



U.S. Office of Government Ethics
Program Review Division

Ethics Program Review

Inter-American Foundation

Report No. 12-46
March 2012

Results in Brief

The United States Office of Government Ethics (OGE) conducted a review of the Inter-American Foundation (IAF) ethics program in March 2012. In general, the results of the review indicate that the majority of the elements of IAF's ethics program appear to be in compliance with applicable laws, regulations, and policies.

Highlights

- The Ethics Office requires non-filers to receive annual ethics training.
 - Each IAF employee has an ethics file which contains all ethics records related to the employee: initial ethics orientation (IEO) completion certificates, annual training certificates, financial disclosure reports, advice and counsel, and other ethics-related materials.
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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 IAF's ethics program, OGE examined a variety of documents provided by IAF's ethics office. OGE examined all public and confidential financial disclosure reports that were required to be filed at IAF in 2011, covering calendar year 2010. In addition, the OGE review team met with IAF's Designated Agency Ethics Official (DAEO) and the ADAEO to (1) obtain additional information IAF's ethics program, (2) seek clarification on issues and (3) verify data collected.

Program Administration

IAF is an independent agency created by Congress in 1969 to channel development assistance directly to the organized poor in Latin America and the Caribbean. IAF is currently governed by a five-person board of directors appointed by the president of the United States and confirmed by the U.S. Senate. A board-appointed president serves as IAF's chief executive officer, managing a staff of approximately 45 employees. Additionally, an advisory council selected by the board of directors makes recommendations about developmental activities in the Western Hemisphere and is currently comprised of 15 members.

IAF's ethics program is administered within the Office of General Counsel. The General Counsel (GC) serves as the DAEO. The Associate General Counsel serves as the ADAEO. The

DAEO and the ADAEO are primarily responsible for the day-to-day administration of the ethics program. The DAEO and ADAEO assumed ethics responsibilities at IAF in January 2012 after the previous DAEO and ADAEO left the agency in late 2011. The DAEO and the ADAEO are in the process of evaluating and making changes to IAF's ethics program.

Because the DAEO also holds the position of GC, ethics officials consistently have a voice in matters affecting the IAF. OGE believes this agency structure is advantageous in proactively addressing ethics concerns that could affect the agency. In addition, ethics duties are incorporated into the position descriptions and performance appraisals of both the DAEO and the ADAEO.

Financial Disclosure

Public Financial Disclosure

OGE reviewed two of the three public financial disclosure reports required to be filed at IAF in 2011. Both reports were filed timely. One report was certified nearly six months late. The ADAEO informed OGE that the late certification was a result of the former DAEO departing the agency and leaving the report uncertified in her desk. The current DAEO and ADAEO did not discover that the report was uncertified until January 2012. They reviewed the report for conflicts of interest and certified it immediately. Since the DAEO and ADAEO were not in their positions until after the certification was due, OGE is not making a recommendation at this time. Instead, OGE reminded IAF ethics officials that reports must be reviewed and certified in accordance with 5 CFR § 2634.605(a) and Program Management Advisory PA-11-04.

OGE noted that the former DAEO did not file a termination public financial disclosure report as required by 5 CFR § 2634.201(e). The ADAEO emailed the former DAEO requesting the termination report at the time of OGE's fieldwork. However, the former DAEO is no longer in the United States and it may be difficult for IAF to get a copy of the report. IAF will continue to make efforts to obtain the termination report.

Confidential Financial Disclosure

OGE reviewed all 26 confidential financial disclosure reports required to be filed by IAF employees in 2011. All the reports were reviewed and certified timely. Eight of the reports examined were filed late. One report was filed nearly a year late and had not yet been filed when the DAEO assumed responsibility of the ethics program. The DAEO required the filer to file as soon as he realized the report had not been filed. OGE found evidence that the former DAEO may have granted a blanket extension to all confidential filers, in which case only one of the 26 reports examined was filed late. OGE reminded IAF ethics officials that extensions should be granted in accordance with 5 CFR § 2634.903(d).

To prevent late filing in 2012, IAF ethics officials sent several reminders to filers and follow-up personally to ensure timely filing. As of March 7, 2012, IAF ethics officials had collected timely all OGE Form 450s and OGE Form 450-A reports without extensions for the 2012 filing season. In addition, IAF added steps for delinquent report follow-up to its formal written procedures for

financial disclosure to help ensure reports are filed timely. As a result, OGE is not making a recommendation regarding the reports filed late in 2011.

The ADAEO informed OGE that approximately 16 confidential filers filed the OGE Form 450-A in 2012.¹ To meet the requirement at §2634.905(b)(5), agencies allowing alternate filing for three consecutive years must have confidential filers file the OGE Form 450 rather than the OGE Form 450-A in years divisible by four. The ADAEO emailed all 16 filers who had submitted the OGE Form 450-A in 2012 and requested that they re-submit the OGE Form 450 to meet the applicable requirements. OGE also noted that five confidential filers filed the OGE Form 450-A for three or more years without filing an OGE Form 450 as required by §2634.905 (b)(4). Since the ADAEO required all filers to re-submit a OGE Form 450 in 2012, OGE declined to make a formal recommendation, but reminded IAF ethics officials that filers may not file the OGE Form 450-A for more than three consecutive years. OGE also reminded ethics officials that there is no requirement to use the OGE Form 450-A. IAF may elect to use the OGE Form 450 instead every year.

The DAEO and ADAEO indicated that although they know which positions at IAF currently require confidential filing, they were unaware of when or how the determination was made. OGE suggests that IAF ethics officials, using the criteria at §2634.904, determine what positions at IAF will be required to file confidential financial disclosure reports. A written determination of filing positions will help ensure continuity of operations in the future.

