senate are SGEs. However, the opinion stated that the members are excluded from the financial disclosure reporting requirement because the duties of their positions made remote the possibility that they would be involved in any real or apparent conflict of interest, in accordance with 5 CFR § 2634.906(a).

Although a determination has been made by Education's OGC that the Board's SGEs are not required to file financial disclosure reports, as SGEs they are required to receive annual ethics training. Currently, the DAEO does not provide annual ethics training to the Board's SGEs. OGE recommends that the DAEO provide annual ethics training to the Board's SGEs in accordance with 5 CFR § 2638.705(a).

Scholarship Review Panel

Once a year the Foundation uses the services of a contractor, American College Testing (ACT), to appoint a panel of 18 readers to review nominations for the Foundation's scholarships and to recommend scholarship awards. The readers are deans of sciences or college administrators at various institutions. Ten of the readers have been on the panel since the

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Foundation's initial year and were appointed by the Foundation's original contractor, Educational Testing Service. The remaining eight readers are replacements for deceased original members of the panel that were appointed by ACT.

During OGE's review, the review team inquired about the employment status of the readers. The DAEO believes that the readers are ACT employees. The DAEO provided a memorandum from ACT outlining the services provided to the Foundation as well as details he believes establish an employment relationship between the readers and ACT. According to the memorandum, some of the services provided to the Foundation by ACT are: (1) providing a list of recommended readers to the President of the Foundation, (2) selecting the readers, (3) arranging and managing the selection meeting in Arizona, and (4) sending an invitation, on ACT letterhead, to the readers to participate on the panel. ACT staff controls the nomination reading process by instructing the readers on how to review the applications. The readers are supervised by ACT staff throughout the nomination review process. ACT also pays the \$300.00 honorarium directly to the readers. The readers can submit a W-9 and Expense Reimbursement Form directly to ACT. The readers are reimbursed by ACT for meals, transportation, and mileage to/from the airport, along with the honorarium.

Although the DAEO has provided OGE with a memorandum in support of his belief that the readers are employees of ACT, he has not made a formal determination of the readers' status. OGE recommends that the Foundation make a formal determination as to the status of the readers based on the provisions of 18 U.S.C. §202(a). OGE would be pleased to assist the Foundation in this endeavor.

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 in providing counseling to employees. *See* 5 CFR § 2634.104(b).

Written Procedures

The Foundation does not have written procedures for the administration of its public financial disclosure system as required by Section 402 (d)(1) of the Ethics in Government Act. Written procedures ensure consistency in the collection, review, and certification of financial disclosure reports. Additionally, written procedures assist reviewers in ensuring that information provided on the reports is appropriately analyzed. Moreover, written procedures are essential for

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a good succession plan. OGE recommends the Foundation create written procedures for its public financial disclosure system pursuant to Section 402 (d)(1) of the Ethics in Government Act.

Public Financial Disclosure System (SF 278)

The DAEO is the only public filer at the Foundation and his report is reviewed and certified by the Chairman of the Board. As the DAEO, his financial disclosure report is subject to review by OGE. The report is certified by the Director of OGE. The DAEO's 2007 report was submitted timely to OGE.

Confidential Financial Disclosure System (OGE form 450)

The Foundation does not currently have any employees who are required to file confidential financial disclosure reports.

ETHICS EDUCATION AND 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.

Initial Ethics Orientation

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

The review team verified that the Foundation's newest employee, who began work in November 2007, received initial ethics orientation as required by 5 CFR § 2638.703.

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., SGEs) 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

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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).

As previously noted in the “SPECIAL GOVERNMENT EMPLOYEES” section of this report, Foundation SGEs (the only employees required to receive annual ethics training at the Foundation) are not provided annual ethics training. OGE recommends that the DAEO provide annual ethics training to all SGEs.

The Foundation does not have an annual training plan that documents and describes the topics to be covered in the upcoming year. OGE recommends the DAEO create an annual training plan in accordance with 5 CFR § 2638.706.

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.

The DAEO did not render any ethics advice to Foundation employees during the period covered by OGE’s review. While OGE recognizes that the Foundation has a limited number of employees, we suggest that the DAEO increase awareness among employees of his availability to provide ethics advice.

ACCEPTANCE OF TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

An employee may accept payment of travel expenses from a non-Federal source 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.

The Foundation submitted travel reports to OGE covering the periods of October 1, 2006 through March 31, 2007; April 1, 2007 through September 30, 2007; and October 1, 2007 through March 31, 2008 in a timely manner. The report covering the period of April 1, 2007

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through September 30, 2007 was submitted late. All of the reports were negative reports, i.e., reported no payments, as the Foundation did not accept any travel payments from non-Federal sources during these periods.

Summary

To enhance the Foundation's ethics program, OGE makes one suggestion and four recommendations.

Suggestion

OGE suggests that the Foundation increase awareness among employees of the DAEO's availability to provide ethics advice.

Recommendations

1. Provide annual ethics training to all SGEs in accordance with 5 CFR § 2638.705(a).
2. Make a formal written determination as to the status of the scholarship review panel readers based on the provisions of 18 U.S.C. §202(a).
3. Create written procedures for the public financial disclosure system pursuant to section 402 (d)(1) of the Ethics in Government Act.
4. Create an annual training plan in accordance with 5 CFR § 2638.706.

The Foundation's DAEO is to advise OGE within 60 days of the specific actions the Foundation has taken or plans to take to address OGE's recommendations. OGE stands ready to assist the Foundation in implementing the recommendations, as well as other program initiatives that the Foundation may choose to undertake. OGE will follow-up with the Foundation's DAEO within six months from the date of this report's issuance.

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