



U.S. Office of Government Ethics  
Program Review Division

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# Ethics Program Review

National Endowment for the Humanities

Report No. 11-012  
March 2011

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## Results in Brief

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The United States Office of Government Ethics (OGE) conducted a review of the National Endowment for the Humanities' (NEH) ethics program during February 2011. The results of the review indicated that NEH's ethics program is effectively administered and in compliance with applicable laws, regulations, and policies.

### Highlights

- NEH conducts a self-assessment survey of employees each year to identify ethics program strengths and weaknesses.
- NEH provides annual ethics training to all employees.
- NEH provides post-employment training to all departing employees.

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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 NEH's ethics program, OGE examined a variety of documents provided by ethics officials; other documents that NEH forwarded to OGE, including the annual questionnaire; prior program review reports; and a sample of NEH's public and confidential financial disclosure reports and advice and counsel provided to employees. In addition, members of OGE's Program Review Division met with the Designated Agency Ethics Official (DAEO) and the Alternate DAEO (ADAEO) to obtain additional information about the strengths and weaknesses of NEH's ethics program, seek clarification on issues that arose through the documentation analysis, and verify data collected.

## **Program Administration**

NEH's ethics program is administered within the Office of General Counsel (OGC). The General Counsel (GC) serves as the DAEO. An Attorney-Advisor serves as the ADAEO. The DAEO and ADAEO are primarily responsible for the day-to-day administration of the ethics program. They are assisted by two law clerks and a paralegal, when needed.

Because the DAEO also holds the position of GC, ethics officials consistently have a voice in matters affecting NEH. OGE believes this agency structure is advantageous in proactively addressing ethics concerns that could affect the agency.

NEH recently began conducting an annual self-assessment survey of its employees to identify strengths and weaknesses of the ethics program. NEH ethics officials indicated that the results of the survey led them to make adjustments to the advice and counsel process to provide more timely responses to employees. Additionally, ethics officials use the results of the survey to help choose training topics that meet the needs of NEH employees. OGE considers NEH's use of the self-assessment survey to be a model practice.

## **Financial Disclosure**

NEH ethics officials indicated that all covered employees filed the required financial disclosure reports in 2010. OGE reviewed a sample of NEH's financial disclosure reports and found that all of the reports in the sample were filed, reviewed, and certified in a timely manner. Additionally, OGE found that relevant documentation such as reviewer notes, widely attended

gathering approvals, and outside employment approval forms were included in the individual employee files.

NEH also has detailed written procedures for the administration of the financial disclosure system. OGE reviewed the written procedures and noted one outdated citation related to the requirements found at 5 CFR § 2634.201(f). NEH ethics officials indicated that the citation would be updated immediately.

## **Education & Training**

NEH ethics officials reported that all required employees received initial ethics orientation (IEO) within 90 days of their date of entry in 2010. Additionally, NEH provided annual ethics training to all of its employees. NEH also provides post-employment training to all departing employees. OGE considers training all employees and requiring post-employment training for all departing employees to be model practices.

OGE reviewed NEH's IEO materials and found them to be in compliance with 5 CFR § 2638.703. OGE also examined NEH's 2010 annual training plan and found that it met the requirements of 5 CFR § 2638.706. However, at the time of the review NEH had not prepared its 2011 annual training plan. OGE reminds NEH to complete its annual training plan by the beginning of each calendar year as required by 5 CFR part 2638.706 in order to ensure adequate preparation for its annual training program.

OGE reviewed the materials used to provide annual training to members of the National Council on the Humanities (Council) and non-Council members. The materials used to train the members of the Council, who serve as special Government employees (SGE), contained all required information. The materials used to provide annual training to non-Council members, however, did not specifically address all criminal conflicts of interest statutes. NEH ethics officials explained that while not included in the handout provided to employees, the criminal conflicts of interest statutes were addressed during the verbal training. OGE reminds NEH to continue to include all the required components in its annual ethics training.

## **Advice & Counsel**

OGE reviewed a sample of NEH's written advice and counsel issued to employees and found that all pieces of advice and counsel appeared thorough and that ethics officials responded to employee requests for advice in a reasonable amount of time. NEH's advice and counsel process is clearly defined within the agency, with the DAEO and ADAEO handling all ethics-related questions. With the exception of routine questions, the DAEO and ADAEO meet to discuss all determinations before they are issued.

