



United States Office  
Of Government Ethics

Report Number 09-005

## Highlights

### **OGE Recommends**

- The Commission draft annual ethics training plans in accordance with 5 CFR § 2638.706.

# Ethics Program Review Commission of Fine Arts

January 2009 Report

## **Executive Summary**

The United States Office of Government Ethics (OGE) has completed its review of the ethics program at the Commission of Fine Arts (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 found in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures for administering the program.

At the time of OGE's on-site fieldwork, the Commission had no written procedures to administer its financial disclosure systems. OGE recommended that the Commission draft written procedures to administer its financial disclosure systems in accordance with 5 U.S.C. § 402 d(1). During the course of the review, OGE provided the Commission's ethics officials with sample written procedures. The Commission has since developed written procedures to administer its financial disclosure systems.

The Commission has not developed annual ethics training plans. OGE recommends that the Commission draft annual ethics training plans in accordance with 5 CFR § 2638.706.

This report has been sent to the Commission's Designated Agency Ethics Official (DAEO). OGE will follow up on the recommendation with the Commission's DAEO within six months from the date of this report's issuance.



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## Ethics Program Review

# Commission of Fine Arts

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 Commission of Fine Arts (Commission) focused on the elements listed below.

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

The on-site fieldwork portion of the review was conducted at the Commission in June 2008.

## Ethics Program Review: Commission

### Program Elements

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

#### PROGRAM STRUCTURE

The Commission's ethics program serves 10 full-time employees and 7 Commission members. The Commission members are designated as special Government employees (SGEs). The Secretary serves as the Designated Agency Ethics Official (DAEO). The Assistant Secretary serves as the Alternate DAEO (ADAEO) and is closely involved in the administration of the ethics program. An administrative officer provides administrative support to the ethics program.

Executive Order 6166 of June 10, 1933, "Organization of Executive Agencies," creates a relationship between the Commission and the Department of the Interior (DOI). According to the ADAEO, as needs arise, the Commission calls upon DOI for services that would be inefficient for the Commission to administer. One of the services provided by DOI for the Commission is conducting briefings for new employees, which include providing initial ethics orientations.

#### 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).

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

The Commission has written procedures for administering its public financial disclosure system. *See* 5 U.S.C. § 402 d(1). The written procedures cover the collection, review, retention, and public availability of financial disclosure reports. Successful written procedures allow for consistent and uninterrupted administration of the public financial disclosure system.

To evaluate the Commission's public financial disclosure system, OGE examined the only public financial disclosure report required to be filed at the Commission in 2007 (that of the

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DAEO). This incumbent report was filed in a timely manner.<sup>1</sup> The report was reviewed in a timely manner by the ADAEO and was subsequently certified at OGE. The ADAEO explained that he is directly familiar with projects before the Commission and is confident that his review of the DAEO's report was thorough.

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

As with the public system, the Commission has written procedures for administering its confidential financial disclosure system. *See* 5 U.S.C. § 402 d(1).

To evaluate the confidential financial disclosure system at the Commission, OGE examined the only confidential financial disclosure report required to be filed at the Commission by a non-SGE in 2007 (that of the ADAEO). This annual report was filed in a timely manner, and was reviewed and certified in a timely manner by the DAEO. The DAEO explained that he is directly familiar with projects before the Commission and is confident that his review of the ADAEO's report was thorough.

### Special Government Employees

OGE examined all six of the confidential reports required to be filed by the seven SGE members of the Commission in 2007. The ADAEO explained that one Commissioner had not been taking part in the Commission's meetings in 2007 and had subsequently not been reappointed, thus the ADAEO did not require that Commissioner to file a report in 2007.

The following is a summary of OGE's examination of the six confidential financial disclosure reports filed by the Commissioners:

#### Filing Timeliness

- All 6 reports were filed in a timely manner.

#### Review Timeliness

- All 6 reports were reviewed in a timely manner.

#### Certification Timeliness

- All 6 reports were certified in a timely manner.

#### Quality of Review

Before each Commission meeting, ethics officials review the meeting agenda in order to identify potential conflicts of interest. The ethics officials explained that they are thoroughly

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<sup>1</sup>The Commission's ADAEO granted the DAEO a 45-day filing extension.

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familiar with the holdings of the Commissioners and feel confident that they are able to identify potential conflicts of interest and to suggest recusals as necessary.

The OGE review team noted minor technical errors on the reports such as filers not checking the SGE box, over-reporting of a personal residence, and signing in the wrong box.

