

United States Office of Government Ethics

Compliance Division

Ethics Program Review

Recovery Accountability and Transparency Board

Results in Brief

The United States Office of Government Ethics (OGE) conducted a review of the Recovery Accountability and Transparency Board's (Recovery Board) ethics program in February 2013. Our review found that the Recovery board's ethics program is well administered and in substantial compliance with applicable laws, regulations, and policies.

Highlights

- The Recovery Board required *all* departing employees to meet with an ethics official for post-employment counseling.
- The Recovery Board sent a one-year follow-up letter to the former Chair to remind him of applicable post-employment restrictions.
- The Recovery Board's Chair exercises personal leadership in supporting the ethics program.

Contents

Objectives, Scope, and Methodology.....	2
Agency Background.....	3
Program Administration.....	4
Financial Disclosure.....	4
Education and Training.....	7
Advice and Counsel.....	8
Enforcement.....	9
Special Government Employees.....	9
1353 Travel Acceptances.....	10
Agency Comments.....	11

Objectives, Scope, and Methodology

OGE provides leadership for the purpose of promoting an ethical workforce, preventing conflicts of interest, and supporting good governance. 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. OGE evaluates the effectiveness of executive agency ethics programs pursuant to title IV of the Ethics in Government Act and 5 C.F.R. part 2638.

To assess the Recovery Board's ethics program, OGE examined a variety of documents provided by ethics officials during the review. These included confidential financial disclosure reports filed in 2012 and advice and counseling provided to employees in 2012 and 2013. OGE also

examined other documents previously submitted to OGE, including the agency's annual questionnaires for 2011 and 2012. In addition, members of OGE's Program Review Branch met with the Recovery Board's ethics officials to obtain additional information about the strengths and weaknesses of the agency's ethics program, clarify certain matters, and verify the accuracy of data collected.

Agency Background

In February of 2009, Congress passed and President Obama signed the American Recovery and Reinvestment Act of 2009 (the Act). The Act was designed to provide fiscal stimulus to the economy through a combination of tax cuts, benefit programs, grants, and contracts. The Recovery Board was established and empowered by Title XV of the Act to monitor the use of the funds made available, in order to prevent and detect fraud, waste, and abuse. The mission of the Recovery Board was subsequently broadened. The Education Jobs Fund Public Law Number 111-22 (2010), generally requires, in part, that the funds appropriated thereunder be subject to the same accountability and transparency terms and conditions as Recovery Act funds. The Consolidated Appropriations Act of 2012, Public Law Number 112-74 (December 23, 2011), grants the Recovery Board the authority to develop and test technology resources and oversight mechanisms to detect and remediate fraud, waste, and abuse in federal spending. The Disaster Relief Appropriations Act, 2013, Public Law Number 113-2 (January 29, 2013), requires the Board to develop and use information technology resources and oversight mechanisms to detect and remediate waste, fraud, and abuse in the obligation and expenditure of funds appropriated for purposes related to the impact of Hurricane Sandy.

Headquartered in Washington, D.C., the Recovery Board is led by 12 Inspectors General, or their representatives, from various federal executive-branch agencies. The Recovery Board's Chair is designated or appointed by the President as specified in Section 1522(a)(1) of the Recovery Act.¹ The current Chair was designated by the President on December 23, 2011 and continues to serve in her Presidentially-appointed, Senate-confirmed (PAS) position as the Inspector General of the Department of Education. The 11 other members are Inspectors General from the Departments of Agriculture, Commerce, Defense, Energy, Health and Human Services, Homeland Security, Interior, Justice, Transportation, Treasury, and the Treasury Inspector General for Tax Administration. These are also PAS positions.² According to the Recovery Board's Bylaws, the Chair and members, known collectively as the Governing Board, are expected to meet at least six times per year to conduct business.

The Governing Board has relied on a workforce of no more than 70 employees at any given time.³ Under the direction of the Chair, the Executive Director for the Recovery Board serves as the agency's Chief Executive Officer and is responsible for providing day-to-day leadership and direction to the agency's staff. The Recovery Board's workforce is made up of employees who

¹ The Vice-Chair is selected from among the 12 Board members.

² Although only 12 agency Inspectors General serve on the Recovery Board, a total of 28 federal agencies received Recovery monies, and 29 Inspectors General are involved in oversight of those agency spending programs.

