



United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

March 8, 2005

Carol Booker
Designated Agency Ethics Official
Broadcasting Board of Governors
Cohen Building, Room 3360
330 Independence Avenue, SW.
Washington, DC 20237

Dear Ms. Booker:

The Office of Government Ethics (OGE) has completed its first review of the ethics program at the Broadcasting Board of Governors (BBG). This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended. Our objective was to determine the ethics program's compliance with applicable statutes and regulations. We also evaluated BBG's systems and procedures for ensuring that ethics violations do not occur. The review was conducted intermittently from August 2004 through January 2005. The following is a summary of our findings and conclusions.

HIGHLIGHTS

BBG's ethics program generally complies with the applicable statutes and regulations. We note that steps were taken during our review to address deficiencies in the public and confidential financial disclosure, education and training, outside employment and activities, and enforcement areas of the ethics program.

BACKGROUND AND HISTORY OF BBG

BBG oversees all United States Government sponsored, non-military broadcasting to foreign countries. Its mission is "to promote and sustain freedom and democracy by broadcasting accurate and objective news and information about the United States and the world to audiences overseas." Organizations under BBG's supervision include Radio Free Europe/Radio Liberty, Radio Free Asia, Middle East Television Network, Voice of America, Office of Cuba Broadcasting, and the International Broadcasting Bureau (IBB). Of the six organizations, the first three are private corporations which receive grants through BBG, the next two are part of the Federal Government, and the latter is a part of BBG.

The United States International Broadcasting Act of 1994 established BBG and IBB within the United States Information Agency (USIA). The Foreign Affairs Reform and Restructuring Act of 1998 reorganized the foreign affairs agencies. As a result of this reorganization, USIA, with the exceptions of BBG and IBB, was abolished and its functions,

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including those of the Office of Inspector General (OIG), were transferred to the Department of State (State).¹

BBG became an independent Federal entity on October 1, 1999 (IBB became a part of BBG at that time). The bipartisan board is composed of nine governors: eight of them are Presidentially-appointed, Senate-confirmed special Government employees (PAS/SGE) and the ninth is the Secretary of State who serves in an ex officio capacity. With the exception of the Secretary of State, the governors serve for three-year terms. Board meetings are usually held at least once per month.

PROGRAM STRUCTURE

The number of personnel assigned to administer the ethics program appears adequate. The ethics staff includes you, as the Designated Agency Ethics Official (DAEO), an Alternate DAEO (ADAEO), and a Deputy DAEO (DDAEO). Administrative support is available from a secretary and intern. In addition to being the DAEO, you serve as the Legal Counsel to the board and are the Acting General Counsel for BBG. The ADAEO serves as a Legal Analyst and the Freedom of Information Act Officer. The DDAEO serves as the Assistant General Counsel.

An Ethics Manual was drafted to serve as a reference for new ethics staff. If an unexpected void occurred in the number of ethics personnel (e.g., if you and the ADAEO suddenly left your positions), the new ethics staff would find guidance in the Ethics Manual for administering the program. Guidance in the Ethics Manual includes, among other things, procedures for the public and confidential financial disclosure system and an annual ethics training plan. We applaud this effort to ensure a smooth transition in the administration of the ethics program should a change in staff occur.

OUTSIDE EMPLOYMENT AND ACTIVITIES

BBG has given its employees the impression that they are required to receive prior approval for certain types of outside employment and activities. However, BBG does not have a supplemental agency regulation issued pursuant to 5 C.F.R. § 2635.105. Instead, Section 520 of Part V-A of BBG's Manual of Operations and Administration (MOA) contains language indicating that employees are required to seek prior approval for engaging in certain outside employment and activities (e.g., news media work).² Additionally, the annual ethics training module on outside employment, which was required to be completed by confidential filers in 2004, states that certain employees must obtain prior approval before engaging in outside employment; the MOA was cited as the authority for that requirement.

¹ Under 22 U.S.C. § 6203(a)(3), State's OIG exercises the same authority with respect to BBG as it exercises with State.

² The MOA contains employee policies and procedures inherited from USIA which were modified and adapted for BBG's use. At the present time, the MOA is being updated.

