



U.S. Office of Government Ethics  
Program Review Division

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# Ethics Program Review

Commission of Fine Arts

Report No. 12-014  
December 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 Commission of Fine Arts's (The Commission) ethics program in October 2011. The results indicate that the majority of the elements of their ethics program appear to be effectively administered and in compliance with applicable laws, regulations, and policies. However, to ensure full compliance, aspects of the ethics program need to be improved.

### Concerns

- Confidential financial disclosure reports lacked evidence of a thorough review.
- Confidential financial disclosure reports were not certified.
- There has been no formal determination as to the employment status of the Old Georgetown Board members.
- Initial ethics orientation materials do not meet the regulatory requirements.

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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 Commission's ethics program, OGE examined a variety of documents provided by the Commission's ethics office including the annual questionnaire; training materials, and written procedures. OGE examined all financial disclosure reports required to be filed in 2011. In addition, the OGE review team met with the Designated Agency Ethics Official (DAEO), and the Alternate Designated Agency Ethics Official (ADAEO) to obtain additional information on the Commission's ethics program, seek clarification on issues, and verify data collected.

## **Program Administration**

The Commission's ethics program serves 11 full-time employees and 7 Commission members. The Commission members are designated as special Government employees (SGEs). The Secretary serves as the Designated Agency Ethics Official (DAEO). The Assistant Secretary serves as the Alternate DAEO (ADAEO) and is closely involved in the administration of the ethics program.

Executive Order 6166 of June 10, 1933, "Organization of Executive Agencies," created a relationship between the Commission and the Department of the Interior (DOI). The relationship gives the Commission access to services and competencies that it cannot perform efficiently and cost effectively. The DAEO and ADAEO explained that the Commission calls upon DOI's Bureau of Safety and Environmental Enforcement (BSEE) to conducting new hire orientation briefings, which include providing initial ethics orientation.

## **Financial Disclosure**

The Commission has written procedures for the administration of the financial disclosure system. However, the procedures did not include the specific dates of submission for annual public reports and the requirement for the submission of termination public reports.

OGE reviewed the one required public financial disclosure report filed by the DAEO. The public financial disclosure report was filed, reviewed, and certified timely. OGE also reviewed the one non-SGE confidential financial disclosure report filed by the ADAEO. The 2010 confidential financial disclosure report was filed in late November 2010 for the entire calendar year. Consequently, this early filing resulted in the report failing to cover the last month of 2010. Additionally, the report showed no evidence of a review nor certification. OGE encouraged the

DAEO and ADAEO to document in the reports or with supporting documentation, all evidence of their reviews and conflicts analysis.

### Special Government Employees

OGE could not determine the timeliness in the filing of the SGE confidential reports of the Commission members because ethics officials had not established a specific due date for the reports. OGE advisory DO-95-019 gives agencies flexibility to collect reports simultaneously for term SGEs. Ethics officials explained that the SGE filers were asked to submit their confidential reports during the fall, with the expectation that Commissioners would submit reports by January 15. The ethics office received reports in October, November and December. OGE reminded the Commission that OGE suggests ethics officials establish a specific due date for the reports. The ethics office could grant extensions when warranted.

It is important that the ethics office ensure that all financial disclosure reports for Commissioners show evidence of a review and be certified in a timely manner. The majority of confidential financial disclosure reports filed by the Commissioners lacked evidence of a review. Moreover, none of the reports were certified. Ethics officials stated that while the reports were not certified, both the DAEO and ADAEO had reviewed them. As previously mentioned, OGE encouraged the DAEO and ADAEO to document evidence of review in the reports or with supporting documentation. OGE also reminded them of the requirement to certify the reports.

In its review, OGE noticed that reappointed SGEs marked the “incumbent” box, indicating the type of report. The ethics office agreed to instruct all SGEs to check the “new entrant” box on their financial disclosure reports and include information for the preceding 12 months from the date of filing.

The Commission has retained financial disclosure reports beyond the six-year retention period specified by 5 C.F.R §§ 2634.603(g) and 2634.604(a). During OGE’s review, the Commission directed staff to destroy copies of financial disclosure reports and supporting documents submitted by the Commission filers prior to 2005, unless required to be retained due to an ongoing investigation.

### Old Georgetown Board

An 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 the conflict of interest laws. See *DAEOgram DO-00-003A*. It may also be helpful to review OGE’s informal Advisory Memoranda 82 x 21, 82 x 22, and 00x 1, and *DAEOgram DO-04-022*.