³ OGE notes that at the time of our entrance conference in February 2013, the Recovery Board had a working staff of 62 employees.

are either appointed to the Recovery Board or who are detailed to the Recovery Board from other federal executive branch agencies. Contractor employees also help support the Board's mission.

Recovery Board Operations Will Be Extended For Two More Years

Pursuant to the Recovery Act, the Recovery Board was scheduled to terminate operations on September 30, 2013. However, due to an emergency aid plan for victims of Hurricane Sandy, the Recovery Board's operations will extend through September 30, 2015.⁴ The Recovery Board will develop and use information technology resources and oversight mechanisms to detect and remediate waste, fraud, and abuse within the Hurricane Sandy aid program. In overseeing Hurricane Sandy funding, the Recovery Board is expected to support Inspectors General, appropriate law enforcement entities, and others around the country.

Program Administration

The Recovery Board's Chair established the Recovery Board's ethics program within the Office of General Counsel (OGC). At the time of OGE's onsite examination, both the Designated Agency Ethics Official (DAEO), who was appointed to the position in January 2012, and the Alternate DAEO (ADAEO), who had previously served as the agency's DAEO from February 2009 to January 2012, were detailed to the Recovery Board from the U.S. Department of the Interior's Inspector General's (IG) Office. The DAEO, a Senior Assistant General Counsel, was responsible for the day-to-day management of the program and was physically located at the Recovery Board. The ADAEO was physically located at Interior serving as an Associate General Counsel within Interior's IG's office. OGE notes that the DAEO (appointed in January 2012) retired from federal Government service in May 2013.

Ethics staff turnover can create inherent risks for an agency's ethics program, including the inability to routinely comply with regulatory requirements due to a lack of experienced ethics officials. OGE believes the Recovery Board's ethics program was prepared for transition. The Chair appointed the General Counsel to be the Recovery Board's DAEO. The letter advising OGE of the appointment was received on June 7, 2013, in accordance with 5 C.F.R. § 2638.202(c). The current DAEO is responsible for managing the day-to-day operations of the program. The current ADAEO will continue to support the program and provide any needed assistance to the DAEO. OGE stands ready to provide expertise and advice to assist the new DAEO during this transition.

Financial Disclosure

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 this by disclosing publicly their personal financial interests by completing OGE Form 278. Title I also authorizes OGE to establish a confidential financial disclosure system for less senior executive

⁴ See, Disaster Relief Appropriations Act of 2013, Public Law Number 113-2 (January 29, 2013)

branch personnel in certain designated positions to facilitate internal agency conflict of interest review. OGE implements this authority by requiring the covered executive branch personnel to complete 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 assist agencies in administering their ethics programs and in providing counseling to employees. *See* 5 C.F.R. § 2634.104(b).

Written Procedures for the Financial Disclosure Program

OGE guidance implementing section 402(d)(1) of the Ethics in Government Act of 1978 (Ethics Act) requires executive branch agencies to develop written procedures for collecting, reviewing, evaluating, and where applicable making publicly available financial disclosure reports filed by the agency's officers and employees.⁵ Written procedures also help to provide for continuity and transparency within the ethics program. Written procedures can also provide ethics officials with the opportunity to assess its processes and implement improvements.

At the time of OGE's review, the Recovery Board did not have written procedures for administering its public and confidential financial disclosure systems. To assist the Recovery Board, OGE provided ethics officials with sample procedures. Prior to the conclusion of the review, written procedures for administering both the public and confidential financial disclosure systems had been developed. OGE found these procedures to comply with the requirements of the Ethics Act. In addition to these procedures, written procedures were also developed to reflect the current practices for administering other elements of the Recovery Board's ethics program. This should help the Recovery Board's new DAEO to maintain consistency and provide for continuity within the ethics program.

Public Financial Disclosure System

As noted, the Recovery Board is comprised of two types of employees: detailees from other agencies and appointees. The Recovery Board had four detailed employees who were required to submit a public financial disclosure report to their parent agency for review and certification in 2012. These four employees included the Board's Chair, the Executive Director, the Chief, Mission Support Services, and the DAEO. According to the DAEO, each report was examined for conflicts prior to being submitted to the filer's parent agency. The DAEO's report was examined by the ADAEO before it was submitted. Copies of all four reports are retained by the Recovery Board.⁶ OGE notes that, in accordance with 5 C.F.R. § 2634.602, the reports filed by the Chair and the DAEO are required to be forwarded to OGE for final review. The two reports not required to be forwarded to OGE were examined as part of the review of the Recovery Board's ethics program. The reports were filed, reviewed, and certified timely. OGE identified no substantive issues in its review of these two reports.