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We found that the two authorities cited in the MOA, which form the major basis for BBG's guidance on outside employment and activities, are no longer valid. One authority, 22 C.F.R. part 10, contains State's residual standards of conduct (previously shared with USIA) which were superseded by OGE's executive branch-wide standards of conduct. State is in the process of revoking these residual standards of conduct. The other authority cited is Volume 3, Subchapter 620 of the Foreign Affairs Manual (FAM). However, 3 FAM 620 no longer exists; it was removed by State at least four years ago.

You stated that it is not BBG's intent to require employees to obtain prior approval. Rather, employees have the option of seeking an opinion from the ethics staff on their outside employment and activities. You agreed to remove the invalid authorities from your MOA. Instead, a reference to 3 FAM 4123, concerning restrictions on employment and outside activities while abroad, will be inserted. The language in the training module on outside employment will direct employees to the valid authority. Additionally, you agreed to issue interim guidance to employees to notify them that prior approval is not required, except for certain employees subject to the FAM.³ Based on your agreement to correct BBG's handling of outside employment and activities, we do not believe a formal recommendation is necessary.

SPECIAL GOVERNMENT EMPLOYEES

BBG has SGEs who serve on the aforementioned bipartisan board, as well as SGEs who serve on the one advisory committee to which BBG provides support. This area of your program is fully compliant with applicable statutes, regulations, and guidance issued by OGE.

Governors

The governors perform work for BBG by working "an hour here and an hour there."⁴ The number of hours and days worked is monitored by an executive assistant. Those governors who work 60 days or less file confidential financial disclosure reports, while those who work over 60 days file public financial disclosure reports.

We examined timekeeping records which tracked the number of days the governors worked from 2002 through pay period 16 in 2004. We were pleased to find that the number of days worked is being calculated correctly. Work performed for a part of a day counts as one entire day of work. While we were pleased that BBG uses the correct method of calculating the

³ Certain subchapters of State's FAM were applicable to employees of USIA. In accordance with the "savings provisions" in the Foreign Affairs Reform and Restructuring Act of 1998, which are codified at 22 U.S.C. § 6543, rules and regulations which applied to BBG when it was a part of USIA are still applicable to BBG employees until nullified.

⁴ According to 22 U.S.C. § 6203(d), the governors cannot be full-time Government employees. The section is silent regarding their designation as SGEs. The designation was made based on guidance (e.g., DAEOgrams) issued by OGE.

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number of days worked by the governors, we were concerned to find that three governors had each worked over 130 days in at least one calendar year. One governor worked over 130 days in both 2003 and 2004, the second governor worked over 130 days in both 2002 and 2003, and the third governor worked over 130 days in 2003. We understand you tell governors that working over 130 days will subject them to having their status as an SGE questioned.

You may continue to designate these governors as SGEs based on your good faith estimate that they will serve no more than 130 days in the ensuing 365-day period. In making your estimate, you consider substantive work to be performed by the governors. We agree that purely ministerial work does not have to be included in the estimate (e.g., a telephonic query to BBG concerning the date and time of a meeting). If a governor unexpectedly serves more than 130 days during the ensuing 365-day period, he or she will still be considered an SGE for the remainder of that period based on your good faith estimate. (See attachment to DAEOgram DO-00-003, dated February 15, 2000.)

Federal Advisory Committee Members

BBG is responsible for providing support to one advisory committee, the Advisory Board for Cuba Broadcasting (ABCB).⁵ The advisory board members are PAS/SGEs. The ABCB is currently dormant due to a lack of a quorum. Indeed, no meetings have taken place in over three years. The complement of advisory board members is set at nine, while a minimum of five members is required to make a quorum in order to hold a meeting. At the present time, there are only two members whose three-year terms have not expired. Additionally, one nominee is going through the Senate confirmation process.

The only required financial disclosure reports the current members filed were those submitted in connection with their appointment to the ABCB in 2003. In light of 5 C.F.R. § 2634.903(b)(3), no follow-on new entrant reports were required to be filed by the two remaining members because no meetings have been held in over three years.

FINANCIAL DISCLOSURE SYSTEMS

The financial disclosure systems generally comply with the provisions of 5 C.F.R. part 2634. We note that actions to address certain deficiencies, including the lack of

⁵ Under 22 U.S.C. § 1465(c), the ABCB is established within the Office of the President. However, the advisory board's charter states that BBG is responsible for providing the necessary support.