### **ETHICS TRAINING**

An ethics education and 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.

The Commission's ethics officials have not created annual ethics training plans. OGE recommends that the Commission draft annual ethics training plans each 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 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.*

To meet the initial ethics orientation requirement, within 90 days from the time an employee begins work at the Commission, the employee is provided with:

- the Standards;
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials;
- OGE's *Compilation of Federal Ethics Laws*;
- a Department of the Interior (DOI) booklet titled, *Ethics Guide for Department of the Interior Employees*; and
- at least one hour of official duty time to review the items described above.

New Commission employees receive new employee briefings from DOI, which include an initial ethics orientation. The ADAEO referred OGE to an Ethics Specialist at DOI in order to allow the review team to better understand the initial ethics orientation process. According to the Ethics Specialist, new employees sign an acknowledgement document that certifies that they

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understand that they have one hour of official duty time to read the initial ethics orientation materials provided. The acknowledgement documents are included in the employees' personnel files and are used to track completion of initial ethics orientation. According to the Commission's ethics officials, initial ethics orientation was provided to the two new employees who began work at the Commission during 2007.

When Commissioners are appointed by the President, the ADAEO prepares a binder with useful information about the Commission. The binder, which is updated each year, includes the Standards, a memorandum titled *Ethics Policy Summary*, and contact information for the Commission's ethics officials. This information constitutes initial ethics orientation for new Commissioners and is provided before the new Commissioner takes part in any Commission meetings.

### Annual Ethics Training

Public financial disclosure filers are required to receive verbal annual ethics training each year. *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 annual ethics training at least once every three years and may receive written annual 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;
- 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).

To meet the annual ethics training requirement, covered employees are provided:

- the Standards;
- OGE's *Compilation of Ethics Laws*; and
- the Department of the Interior's *Ethics: An Employee Guide*.

In 2007, the DAEO and ADAEO received the required annual ethics training. Additionally, the Commissioners receive an updated binder that contains the Standards, a memorandum titled *Ethics Policy Summary*, and contact information for the Commission's ethics officials. This information constitutes annual ethics training for the Commissioners.

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### **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.

To meet the counseling requirements at the Commission, ethics-related counseling is provided to employees primarily by the DAEO and ADAEO. To evaluate the counseling provided, OGE examined a sample of written determinations rendered during the period covered by the review. The counseling was primarily in the areas of gifts and outside activities. OGE found that the counseling rendered accurately addressed applicable statutes and regulations and was timely and consistent.

### **ENFORCEMENT**

The DAEO is required to ensure that (1) information developed by internal audit and review staff, the Office of the Inspector General, 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 has no Office of the Inspector General (OIG). The ADAEO explained that if the ethics office became aware of a potential violation of the criminal conflict of interest laws or of the Standards, they would contact their OGE desk officer. After considering the desk officer's advice, the ethics office may then refer the case to DOI's OIG for further investigation and possible referral to the Department of Justice (DOJ).

There were no criminal conflict of interest violations referred to the DOJ during 2007. During the same period, there were no substantiated violations of the Standards.

### **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.

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The Commission does not accept travel payments from non-Federal sources under the authority of 31 U.S.C. § 1353. However, reports of no payments are required to be submitted to OGE.

Three semiannual reports of no payments were submitted to OGE covering the period from October 1, 2006 through March 31, 2008. All of the semiannual reports were submitted using the appropriate SF 326 and were submitted to OGE in a timely manner.

### **Summary**

OGE found that the Commission was in need of written procedures to administer its public and confidential financial disclosure systems. During the course of the review, OGE provided the Commission's ethics officials with sample written procedures. The Commission has since developed written procedures to administer its financial disclosure systems. OGE also found that the Commission did not have annual ethics training plans for the period covered by this review.

### **Recommendation**

To enhance the Commission's ethics program, OGE recommends that the Commission:

- Develop annual ethics training plans each year in accordance with 5 CFR § 2638.706.

The Commission's DAEO is to advise OGE within 60 days of the specific actions the Commission has taken or plans to take on OGE's recommendation. OGE stands ready to assist the Commission in implementing this recommendation as well as other initiatives that the Commission may choose to undertake. OGE will follow up with the Commission in six months.

If you have comments or would like to discuss this report, please contact Dale A. Christopher, Jr., Associate Director, Program Review Division, at 202-482-9224. You may also contact Joseph E. Gangloff, OGE's Deputy Director, at 202-482-9220.