⁵ *See*, OGE's DAEOGram 09-03-92: Developing written procedures for the public and confidential financial disclosure systems.

⁶ The Chair remains an employee of the Department of Education and the DAEO, the Executive Director, and the Chief, Mission Support Service are detailed from the Department of the Interior.

Compensation for the Recovery Board's appointed employees is based on a non-standard pay structure. This pay structure allows the Recovery Board the discretion to administratively set the appointed employees' pay anywhere between \$1 and \$155,900 per year. During the 2012 annual filing cycle, seven appointed employees were required by the Recovery Board to file public financial disclosure reports. However, shortly after the 2012 filing cycle, it was determined that these employees' positions should no longer be covered positions for purposes of filing a public financial disclosure report and that incumbents should instead file confidential financial disclosure reports. This determination was made in consultation with the Chair and the General Counsel and with the concurrence of the former General Counsel and the former DAEO. The DAEO's decision was based on the guidance provided in OGE's 2007 DAEOGram, *DO-07-029: Determining the Public Financial Disclosure Requirements for Non-standard Pay Systems*. The DAEO explained that the initial decision that the seven appointed employees should file a public financial disclosure report was made while the Recovery Board was establishing itself and without consideration of OGE's guidance. OGE examined the factors involved in determining whether the seven appointees should be required to file public reports and how the Recovery Board came to its decision that they would not be required to file. OGE has accepted the Recovery Board's analysis and decision.

Confidential Financial Disclosure System

To evaluate the collection and review of the Recovery Board's confidential financial disclosure reports, OGE examined all 41 confidential reports that were required to be filed in 2012. Of the 41 reports, 26 were new entrant and 15 were incumbent reports. While OGE found the majority of these reports (59 percent) were filed after the February 15 filing deadline, all were certified timely. OGE also identified several technical reporting issues during its examination that the Recovery Board must be mindful of during future filing cycles. Based on assurances received from ethics officials, OGE is making no formal recommendations regarding these matters.

Recovery Board appointees who serve in positions whose incumbents are required to file a confidential report submit their reports to the DAEO for review and certification. Likewise, detailed employees who have been identified by the Recovery Board as required to file a confidential report also submit their reports to the DAEO for review and certification. Those detailed employees who are already confidential filers with their parent agencies are required to submit their reports to their respective agencies for review and certification.

In 2012, upon the recommendation of the Chair, ethics officials and the General Counsel were asked to conduct a review of all positions to determine whether additional employees should file confidential reports. The Chair's request was based on the fact that due to the Recovery Board's important mission and relative small staff, a significant portion of Recovery Board employees are required, in the course of their duties, to support the agency's oversight efforts and/or procurement processes. Based on this review, ethics officials increased the number of employees required to file a confidential report with the Recovery Board from 15 to 41 filers. The Chair also instructed that ethics officials start collecting copies of confidential reports filed by detailees who are required to file with their parent agencies and to have the filer's supervisors conduct an intermediate review. Affected employees were directed to submit confidential reports in July 2012.

Leadership support is critical to maintaining a viable ethics program, for employees as well as for the ethics officials who are responsible for administering the program on behalf of the agency. Therefore, it is important for agency leaders to become involved by exercising their personal leadership in maintaining and carrying out the agency's ethics program.

See 5 C.F.R. § 2638.202(a). This involvement helps to better coordinate and manage an ethics program. OGE views the Chair's leadership involvement in the ethics program, which resulted in a more appropriate application of the filing criteria, to be a model agency practice.

Model Agency Practice

OGE identifies model practices and shares them when it appears they may benefit an agency's ethics program. The following is a model practice OGE noted the Recovery Board implemented to enhance its ethics program:

- The Recovery Board Chair exercised personal leadership in directing ethics officials to conduct a review of all positions held at the Recovery Board to determine whether additional employees should file confidential reports to support the agency's oversight efforts and/or procurement processes.