The mission of the ABCB is to "review the effectiveness of the activities carried out under the Radio Broadcasting to Cuba Act and the Television Broadcasting to Cuba Act and [to] make such recommendations to the President and the Broadcasting Board of Governors, as it may deem necessary."

comprehensive written procedures for the administration of the financial disclosure systems, were taken during the course of OGE's review.

Public Financial Disclosure

We examined all 29 public financial disclosure reports required to be filed in 2004; one new entrant and 28 incumbent reports were filed. While technical errors were found, we did not uncover any substantive deficiencies. With the possible exceptions of the one new entrant and two incumbent reports, all reports were reviewed in a timely manner.⁶ We note that documentation in the files showed that there were many questions from and annotations made by the reviewing official which indicated a thorough review of reports.

We were concerned to find that 1 incumbent report was filed 92 days beyond the filer's filing extension. We did not find any indication of a second filing extension being granted. In the absence of a second filing extension, the \$200 late filing fee should have been imposed. We did not find any indication of a waiver of the late filing fee. The late filing fee should be imposed on public filers in accordance with 5 C.F.R. § 2634.704. You agreed to levy the late filing fee unless information received from the filer warrants a waiver.

OGE DAEOgram DO-04-014, dated June 15, 2004, stated that agencies were to forward DAEO and PAS annual public reports to OGE as soon as they were approved by the agency. BBG was slow in its forwarding of the 2004 annual public reports filed by yourself and certain PAS employees to OGE for final review and certification.⁷ Your annual report was received by OGE two months after agency certification and all five annual reports filed by certain PAS employees were received by OGE in January 2005, between four and seven months after agency certification. Submitting these reports right after your certification will enable OGE's review and any follow-up on questions to be accomplished in a timelier fashion. Based on your agreement to do so, we do not believe a formal recommendation is necessary.

Confidential Financial Disclosure

We examined a sample of 40 of the 321 confidential reports required to be filed from 2003 to August 2004; 11 new entrant and 29 annual reports were examined.⁸ While technical errors were found, we did not uncover any substantive deficiencies. With the possible

⁶ The one new entrant report lacked a date of appointment and a date stamp of agency receipt; the two incumbent reports lacked a date stamp of agency receipt. Therefore, the timeliness of filing and review could not be determined for these reports.

⁷ The employees, other than yourself, whose public reports are required to be forwarded to OGE are the Director of IBB and the governors who exceed 60 days of work in a calendar year.

⁸ Governors who work 60 days or less in a calendar year submit their confidential reports during the filing cycle for public reports.

exceptions of three new entrant and two annual reports, all reports in our sample were reviewed in a timely manner.⁹

We were concerned that 4 (or 36 percent) of the new entrant reports in our sample were filed from 2 to 8 months late.¹⁰ Previously, the ethics staff captured new entrants during preparation for the annual filing cycle. A newly instituted agreement with the Office of Personnel (OP) should assist in alleviating this problem. The ethics staff will be notified when a new hire or a promotion to a covered position has occurred. This should assist in the filing of a new entrant report within 30 days of an employee's assumption of a position requiring the filing of a confidential report. The timely filing of new entrant reports will assist the ethics staff's identification of any potential or actual conflicts of interest in a timely manner. Due to the institution of this agreement, we do not believe a formal recommendation is necessary.

ETHICS AGREEMENTS

Six PAS/SGEs entered into ethics agreements. No other employees have ethics agreements. All terms of the ethics agreements were complied with and screening arrangements for recusals are in place. You screen the board agendas and attend the board meetings. You would be aware of any conflict that arose and would advise the employees accordingly.

No 18 U.S.C. § 208 waivers were issued. Therefore, we could not evaluate the issuance of waivers.

EDUCATION AND TRAINING

The education and training program will be fully compliant with the provisions of 5 C.F.R. part 2638 once all covered employees receive their 2004 annual ethics training. We note that you took action during our review, or agreed to take action, to correct certain deficiencies. For example, the ADAEO drafted a comprehensive written annual ethics training plan for 2004 which included the information required in accordance with 5 C.F.R. § 2638.706. Moreover, some aspects of your education and training program exceed the regulatory requirements.

