

**United States Office of Government Ethics**

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Compliance Division

# Ethics Program Review

American Battle Monuments Commission

Report No. 13-20  
April 2013

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## Results in Brief

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The United States Office of Government Ethics (OGE) conducted a review of the American Battle Monuments Commission (the Commission) ethics program in November 2012. The results of the review indicated that the Commission must take steps to bring its ethics program into compliance with applicable laws, regulations, and policies.

### Concerns

- Improvements are needed in the administration of the public financial disclosure system. Written procedures for the financial disclosure systems were not finalized at the time of the issuance of this report and public financial disclosure reports did not meet the standard of completeness.
- Improvements are needed in the administration of ethics training. The Commission did not provide annual ethics training to covered employees in 2011 and 2012. OGE was unable to verify the agency's compliance with initial ethics orientation requirements.
- Improvements are needed in the administration of ethics advice and counsel. A non-Federal attorney was providing advice and counsel to the Commission employees, and the written advice to employees could be more thorough.
- The Commission requires employees to seek permission from their supervisors to engage in outside work or activities without an OGE-approved supplemental regulation or organic authority.
- The Commission provided OGE the semiannual reports of payments accepted under 31 U.S.C. § 1353 due in 2011 and 2012, beyond the statutory deadlines.

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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 of 1978, 5 U.S.C. app. § 402, and 5 C.F.R. part 2638.

To assess the Commission's ethics program, OGE examined a variety of documents provided by the Designated Agency Ethics Official (DAEO) and Alternate Designated Agency Ethics Official (ADAEO), including the 2011 Agency Ethics Program Questionnaire, the Commission's public financial disclosure reports, a training presentation provided to Commissioners in July 2010, and a sample of the advice and counseling rendered to Commission employees. Members of OGE's Compliance Division met with the DAEO, ADAEO, and a non-Federal attorney retained to provide legal services to the Commission to seek clarification on issues that arose through analysis of documentation and to verify data collected.

## Program Administration

Congress established the Commission in 1923 to commemorate the service, achievements, and sacrifice of U.S. armed forces. The Commission manages 24 overseas military cemeteries and 25 memorials, monuments, and markers. Nearly all the cemeteries and memorials specifically honor those who served in World War I or World War II. These locations memorialize the sacrifice of more than 218,000 U.S. servicemen and women. Nearly 125,000 American war dead are buried at Commission cemeteries, with an additional 94,000 individuals commemorated on Tablets of the Missing. The authorizing legislation for the Commission (36 U.S.C. Chapter 21) specifies that the President will appoint no more than 11 members to the Commission and an officer of the Army to serve as the Secretary. These officials are not Senate-confirmed and are special Government employees. The Commission has 396 full-time employees but in 2012, only 71 of these are Federal employees while the rest are foreign nationals. However, according to internal documents, the Commission considers any foreign nationals working for the Commission subject to the Standards of Ethical Conduct for Employees of the Executive Branch (the Standards), if permissible by labor agreements, international treaties, agreements, and host country laws.

The ethics program at the Commission is organizationally located within the office of Human Resources and Administration (HRA). The Director of HRA serves as the DAEO, while the Chief of Personnel Services serves as ADAEO. The DAEO and ADAEO share the daily operations of the ethics program. Both ethics officials perform ethics as a collateral duty. The DAEO and ADAEO are also assisted by a non-Federal attorney who provides legal services to the Commission including ethics advice, as needed, and ethics training to the Commissioners.

## 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 demonstrate this by disclosing publicly their personal financial interests by completing OGE Form 278. Title I also authorizes OGE to establish a confidential financial disclosure system for less senior executive branch personnel in certain designated positions to facilitate internal agency conflict of interest reviews. OGE implements this authority by requiring the covered executive branch personnel to complete OGE Form 450. Financial disclosure serves to prevent conflicts of interest and to identify potential conflicts by providing for a systematic review of the financial interests of officers and employees. *See* 5 C.F.R. § 2634.104(b).

### Written Procedures

Section 402(d)(1) of the Ethics in Government Act requires all agencies to develop written procedures to administer the public and confidential financial disclosure systems. The Commission did not have written procedures prior to the on-site portion of the review. During the on-site portion of the review, the ADAEO provided the review team with draft written procedures developed from a sample provided by OGE. The ADAEO agreed that having procedures in place would be a strong first step in establishing a robust succession plan at the Commission. The Commission should continue its efforts to finalize its written procedures to administer the public and confidential financial disclosure systems.

