

**United States Office of Government Ethics**

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Compliance Division

# Ethics Program Review

Appraisal Subcommittee

## Results in Brief

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The United States Office of Government Ethics (OGE) conducted a review of the Appraisal Subcommittee (ASC) ethics program in April, 2013. The results of the review indicated that the ASC must take steps to bring its ethics program into compliance with applicable laws, regulations, and policies.

### Concerns

- Ethics officials inadvertently failed to notify employees of their financial disclosure filing deadlines, resulting in all seven of the ASC’s annual financial disclosure filers submitting their reports beyond the filing deadline.
- Due to a similar deadline oversight, one of the ASC’s two new employees received initial ethics orientation beyond the required 90 days from starting work for the agency.

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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, 5 U.S.C. app. § 402, and 5 C.F.R. part 2638.

To assess the ASC's ethics program, OGE examined a variety of material covering 2012 that ASC provided to reviewers including the Agency Ethics Program Questionnaire, public and confidential financial disclosure reports, and ethics training provided to employees. Members of OGE's Compliance Division met with ASC ethics officials to verify data collected, clarify any issues identified during OGE's document analysis, and discuss ethics program operations in further detail.

## **Program Administration**

The Appraisal Subcommittee (ASC) is an independent agency that is a subcommittee of the Federal Financial Institutions Examination Council. The ASC was created pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 to oversee the real estate appraisal process as it concerns federally related transactions. The four general responsibilities of the ASC are:

- Monitor state requirements for certification and licensing of appraisers and registration and supervision of appraisal management companies;
- Monitor federally established requirements for state appraisals involving federally related transactions under their jurisdiction;
- Maintain a national registry of licensed and certified appraisers and appraisal management companies that perform appraisals in connection with federally related transactions; and
- Monitor and review the practices, procedures, activities, and organizational structure of the Appraisal Foundation.<sup>1</sup>

The ASC is comprised of seven committee members, designated by the heads of the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, Federal Housing Finance Authority, Consumer Financial Protection Bureau, and the U.S. Department of Housing and Urban Development. The ASC reviews each state's appraiser regulatory agency at least every two years.

The Chairperson of the ASC appoints an Executive Director to manage the day-to-day operations of the ASC's 12-person staff. The ASC's General Counsel serves as the Designated Agency Ethics Official (DAEO). The ASC's Management and Program Analyst serves as the ADAEO and performs ethics duties concurrently with financial and administrative responsibilities. The DAEO indicated that the ADAEO is expected to assume primary responsibility for the ethics program in 2013, pending reassignment of the non-ethics duties.

The ASC's "Ethics Policy" document provides a broad overview of ethics provisions including financial disclosure, education and training, and advice and counsel. Section 11.01 of the ASC Rules of Operation requires ASC officers and employees to abide by a code of ethics consistent with applicable law.

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<sup>1</sup> The Appraisal Foundation is private, non-profit educational organization.

## 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 publicly disclose their personal financial interests using the OGE Form 278. Title I also authorizes OGE to establish a confidential financial disclosure system, in which less senior executive branch personnel in certain designated positions may be required to complete the OGE Form 450. Financial disclosure serves to prevent, identify, and resolve conflicts of interest by providing for a systematic review of the financial interests of officers and employees. The financial disclosure reports assist agencies in administering their ethics programs and also assist in providing counseling to employees. *See* 5 C.F.R. part 2634.

### Written Procedures

Section 402(d)(1) of the Ethics in Government Act requires that each executive branch agency establish written procedures for collecting, reviewing, evaluating, and where applicable, making publicly available financial disclosure reports filed by the agency's officers and employees. The ASC's Ethics Policy document contains the agency's written procedures for financial disclosure. OGE's review of these procedures found they did not initially meet the statutory requirements for review, evaluation, and public availability of public financial disclosures. ASC ethics officials subsequently revised and expanded the procedures to meet these requirements during the course of the review and provided OGE reviewers with an ASC Policy document specific to the financial disclosure system. ASC ethics officials communicated this revised policy to all agency employees in May 2013.

### Public and Confidential Financial Disclosure

The ASC has two public and eight confidential financial disclosure filers. Both public filers are designated by statute. The DAEO designated the eight confidential filers based on the duties and responsibilities of their positions, in accordance with 5 C.F.R. § 2634.903. The ASC does not maintain a formal system for tracking the filing status of its employees due to the small size of the agency. The DAEO and ADAEO are familiar with new, existing, and departing agency employees and are able to keep current on which positions require financial disclosure filing.