Initial Ethics Orientation Program

The initial ethics orientation (IEO) program complies with the provisions at 5 C.F.R. § 2638.703. New employees receive their IEO materials during OP's new employee orientation sessions. IEO materials consist of contact information for the ADAEO, a copy of the Standards

⁹ These five reports lacked a date stamp of agency receipt. Therefore, the timeliness of filing and review could not be determined for these reports.

¹⁰ Additionally, five new entrant reports lacked the date of the filer's appointment. Therefore, the timeliness of filing could not be determined for these reports.

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of Ethical Conduct for Employees of the Executive Branch (Standards), and the 14 Principles of Ethical Conduct.

We noticed that BBG is still distributing the outdated September 1999 edition of the Standards. We understand that an administrative error resulted in the ordering of 1,000 copies of the Standards, rather than 100 copies. The ADAEO agreed to have OP include a revisions sheet which shows the changes made to the 1999 edition which appear in the October 2002 edition of the Standards.

Even if an employee new to BBG has received IEO from another agency, you request that the employee complete IEO. We commend BBG for exceeding the regulatory requirement by including Federal employees coming from other agencies, namely because those who are not subject to the annual ethics training requirement may have gone many years without ethics training. Moreover, since the start of our review, you now have a procedure in place to track receipt of IEO by having the employees sign a certification notice.

Annual Ethics Training Program

BBG's annual ethics training (AET) program will be fully compliant with the provisions of 5 C.F.R. §§ 2638.704 and 2638.705 once all covered employees complete their AET.

In 2003, only the governors were trained. You provided an ethics briefing which was supplemented by the governors' review, at their convenience, of the attachment to OGE DAEOgram DO-00-003 concerning ethical requirements applicable to SGEs. The briefing topics included an overview of the Standards, the aforementioned DAEOgram attachment, the Hatch Act, and gift regulations. After the briefing, a question-and-answer session was held. At the conclusion of the session, several governors followed up privately with questions of particular interest to them.

We were disappointed to find that, in 2003, BBG did not provide AET to regular covered employees. The ADAEO stated that new computer-based training modules were scheduled to debut in 2003, but technical difficulties prevented their launch. We believe that alternative means should have been used to deliver the training. For example, BBG could have directed employees to complete computer-based training modules on OGE's Web site. Training not specifically tailored to BBG employees would have been better than no training at all.

In 2004, you provided an ethics briefing to the governors. The briefing topics included information on the Standards and conflict of interest statutes. Regular covered employees were notified by memorandum to complete their AET via the computer-based training modules. Confidential and public financial disclosure report filers completed different modules. Public filers completed four modules on conflicts of interest, fundraising, participation in outside organizations, and teaching, speaking, and writing. Confidential filers completed four modules on conflicts of interest, gifts between employees, gifts from outside sources, and outside

employment. The ethics staff received positive feedback from employees on the new format for providing AET. Although only covered employees are required to complete the training, any employee may access the training modules through BBG's Intranet. Completion of AET is tracked by the ADAEO who receives a notice of completion which is generated and e-mailed upon completion of a training module.

According to the ADAEO, only 93.5 percent of BBG's covered employees completed their 2004 training. It is important that the remaining covered employees receive their AET. BBG is risking its employees running afoul of ethics regulations, especially in light of there having been no AET provided to regular covered employees in 2003. The ADAEO stated that she would enlist the assistance of the remaining employees' supervisors in order to have the employees complete their 2004 training as soon as possible.¹¹ Based on this intention, we do not believe a formal recommendation is necessary.

Post-Employment

BBG offers post-employment briefings at its semiannual retirement seminars. The ADAEO summarizes the functions of the ethics staff, provides her contact information, and informs employees that they can contact the ethics staff for advice even after they leave the employ of BBG. Seminar attendees receive a copy of the Standards, OGE's pamphlet on "Understanding the Revolving Door," and a document containing guidance on post-employment (as well as seeking employment) rules.

Ethics Resources on BBG's Intranet

Ethics resources are contained on an Intranet Web page which employees can access. The resources include contact information about the ethics staff, financial disclosure forms and instructions, and ethics training modules. There is also a link to OGE's Web site. We commend BBG for making ethics information easily accessible to BBG employees.