NEH ethics officials provide formal opinions in memorandum format to employees in response to widely attended gathering and outside employment requests. Additionally, NEH ethics

officials make general ethics guidance and ethics reference materials available to employees on the OGC intranet site.

### **Agency-Specific Ethics Rules**

NEH's supplemental regulation, found at 5 CFR § 6601.102, requires that agency employees receive prior approval before engaging in outside employment. OGE found that the appropriate outside employment approvals were on file for relevant employees.

### **Ethics Agreements**

At NEH, only Presidentially appointed and Senate-confirmed employees are required to execute ethics agreements. This group includes the NEH Chairman, who serves as a full-time employee, and the members of the National Council of the Humanities. Evidence of the Chairman's compliance with his ethics agreement was timely submitted to OGE.

Because of their SGE status, the members of the Council are generally not required to divest of holdings or resign from positions they hold. The 18 U.S.C. § 208 conflicts and 5 CFR § 2635.502 recusals generally specified in each member's ethics agreements are based on information reported on the member's OGE Form 450 and on discussions with the White House ethics office. In addition, members are required to agree to abide by a conflict of interest resolution passed by the Council. NEH ethics officials maintain updated records of conflicts and recusals for each confirmed Council member. OGE found that the appropriate records of conflicts and recusals were on file for Council members.

### **Enforcement**

NEH reported no disciplinary actions based wholly or in part upon violations of the standards of conduct provisions (5 CFR part 2635) or the criminal conflict of interest statutes (18 U.S.C §§ 203, 205, 207, 208, and 209). NEH made no referrals to the Department of Justice of potential violations of the criminal conflict of interest statutes.

Ethics officials have a good relationship with the Office of Inspector General (OIG). Additionally, the OIG indicated that ethics officials have appropriate procedures in place to address the risks of potential conflicts of interest, particularly in the area of peer review panels.

### **1353 Travel Acceptances**

NEH submitted to OGE in a timely manner the required semi-annual reports of payments accepted from non-Federal sources. A clear system exists to identify and communicate with those employees who might file a report under 31 U.S.C. 1353. Additionally, NEH has established written procedures for the administration of the travel element of the ethics program

as well as a detailed instruction memo to employees outlining the requirements for submitting travel payment requests.

### **Agency Comments**

NEH provided comments on the draft version of this report, some of which have been incorporated into this final version. NEH's comments in their entirety are attached to this report as an appendix.



NATIONAL  
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FOR THE  
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March 11, 2011

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Re: Comments on your Draft Ethics Program Review Report for the National Endowment for the Humanities (NEH)

Dear Ms. Granahan:

Thank you for sending us the draft of your report on NEH's ethics program, which we received on February 24, 2011. At your suggestion, I am writing now to provide you with a few brief remarks in response to your report.

First, we have addressed in full the two concerns you raised: 1) we have revised our Financial Disclosure System Directive to update the citation on the requirements for public filers to obtain filing extensions (5 C.F.R. § 2634.201(f)); and 2) we have also prepared the NEH annual ethics training plan for 2011. If you would like to see copies of these documents, please let me know and I would be happy to send them to you.

As for the remainder of the draft report, we have only two further comments. In the introductory paragraph on page 2 in the 'Results in Brief' section, you write that NEH's ethics program "generally appears to be effectively administered and in compliance with applicable laws, regulations, and policies." On this point—about which we are of course quite pleased—I wondered whether you might wish to remove any ambiguity from the overall highly positive tone of your assessment by substituting the word "is" for "generally appears to be."

Finally, on page 4 in the 'Education and Training' section, you noted that although we provided verbal training on the conflict of interest statutes during annual ethics training in 2010, we did not provide written handouts on this topic (although we did provide written handouts on the other topics we addressed in training). On this point I would like simply to emphasize that even though the OGE ethics training regulations (5

C.F.R. § 2638.704-705) do not require written materials when verbal training is being given, on this particular topic we did make it clear to staff during the verbal ethics /training that written materials on conflicts of interest are available on our internal agency website.

It was a pleasure meeting with you and your colleague Ms. Guzman when you visited NEH to conduct your on-site review. Thank you both for your hard work on our behalf and for this opportunity to respond to your draft report.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael McDonald". The signature is written in a cursive style with a large initial "M" and "D".

Michael McDonald  
General Counsel and DAEO