Suggestion

- Make a written determination on which positions at IAF will be required to file confidential financial disclosure report.

Education & Training

Initial Ethics Orientation

OGE examined IAF's Initial Ethics Orientation (IEO) packet and found it to be in compliance with 5 CFR § 2638.703. IAF employees are required to certify that they received IEO and the certifications are retained in employees' personal ethics file. All new employees required to receive IEO in 2011 received it.

Annual Ethics Training

IAF's training program meets all relevant requirements. IAF provides verbal training annually to all its employees. All employees also receive a packet covering the requirements at 5 CFR § 2638.704 or § 2638.705 and participate in an online training module. Upon completion of the online module, employees are required to print out the certificate of completion and return it to

¹ Two filers had not yet filed for 2012 as they had filing extensions.

the ADAEO. The ADAEO stores the certificates in the employees' personal ethics file. OGE considers these training efforts to be a model practice.

Advice & Counsel

The DAEO and the ADAEO both provide ethics-related advice and counsel. OGE reviewed a sample of the IAF's written advice and counsel issued to agency employees and found that it appeared to be accurate. All advice and counsel is memorialized in a shared ethics drive. IAF ethics officials memorialize novel or complex ethics issues in formal memorandums. In addition to the shared ethics drive, all advice and counsel rendered to employees is also memorialized in the employee's personal ethics file.

Agency-Specific Ethics Rules

In accordance with IAF's supplemental regulation at 5 CFR §7301, IAF requires that employees, other than SGEs, receive written approval from the DAEO or Alternate DAEO prior to engaging in any outside teaching, speaking, or writing for compensation. Employees must submit a "clearance of outside activities form" to their immediate supervisors for approval. Once the employee's immediate supervisor signs the form, the DAEO or the ADAEO either approves or disapproves the teaching, speaking, or writing activity. Activities approved by the DAEO are then signed by IAF's President. The outside activities clearance form is located on IAF's intranet and all employees are notified of the prior approval requirement during IEO and annual ethics training. Completed forms are placed in the employee's personal ethics file and a copy is provided to the requesting employee.

Enforcement

IAF reported no disciplinary actions based wholly or in part upon violations of the standards of conduct provisions (5 CFR part 2635). There were 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). IAF made no referrals to the Department of Justice (DOJ) of potential violations of the criminal conflict of interest statutes.

The United States Agency for International Development's Office of Inspector General provides investigative services to IAF. The DAEO is responsible for concurrently notifying OGE of referrals to DOJ.

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. See *DAEOgram DO-00-003A* and OGE's informal Advisory Memoranda 82 x 21, 82 x 22, and 00x 1, and *DAEOgram DO-04-022*. IAF has twenty SGEs.

The five members of the board of directors and the fifteen members of the advisory council are SGEs.

Confidential Financial Disclosure for SGEs

OGE examined 17 of the 20 confidential financial disclosure reports required to be filed by SGEs in 2011. Three reports, all belonging to advisory council members, were not filed as required in 5 CFR § 2634.903 (b). During fieldwork, IAF ethics officials emailed the three filers and requested that they file OGE Form 450s immediately. Four of the 17 reports were filed late. Additionally, most of the OGE Form 450s filed by SGEs were marked as annual reports instead of new entrant reports as required by § 2634.903(b).

OGE also found that one board member's reports was certified nearly one year late because the former DAEO left without certifying the report. The current DAEO reviewed and certified the report in January 2012 as soon as he realized that it had not been certified. Another report, belonging to an advisory council member, had not yet been certified as IAF ethics officials were still working with the filer to get additional information.

Since the current DAEO and ADAEO were not IAF ethics officials at the time the SGE reports were collected in 2011, OGE is not making a formal recommendation at this time. Instead, OGE reminded IAF ethics officials to ensure SGEs timely file new entrant reports each year and to ensure the reports are timely certified.

Ethics Training for SGEs

The five SGE board members at IAF received annual training as required by 5 CFR § 2638.705 in 2011. The board members were provided the DVD entitled *Ethical Choice: Ethics for Special Government Employees*. All board members signed a certificate of verifying that they had reviewed the DVD.

The fifteen members of the advisory council, who were appointed in October 2011, did not receive IEO within 90 days as required by § 2638.703. During OGE's fieldwork, the ADAEO provided the members with IEO by sending them OGE's pamphlets *A Brief Wrap on Ethics*, *A Guide on the Ethics Rules That Apply to Advisory Committee Members Serving as Special Government Employees*, and the Standards of Conduct. IAF ethics officials reported that the Advisory Council members will receive the same annual ethics training as the board members beginning in 2012.

1353 Travel Acceptances

IAF has consistently submitted to OGE in a timely manner the required semi-annual reports of payments accepted from non-Federal sources.

Agency Comments

OGE provided IAF with a draft copy of this report for comment. Their comments are included in the appendix of this final report.



Inter-American Foundation

An Independent Agency of the U.S. Government

March 28, 2012

Rashmi Bartlett
Associate Director, Program Review Division
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Washington, DC 20005

Dear Ms. Bartlett:

Thank you for the opportunity to comment on the draft report prepared by the Office of Government Ethics (OGE) following its March 2012 review of the Inter-American Foundation's (IAF) ethics program.

Over the past month, it has been a pleasure working with your reviewers, Leigh Snyder and Kingsley Simons, who were helpful, thorough and constructive in their review. We were pleased with the generally positive assessment of IAF's ethics program and its compliance with applicable laws, regulations, and policies.

We look forward to working with you and the OGE team to continue to strengthen the administration of the agency's ethics program.

Sincerely,

Paul Zimmerman
General Counsel and
Designated Agency Ethics Official