The DAEO stated that the ASC's process is to provide email reminders to public and confidential financial disclosure report filers prior to each report's respective due date. Filers submit their reports via email or in hard copy. The DAEO contacts filers who have not submitted reports by the submission deadline requesting the report and, if necessary, contacts the filer's supervisor if filers remain delinquent. Reports filed electronically are printed in hard copy for retention by ethics officials. Upon receipt, the DAEO reviews each report for potential conflicts of interests and then certifies the report. Ethics officials file completed reports in a locked filing cabinet. The ADAEO controls keyed access to the filed reports. OGE verified no reports were retained beyond the six-year retention period.

The seven ASC committee members, who are designated by their home agencies, file financial disclosures with their respective agencies. The DAEO informed OGE that the ASC historically did not review committee members' financial disclosure reports for potential conflicts of interest. Following the interview, the DAEO established a notification system to ensure committee members' financial disclosure reports are requested from their respective agencies and reviewed for potential conflicts of interest prior to each committee meeting. The ASC formalized this process as part of its policy on financial disclosure.

The DAEO informed OGE reviewers that financial disclosure filing reminders were not sent to ASC employees until July 2012, beyond both the February 2012 (confidential) and May 2012 (public) annual financial disclosure due dates. *See* 5 C.F.R. § 2634.201(a) and 903(a). As a result, all seven of the ASC's annual financial disclosure filers submitted late reports. Additionally, filers were not followed-up with regularly by the DAEO, resulting in three annual filers not submitting reports until December 2012. Of the three ASC employees entering filing positions in 2012, two did not submit their report by the 30-day deadline. *See* 5 C.F.R. § 2634.903(b).

The DAEO indicated to OGE reviewers that the financial disclosure filing requirements were inadvertently overlooked as a result of the focus on other core responsibilities as the ASC's General Counsel. The DAEO expects transferring the day-to-day operation of the ethics program to the ADAEO will result in timely notification of and follow-up on reporting deadlines.

The DAEO noted that assets held in the appraisal industry could pose a conflict of interest risk if held by ASC employees, and financial disclosure reports are reviewed accordingly for those assets. OGE's review of the ASC's 10 financial disclosure reports found some reports missing asset names, asset incomes, or including assets with insufficient information to identify the particular type of holding. One report did not show any evidence of ethics office review or certification; this report was subsequently reviewed and certified after being identified by OGE reviewers.

OGE identified vulnerabilities in the financial disclosure component of the ethics program, possibly resulting from a combination of infrequent interactions with financial disclosure reports, a small number of financial disclosure filers, and the challenges of performing ethics duties concurrently with ethics officials' primary ASC responsibilities. ASC could benefit from developing detailed policies, procedures, and job-aids that provide sufficient direction to compensate for limited ongoing activity within the ethics program. Such documentation should be more specific than the broad ethics discussion found in the ASC's Ethics Policy and should particularly focus on identifying and meeting ethics program deadlines. ASC ethics officials could also benefit from financial disclosure training provided by OGE and more frequent consultation with OGE's Agency Assistance Branch. OGE therefore makes the following recommendations:

## Recommendations

- Develop a plan to address the vulnerabilities in the financial disclosure program. Include in the plan a mechanism for tracking filers, due dates, and submission dates; clear follow-up and escalation procedures if a filer is delinquent submitting a report; a reminder system to ensure timely filing, review, and certification of financial disclosures; and a reference list of assets posing potential conflicts of interest.
- Develop a plan to provide ethics officials with training on financial disclosure review and certification, including reviews of online training material and courses provided by OGE.

## **Education and Training**

### **Initial Ethics Orientation**

OGE regulation requires all new agency employees receive ethics official contact information along with the following material within 90 days of beginning work for an agency: (1) the Standards of Ethical Conduct for Employees of the Executive Branch (the Standards) and any agency supplemental Standards to keep or review; or (2) summaries of the Standards, any agency supplemental Standards, and the Principles of Ethical Conduct (the Principals) to keep. Employees must receive one hour of official duty time to review the material. *See* 5 C.F.R. § 2638.703.

