



U.S. Office of Government Ethics
Program Review Division

Ethics Program Review

Access Board

Report No. 12-26
January 2012

Results in Brief

The United States Office of Government Ethics (OGE) conducted a review of the Access Board’s ethics program in November 2011. The results of the review indicated that the Access Board’s ethics program generally appears to be in compliance with applicable laws, regulations, and policies.

Concerns

- Financial disclosure reports were not filed timely or, due to procedural shortcomings, lacked sufficient ethics office documentation to determine timeliness.

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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 has the authority to evaluate the effectiveness of executive agency ethics programs. See Title IV of the Ethics in Government Act and 5 CFR part 2638.

To assess the Access Board’s ethics program, OGE examined a variety of documents provided by ethics officials; other documents that the Access Board forwarded to OGE, including the annual questionnaire; and a sample of the Access Board’s public and confidential financial disclosure reports. In addition, members of OGE’s Program Review Division met with the ethics staff to discuss the strengths and weaknesses of the Access Board’s ethics program, seek clarification on issues that arose through the documentation analysis, and verify data collected.

Program Administration

The Office of General Counsel administers the ethics program. The General Counsel serves as the Designated Agency Ethics Official (DAEO) and the Deputy General Counsel serves as the Alternate DAEO. Both share responsibility for the day-to-day administration of the ethics program.

The Access Board has a staff of 26 full-time employees, including of the DAEO and Alternate DAEO. Additionally, the Access Board is governed by a 25 member board which consists of 12 ex officio Federal members from various departments and agencies and 13 members of the public who serve as special Government employees (SGE). The public members are appointed by the President, without Senate confirmation, to serve for four-year terms.

Financial Disclosure

Public Financial Disclosure

OGE examined both of the public financial disclosure reports required to be filed in 2011. Based on the filer signature date, the reports appear to have been filed in a timely manner; however, both public reports lacked the date of agency receipt. In accordance with 5 CFR § 2634.605(a), the date of receipt must be noted on the reports. Additionally, one of the public reports was certified more than 60 days after submission. No documentation was included with the report to indicate that the certifier was waiting on pending information from the filer. OGE recommends that Access Board ensures that the date of receipt is noted on all incoming financial disclosure reports. OGE also reminds the Access Board to include documentation with the reports when the certifier is waiting on pending information from the filer.

Confidential Financial Disclosure

OGE examined both of the confidential reports required to be filed by full-time Access Board employees. Both reports were submitted more than two months late. The DAEO indicated that the late filing was due to his failure to notify the filers of the filing deadline and that he had granted extensions for the reports. OGE recommends that the DAEO develop a process to remind filers of the filing deadline.

SGE Confidential Disclosure

OGE also examined the 13 new entrant confidential reports filed by public board member SGEs.¹ OGE noted that none of the reports contained the date of appointment of the filer. The

¹ According to Access Board's written procedures, "Public Board members are special Government employees and are appointed by the President for four-year terms, beginning on December 4th. Public Board members must file a confidential financial disclosure report before their initial appointment if required by [the] White House Personnel Office or otherwise within 30 days of their initial appointment to the Board, and by February 15th of each year thereafter. The DAEO indicated that incumbent public board members file follow-on new entrant reports each year for the duration of their terms.

DAEO indicated that due to the nature of the nomination process, it is difficult to determine the actual date of appointment of the board members. OGE is aware that the examined reports were filed by incumbent board members as follow-on new entrant reports, which are due on February 15th of each year. However, in order to be in compliance with 5 CFR § 2635.903(b)(1), OGE recommends that the Access Board create a system to determine the date that the board members officially enter Government service and enter that date on the new entrant reports.

Additionally, all of the reports were filed late. Six of the 13 reports were filed less than 30 days late. All but one of the remaining seven reports were filed more than 60 days late. The DAEO indicated that in some cases board member reports are not submitted until board meetings are convened. These reports should be submitted in advance of meetings in order to allow time for a meaningful conflicts analysis. OGE recommends that the Access Board ensure that in the future, incumbent board member reports are filed by the February 15th deadline.

Recommendations

- Ensure that the date of receipt is noted on incoming public financial disclosure reports.
- Develop a process to remind confidential filers of the filing deadline.
- Create a system to determine the date that board members officially enter Government service and enter that date on the new entrant reports.
- Ensure that incumbent board member reports are filed by the February 15th deadline.

Education & Training

The DAEO indicated that all covered employees received annual ethics training in 2010. The DAEO or Alternate DAEO provides an annual briefing to agency employees and written materials to SGE board members.

The DAEO indicated that both of the new employees required to receive initial ethics orientation (IEO) in 2010 did so. In-person IEO is provided to all incoming employees by either the DAEO or Alternate DAEO.

OGE's examination of the training materials found that both annual and IEO training met the relevant requirements.

Advice & Counsel

Advice and counsel is rendered verbally either in-person or over the phone. The DAEO indicated that due to the culture of the Access Board, no written records are necessary. While 5 CFR § 2638.203(b)(8) simply indicates that records of advice rendered should be kept "when appropriate," OGE reminds the DAEO that it would be advisable to consider keeping written records of advice rendered, especially for cases that are complex or involve board members. See OGE's DAEOgram, DO-05-019: Documenting Ethics Advice, for more information.

Enforcement

The Access Board reported no disciplinary actions based wholly or in part upon violations of the standards of conduct provisions (5 CFR part 2635) in 2010. There were also no disciplinary actions based wholly or in part upon violations of the criminal conflict of interest statutes (18 U.S.C §§ 203, 205, 207, 208, and 209), nor referrals to the Department of Justice of potential violations of the criminal conflict of interest statutes.

1353 Travel Acceptances

The Access Board submitted the required semi-annual reports of payments accepted from non-Federal sources to OGE in a timely manner. Access Board has an established process for approving requests for travel payments accepted from non-Federal sources.

Agency Comments

The Access Board provided one comment on the draft version of this report. That comment has been incorporated into this version.