Section 3 of the Old Georgetown Act of 1950 (P.L. 808-81 Congress) gives the Commission the authority to appoint a committee of three architects to a review board to provide advice regarding designs and plans referred to the Commission. According to the DAEO, the members of the Old Georgetown Board are not SGE’s but rather, volunteers who meet monthly for project reviews,

totaling approximately 13 to 14 days a year. However, the agency has not documented a formal determination of the status of the Old Georgetown Board.

#### Recommendations

- Include the specific dates of submission for annual public reports and the requirement for the submission of termination public reports in the Commission's Financial Disclosure Procedures.
- Review and certify all confidential reports within 60 days of their submission.
- Make a formal determination as to the status of the Old Georgetown Board members based on the provisions of 18 U.S.C. §202(a).

#### Suggestion

- Establish a specific due date for the confidential reports filed by SGEs. Filers could be granted extensions when warranted.

### **Education & Training**

The Commission did not have any new employees during 2010 who were required to receive initial ethics orientation. According to the DAEO, BSEE provides new employees a copy of the Standards, the 14 principles and the contact information for the DAEO. However, BSEE explained that the copy of the Standards, the 14 principles and the contact information for the Commission's DAEO are not provided to new employees.

The Commission provides annual training to all employees. Annual ethics training covers the Standards, the conflicts of interest laws and contact information for the DAEO and ADAEO.

#### Recommendation

- Ensure that new employees are provided a copy of the Standards, the 14 principles and the contact information for the DAEO.

### **Advice & Counsel**

The DAEO and ADAEO provide ethics advice, typically in person, given the size of the Commission. The ethics office does not document verbal advice in light of the close communication that occurs within the agency. As such, the DAEO and ADAEO were unable to provide OGE with samples of advice rendered.

#### Suggestion

- Memorialize verbal advice provided for novel and complex situations.

## Enforcement

The Commission does not have its own Office of the Inspector General (OIG). The Commission uses the services of the DOI Office of Solicitor to refer cases of potential ethics violations for investigation and referral to the Department of Justice (DOJ).

There were no criminal conflict of interest violations referred to the DOJ during 2010. During the same period, there were no substantiated violations of the Standards.

## 1353 Travel Acceptances

The required semi-annual reports of payments accepted from non-Federal sources were submitted to OGE in a timely manner.

## Agency-Specific Ethics Rules

At the time of OGE's review, the Commission required employees to obtain permission from the DAEO to engage in outside activities and employment. Employees were directed to complete the Board of Governors of the Federal Reserve's Standard Form (FR 725): *Report of Compensated Outside Employment*, to request authorization for outside employment.

The Commission does not have a supplemental regulation authorizing prior approval of outside activities and employment. The review team explained ethics officials that in order to require employees to seek prior approval of outside activities, the Commission should draft a supplemental regulation in conjunction with OGE. *See OGE's Legal Advisory LA-11-07*. Alternatively, the agency may recommend – rather than require – that employees consult with the DAEO and explain that such engagement may lead to better decision making and increased transparency. Consequently, the Commission revised its Ethics Policy and no longer requires employees to obtain prior approval of outside activities and employment.

## Agency Comments

The Commission's comments in their entirety are attached to this report as an appendix.

# U.S. COMMISSION OF FINE ARTS

ESTABLISHED BY CONGRESS 17 MAY 1910

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1 December 2011

Dear Ms. Guzman:

Thank you for the opportunity to comment on final report for the Commission of Fine Arts agency Ethics Program Review of November 2011. We appreciate the professional manner and the informative process by which the Office of Government Ethics had conducted the Commission's review. The format of the final report was clear, concise, and to the point, resulting in a valuable tool for the agency to use as it endeavors to improve its ethics program.

The Commission will work to institute the recommendations and suggestions contained in the review report. Specifically:

- 1) Agency management will pursue with legal counsel a determination, for the purposes of the conflict of interest laws, of the status of the members of the Old Georgetown Board, appointed by the Commission of Fine Arts, to serve as either volunteers or Special Government Employees (SGE).
- 2) As per the recommendations, 30 November has been established in the Commission's Financial Disclosure Procedures as the specific annual due date for the filing of the SGEs' and ADAEO's confidential disclosure reports and that the filed reports will be reviewed and certified within 60 days of their submission.
- 3) All new full-time employees will be provided copies of the Standards, the Fourteen Principles, and the contact information for the DAEO and ADAEO by the agency.
- 4) To document and memorialize verbal advice given by the DAEO and ADAEO on questions of ethic issues and situations, a written log book as been established.

We appreciate the guidance of the Office of Government Ethics in assisting the Commission of Fine Arts in its administration of this important government function.

Sincerely,



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