### Public Financial Disclosure

For the year 2012, the Commission had four public financial disclosure filers. To evaluate the effectiveness of the Commission's public filing system, OGE examined all public financial disclosure reports that were required to be filed in 2012. All of the reports were submitted timely. OGE found that three public financial disclosure reports were certified free of conflicts of interest within the 60-day deadline and the fourth report was certified two days after the 60-day deadline. In one instance, a report had been submitted and certified while missing a section. OGE reminds the Commission that a report must be complete before it may be certified as having no conflicts of interests. In order to complete the review and certification of the public financial disclosure report, the ADAEO agreed to obtain the missing report section. All four reports had technical errors such as over-reporting of property addresses, no agency receipt date, and no date of appointment.

During the course of the review, the review team discovered that the DAEO's most recent financial disclosure report was not submitted to OGE as required by 5 C.F.R. § 2634.602(c). According to the ADAEO, the DAEO's report was not submitted to OGE due to an administrative oversight. The ADAEO submitted the DAEO's report after the on-site portion of the review.

## **Confidential Financial Disclosure**

The Commission has no confidential financial disclosure filers. Determining if an employee should file a confidential report is at the agency's discretion, based on specific regulatory guidelines published by OGE. The review team suggested to the ADAEO that the Commission review the confidential filing requirements found at 5 C.F.R. § 2634.904(a) to determine if any positions meet the confidential filing criteria and document its analysis.

### Recommendations

- Finalize written procedures to administer the public and confidential financial disclosure systems.
- Collect the missing public financial disclosure report section and complete the review and certification of the report.

### Suggestions

- Improve ethics officials' financial disclosure review proficiency through additional training, such as classes provided by OGE.
- Document the Commission's review and analysis of the confidential filing criteria to identify any agency positions that may meet the criteria.

## **Education and Training**

An ethics training program is essential to raising awareness among employees about ethics laws and rules and informing them of agency ethics officials' availability to provide ethics counseling. Each agency's ethics training program must include at least an initial ethics orientation for all employees and annual ethics training for covered employees. OGE found that the Commission's education and training program is not in compliance with several aspects of OGE's initial ethics orientation and annual ethics training requirements.

Ethics programs are required by regulation to develop an annual ethics training plan each calendar year. The Commission did not have a training plan in place at the beginning of the 2012 calendar year as required.

### **Initial Ethics Orientation**

According to 5 C.F.R. § 2638.703, within 90 days from the time an employee begins work for an agency, the agency must provide the new employee with an initial ethics orientation that includes the Standards, any agency supplemental standards, contact information for the agency's ethics officials, and one hour to review the materials. Alternatively, an agency may provide the new employee summaries of the Standards, any agency supplemental Standards, and the Principles of Ethical Conduct for Federal Employees (the Principles) to keep, and also one hour of official duty time to review the material.

The ADAEO explained that all new employees at the Commission's headquarters receive a copy of the Standards, a brief in-person introduction to the ethics program, and one hour to review the materials. The ADAEO also explained that the Ethics Office does not track the completion of initial ethics orientation since the headquarters office consists of approximately 20 employees, and the ADAEO sees no need to formally track new employees. Therefore, OGE was unable to confirm initial ethics orientation was received by new employees within 90 days of beginning work for the Commission.

The ADAEO explained that the Deputy Secretary / Director of Overseas Operations Office is responsible for new employees' initial ethics orientation outside of the Commission headquarters. The ADAEO received assurances from the Deputy Secretary /Director of Overseas Operations Office that the Commission's initial ethics orientation process overseas is in compliance with 5 C.F.R. § 2638.703. However, the Commission did not provide the review team with a sample of initial ethics orientation materials used outside of headquarters; therefore, the review team could not verify that it met applicable requirements. Additionally, the Commission could not provide evidence that the new Commission employees outside of headquarters received initial ethics orientation.

### **Annual Ethics Training**

The Commission contracts the services of a non-Federal attorney to provide legal services to the Commission including annual ethics training. The ADAEO explained that the attorney provides annual ethics training to the Commissioners and other covered employees. The review team interviewed the attorney and he explained that the last time he provided an ethics briefing was in July 2010. He added that a briefing he provided in November 2011 focused primarily on the Hatch Act. Furthermore, the attorney told the review team that only the Commissioners attend his briefings. The attorney said that he was not scheduled to provide annual ethics training to the Commissioners or covered employees in 2012. Therefore, it appears that neither the Commissioners, who are SGEs, nor the four covered employees have received ethics training in the last two years. OGE reminds the DAEO and ADAEO that providing ethics training is one of the most important elements of the ethics program and a fundamental part of the DAEO's duties per 5 C.F.R. § 2638.203.