Education and Training

OGE found the Recovery Board's education and training program to exceed the minimum training requirements found at subpart G of 5 C.F.R. 2638. The Recovery Board provides in-person initial ethics orientation (IEO) and offers in-person annual ethics training to all employees. The Recovery Board also meets the requirements for documenting its annual ethics training plan.

Initial Ethics Orientation

Agencies must provide new employees IEO that includes the Standards of Ethical Conduct for Employees of the Executive Branch (the Standards), any agency supplemental standards, contact information for the agency's ethics officials, and one hour to review the materials. This training must be provided within 90 days from the time an employee begins working for an agency. *See* 5 C.F.R. § 2638.703.

The Recovery Board exceeds OGE's IEO requirements by providing all new appointed employees with in-person training. OGE was advised that these initial ethics orientations are usually conducted once every two months or whenever the need arises. In addition to in-person briefings, new employees are also provided with a copy of the agency's Ethics Guide for Employees of the Recovery Accountability and Transparency Board (Ethics Guide) which covers the ethics laws and regulations that most often affect Recovery Board employees. The Ethics Guide was also available on the Recovery Board's shared drive. Training completion is tracked via sign-in sheets. OGE examined the sign-in sheets signed by new employees in 2012 and determined that all 11 new employees who were required to receive IEO received the training.

Annual Ethics Training

Agencies are required to provide covered employees with annual ethics training. The training must include a review of the Principles, the Standards, any agency supplemental standards, the Federal conflict of interest statutes, and the names, titles, office address, and telephone numbers of the DAEO and other agency ethics officials available to advise the employee of ethics issues. *See* 5 C.F.R. § 2638.704 and 5 C.F.R. § 2638.705. Annual ethics training is a vital component of an agency's ethics program and is intended to assist employees in carrying out their official responsibilities in a manner consistent with ethics-related statutes and regulations. Additionally, annual training helps to prevent violations and maintain the public's confidence that Government officials act impartially and free of conflicts of interest.

The Recovery Board exceeds OGE's annual training requirement by offering in-person training to all employees, appointed and detailed and regardless of whether they are required to file a financial disclosure report. Since the parent agency of a detailed employee is ultimately responsible for ensuring that this type of employee receives all requisite ethics training, OGE views providing ethics training to detailed employees as a model practice. OGE was advised that when detailees attend the Recovery Board's annual ethics training, there is coordination with the detailees' parent agencies to ensure that their attendance is reported.

OGE confirmed that employees were provided with annual ethics training which met all content requirements. Various other ethics-related materials deemed pertinent by the DAEO are also provided. Additionally, OGE was advised that when in-person training can't be provided, the annual training requirement can also be satisfied by viewing OGE-produced ethics videos with an ethics official being available during and after viewing. In addition, confidential filers could also fulfill the annual training requirement by attending an in-person IEO session or by attending a year-in-review ethics refresher course held towards the end of the year.

Completion of annual ethics training is tracked through sign-in sheets or self-certification if the employee is trained via video presentation. The Recovery Board provided OGE with copies of the sign-in sheets that document employees' attendance.

Advice and Counsel

OGE found the Recovery Board's ethics advice and counseling services to meet the requirements of 5 C.F.R. § 2638.203(b)(7). OGE also found that records are kept, where appropriate, on advice rendered, as required by 5 C.F.R. § 2638.203(b)(8). Employees are encouraged to contact ethics officials via e-mail, telephone, or in-person. The majority of inquiries are made via e-mail or in-person. Responses are usually provided through formal memorandums.

To assess the advice provided by ethics officials, OGE examined all nine pieces of advice which had been memorialized in writing in 2012. The advice addressed matters ranging from gift acceptance to seeking employment and post-employment. In all nine instances the advice fully documented the specific issue and the basis for the advice being rendered. OGE also found the

advice examined to have been rendered timely, which is key in preventing conflicts of interest and other ethics violations from occurring.

OGE was advised that the post-employment restrictions are always mentioned during both initial and annual ethics training. In-person post-employment briefings are also provided to those departing from Federal service as part of the Recovery Board's employee check-out process. OGE examined a letter sent by the ADAEO to the former Recovery Board Chairman almost one year after he resigned from Federal service reminding him of the post-employment restrictions that were still applicable. OGE considers this to be a model agency practice.