According to the DAEO, the ASC does not have a formal procedure for providing new employees with initial ethics orientation. ASC ethics officials provide initial ethics orientation to new employees upon arrival. In 2012, two new employees received training that met the initial ethics orientation requirements. However, one of the two employees received training in excess of the required 90 days from beginning work for the agency. The DAEO indicated that the 90-day initial training deadline was overlooked, similar to the financial disclosure filing deadline, due to a focus on other agency responsibilities.

### **Annual Ethics Training Plan**

OGE regulations under 5 C.F.R. § 2638.706 require agencies to develop, at the beginning of each year, a written plan for annual ethics training. The plan must contain a brief description of the agency's annual training and include estimates of the number of employees who will receive verbal and written training. The annual training plan provided by the ASC did not meet either of these requirements. ASC ethics officials revised the annual training plan to incorporate the required estimates. ASC ethics officials also agreed to ensure the training plan was revised annually to reflect updated estimates and any changes to the brief description of annual training.

### **Annual Ethics Training**

OGE regulation requires all covered employees to receive annual ethics training consisting of a review of: (1) the Principles; (2) the Standards; (3) any agency supplemental Standards; (4) the

criminal conflict of interest statutes; and (5) ethics official contact information. Training length and delivery method vary by an employee's financial disclosure filing status. *See* 5 C.F.R. § 2638.704 and 705.

The DAEO currently provides covered ASC employees with in-person annual ethics training. The ADAEO will assume responsibility for delivering annual ethics training when the DAEO transitions primary day-to-day operations of the ethics program to the ADAEO in 2013, as previously noted. ASC employees who receive training sign an attendance roster to record their attendance. OGE reviewers verified the attendance roster contained all 10 covered employees' signatures. The content of ASC's annual ethics training met the established training requirements.

### Recommendation

- Develop a plan to address new employees' initial ethics orientation. Include in the plan a mechanism for tracking a new employee's start date, training completion date, and a reminder system to notify ethics officials prior to the training deadline if initial ethics orientation has not been completed.

### **Advice and Counsel**

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 C.F.R. § 2638.203. The DAEO may delegate to one or more deputy ethics officials the responsibility for developing and conducting the counseling program. *See* 5 C.F.R. § 2638.204.

The DAEO provides ethics advice and counsel to ASC employees. For complex ethics questions, the DAEO requests that employees submit their questions by email. Both the DAEO and ADAEO review ethics advice prior to its issuance to ASC employees. Employee questions and the advice provided by ethics officials are maintained in hard copy. When the ADAEO assumes primary responsibility for the ethics program, the DAEO confirmed to OGE reviewers that both ethics officials will resolve ethics questions.

ASC ethics officials issued no ethics advice and counsel in 2012 through formal letter, memorandum, or email. Due to the very infrequent nature of ethics-related questions at ASC, OGE suggests ASC ethics officials continue to collaborate on all ethics questions and consult with the Agency Assistance Branch, as needed, prior to issuing ethics counsel.

### **Enforcement**

The ASC reported 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) and no disciplinary actions based wholly or in part upon violations of the Standards (5 C.F.R. part 2635).

The ASC does not have an Office of Inspector General (OIG) or a memorandum of understanding with another agency's OIG to provide investigative services. The DAEO noted that there is some sharing of resources with committee members' agencies, and this would be considered if a potential criminal conflict of interest occurred. Because the ASC has never encountered a situation requiring investigation, OGE suggests that ASC ethics officials document possible investigative resources and proposed procedures to notify OGE if potential conflict of interest must be referred to the Department of Justice. *See* 5 C.F.R. § 2638.603.

### **1353 Travel Acceptances**

Federal agencies may allow employees to accept payments from non-Federal sources for travel, subsistence, and related expenses incurred on official travel under the authority of the General Services Administration (GSA) regulation at 41 C.F.R. 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. The ASC has submitted timely to OGE both semiannual reports due in 2012.

### **Agency Comments**

The ASC provided the following comments to this report via email on June 21, 2013:

The Appraisal Subcommittee (ASC) staff appreciates the time and effort OGE expended on the Ethics Program Review. Your review noted a number of ways in which our program can be improved. We have already implemented all recommendations from OGE to ensure appropriate processes and procedures are in place to support a compliant ethics program. While improvements to the ethics program were needed, ASC staff has consistently maintained a high level of awareness in carrying out its mission while upholding the highest ethical standards. We have appreciated the support of OGE in the past, and look forward to continuing to coordinate closely with OGE in the future.