ENFORCEMENT

BBG complies with the provisions of 5 C.F.R. § 2638.203(b)(12), ensuring that the services of OIG are utilized when appropriate, and § 2638.203(b)(9), ensuring that prompt and effective action, including administrative action, is taken to remedy ethics violations. BBG, through OIG, generally complies with § 2638.603, requiring agencies to notify OGE of referrals to the Department of Justice (DOJ) of alleged violations of the conflict of interest statutes and the disposition of referrals.

There appears to be an effective working relationship between BBG and OIG. OIG notifies BBG of the allegations it receives. BBG will alert OIG when it becomes aware of a

¹¹ We remind you that these employees will still be required to complete AET for 2005.

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matter requiring OIG's attention. BBG utilizes both its ethics staff and OIG for investigations. If a matter appears to involve a criminal violation, BBG will turn the matter over to OIG. Administrative matters can be handled by the ethics staff.

OIG's investigation of one employee is in the process of being closed out due to a lack of sufficient evidence of criminal activity. The employee allegedly accepted gifts from prohibited sources. Additionally, there was a question concerning the appropriateness of his signing-off on b(6) OIG handled the criminal aspect of the case and the ethics staff handled the administrative part of the case. BBG b(6)
You estimated that BBG would draft proposed disciplinary action within the next two months.

In 2003, a GS-15 employee was investigated by OIG for allegedly violating 18 U.S.C. § 208. The employee recommended that a non-profit organization (run by a friend of his) receive a cooperative agreement to conduct training in Uganda. The employee then arranged to have his friend subcontract all the work to a non-profit owned by the employee and his wife. For these services, he received payments which were deposited in a bank account established by the employee and his wife. BBG became aware of his involvement when his name was listed on the training agenda. Immediately thereafter, OIG was called in to investigate. In May 2003, the matter was referred to DOJ for prosecution. In December 2003, the employee was fired from his position at BBG. He pled guilty in January 2004 to one count of violating 18 U.S.C. § 208. In March 2004, he was debarred from participation in all non-procurement programs (e.g., grants and cooperative agreements) with the Federal Government for a period of 3 years. In May 2004, he was sentenced to 3 years probation and 50 hours of community service. He was fined \$1,000 and ordered to pay restitution of \$15,064 and a \$25 special assessment.

OIG notified OGE of the referral approximately one year after the referral was made to DOJ. Based on our discussion with OIG officials, we trust that past administrative difficulties will be overcome by OIG's Directive (in draft form at the time of our discussion) requiring certain OIG Office of Investigations staff to notify OGE at the time allegations are referred to DOJ, regardless of whether or not a declination is immediately received, and of the final disposition of the case. Timely notification will allow OGE to effectively monitor BBG's enforcement system.

TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

The acceptance of travel payments appears to comply with the applicable procedures and regulations. Procedures in BBG's MOA exist to ensure proper acceptance and reporting of travel payments accepted by BBG employees under 31 U.S.C. § 1353. You stated that payments would be refused if there is a potential for conflict or a question of undue influence.

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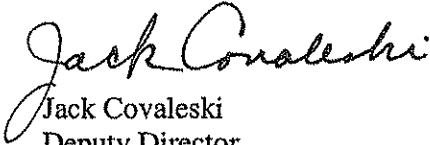
We examined all five travel payments of more than \$250 per event reported to OGE for the period covering October 1, 2003 through March 31, 2004. All acceptances of payments appeared to comply with the statute and agency procedures.

ADVICE AND COUNSELING

Ethics advice and counseling services comply with 5 C.F.R. § 2638.203(b)(7) and (8). We examined 16 documents which consisted of ethics opinions and guidance rendered by you, the ADAEO, and Deputy ADAEO in 2003 and 2004. The acceptance of gifts was the most popular topic of inquiry. Based on our examination, we believe the advice rendered was consistent with the appropriate statutes and regulations.

In closing, I wish to thank the BBG and State officials who were involved in this review for their cooperation on behalf of the ethics program. A brief follow-up review is typically scheduled within six months from the date of this report. However, as this report contains no formal recommendations to improve the ethics program at this time, no such follow-up is necessary. A copy of this report is being forwarded to OIG via transmittal letter. Please contact Traci M. Quan at 202-482-9271 if we may be of further assistance.

Sincerely,


Jack Covaleski
Deputy Director
Office of Agency Programs

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