Model Agency Practice

OGE identifies model practices and shares them when it appears they may benefit an agency's ethics program. The following is a model practice OGE noted the Recovery Board implemented to enhance its ethics program:

- The Recovery Board sent a one-year follow-up letter to the former Chair to remind him of post-employment restrictions that he was still subject to.

Enforcement

The Recovery Board's enabling legislation did not include the establishment of an Office of Inspector General (OIG). However, since the Recovery Board's leadership is comprised of Inspectors General, OGE is confident that relevant program elements will be carried out in the event an allegation of misconduct on the part of a Recovery Board employee warrants an investigation or referral to the Department of Justice.

OGE confirmed that no referrals of alleged violations of the conflict of interest laws were made by the Recovery Board to the Department of Justice in 2012. However, in the event a referral had been made, the DAEO would have been responsible for concurrently notifying OGE. In addition, there were no reported disciplinary actions taken based wholly or in part upon violations of the standards of conduct in 2012.

Special Government Employees

Pursuant to the Recovery Act, the Recovery Independent Advisory Panel (Panel) was created to provide recommendations to the Recovery Board regarding actions to prevent fraud, waste, and abuse of Recovery funds. According to the charter, Panel members, all of whom are special Government employees (SGE), are selected by the President on the basis of their expertise in economics, public finance, contracting, accounting, or other relevant field. Each one files a new entrant confidential report upon nomination and subsequently files new entrant confidential reports each year thereafter. The President announced four appointees to the Panel on March 5, 2010. This Panel is statutorily scheduled to terminate operations on September 30, 2013.

OGE was advised that in 2012 the Panel did not formally meet, take deliberative action, or offer substantive recommendations. Moreover, it was anticipated that the Panel would only perform administrative tasks in 2013. OGE was advised that the last time the panel conducted substantive work was in February 2011.

To assess the collection and review of financial disclosure reports filed by SGEs, OGE examined three of the four confidential reports that were required to be filed in 2012 and found them to have been filed, reviewed, and certified timely.⁷ OGE also determined that Panel members received ethics training addressing conflict-of-interest laws and ethics regulations when they first came on board and annually thereafter, in accordance with 5 C.F.R. § 2638.703 and § 2638.705. In 2012, however, it was acknowledged that annual training was not provided to members since the Panel performed only administrative tasks for the calendar year. While it is anticipated that the Panel will also not meet in 2013, as a precautionary measure, training materials were forwarded to Panel members on January 9, 2013. Panel members were requested to confirm by January 31, 2013 that they read the material.

1353 Travel Acceptances

Federal agencies may accept payments from non-Federal sources for travel, subsistence, and related expenses incurred on official travel under the authority of the General Services Administration regulation at 41 CFR chapter 304, implementing 31 U.S.C. § 1353. Semiannual reports of payments accepted under 31 U.S.C. § 1353 must be submitted to OGE by May 31 and November 30 of each year.

Although the Recovery Board allows its employees to accept payments on behalf of the agency from non-Federal sources for travel, subsistence, and related expenses incurred on official travel under 31 U.S.C. § 1353, gifts of travel to Recovery Board employees are rarely offered. In fact, the Recovery Board has not reported accepting any travel payments greater than \$250 per event from non-Federal sources on its last two semiannual reports forwarded to OGE covering the reporting periods October 1, 2011 through March 2012 and April 2012 through September 30, 2012. OGE confirmed that the Recovery Board forwarded to OGE their negative reports using the required GSA standard form (SF) 326 in a timely manner.

⁷ One member resigned from the Panel in 2012 before a report was required to be submitted.

**COMMENTS FROM THE RECOVERY BOARD CHAIR TO THE
OGE PROGRAM REVIEW REPORT**

Thank you for providing us with an opportunity to respond to the review undertaken by the Office of Government Ethics of the Recovery Accountability and Transparency Board (Recovery Board) ethics program. We are pleased that the review found the Recovery Board's ethics program is well administered and is generally in compliance with all applicable laws, regulations, and polices. We note that the review identified strengths of the Recovery Board's ethics program, to include certain model agency practices, as well as modest areas of improvement.

The Recovery Board will continue its efforts to promote an ethical workforce, prevent conflicts of interest, and support good governance in a manner consistent with the spirit and goals of ethics laws and regulations.