### Recommendations

- Develop an annual training plan as required for 2013.
- Develop an action plan to ensure that all new employees receive initial ethics orientation whether at Commission headquarters or at overseas offices.
- Institute a tracking or certification mechanism to ensure proper documentation exists to verify that that covered employees receive initial ethics orientation and annual ethics training.
- Provide all covered employees with annual ethics training containing the Standards, the Principles, and the criminal conflict of interest statutes, in accordance with 5 C.F.R. § 2638.704.

## Advice and Counsel

The DAEO is required to ensure that a counseling program for agency employees concerning ethics and Standards 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 ADAEO and the non-Federal attorney told the review team that providing advice and counsel is extremely rare. The attorney explained that some of the verbal advice he has provided was regarding properly filling out financial disclosure forms. OGE reminds the Commission that providing final written or oral opinions concerning the application of the conflict of interest laws or the Standards of Ethical Conduct for Employees of the Executive Branch, including giving advice directly to Government employees is considered an inherent Governmental activity and as such it must be performed by Government personnel only. *See* DO-03-011. The Commission may consider entering into an agreement with another Federal agency to provide ethics advice to the Commission's employees if it deems necessary to outsource this element of the program. Additionally, OGE stands ready to assist ethics officials with ethics advice and opinions through OGE's desk officer service.

OGE reviewed the only two instances of written advice and counsel issued to agency employees in the last three years in the areas of honoraria and widely attended gatherings. While the advice rendered appeared accurate, it contained no citations to identify ethics statutes and regulations. Providing written advice is an opportunity to raise awareness of the ethics laws and regulations. Including references to the statutes and regulations that provide the authority for the rendered advice will improve its completeness.

### Recommendation

- Ensure ethics advice and counsel provided directly to government employees is provided by Government personnel only.

### Suggestions

- Enter into an agreement with another Federal agency to provide ethics advice to the Commission's employees if the DAEO deems necessary to outsource this element of the program.
- Include citations to ethics statutes and regulations, as appropriate, when providing written ethics advice.

## Agency-Specific Ethics Rules

Executive branch agencies may publish regulations to supplement OGE's Standards where the agency and OGE determine such regulations are necessary and appropriate to support the agency's programs and operations. Effective May 6, 2004, per OGE guidance, the Commission repealed its superseded agency employee responsibilities and conduct regulations, which had been replaced by the executive branch-wide Standards. Since the repeal of the superseded regulations, the Commission has not pursued the issuance of supplemental standards per 5 C.F.R. § 2635.105.

Internal documentation stated that the Commission is requiring employees to seek permission from their supervisors to engage in outside work or activities. The ADAEO confirmed that this requirement is in place at the Commission. Absent an OGE-approved supplemental regulation, the Commission does not have the authority to require employees to obtain permission to engage in outside activities. Any agency that wishes to supplement the Standards of Conduct must prepare and submit to these regulations to OGE for its concurrence and joint issuance.

### Recommendation

- Cease requiring employees to obtain permission to engage in outside activities. The Commission should also remove all occurrences of the language requiring employees to seek permission from their supervisors to engage in outside work or activities from agency policy documents. If the Commission determines that requiring employees to obtain permission to engage in outside activities is necessary, then it must work jointly with OGE to issue such supplemental regulations.

## Enforcement

The Commission reported no disciplinary actions based wholly or in part upon violations of the Standards (5 C.F.R. part 2635) in 2011 or 2012. The Commission also 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) or the Standards (5 C.F.R. part 2635).

The Commission does not have an Office of the Inspector General (OIG). According to the DAEO and ADAEO, the Commission will consider at the next meeting whether to establish procedures to delineate responsibilities in the event of allegations that warrant investigations and referrals to Department of Justice. The review team told the DAEO and ADAEO that similarly situated agencies have entered into memoranda of understanding (MOUs) with existing OIGs. However, the DAEO explained that the Commission was not considering entering into an MOU.

### Suggestion

- The Commission should continue its efforts to establish procedures to delineate responsibilities in the event of allegations that warrant investigations and referrals to DOJ.

### **Special Government Employees**

A 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.

During the previous review conducted by OGE in 2004, ethics officials determined that the Commissioners are SGEs, and although ethics officials believed the Commissioners’ potential conflicts of interest were remote, the Commissioners would be required to file confidential financial disclosure reports out of an abundance of caution. The DAEO, as the designee of the agency head, has since excluded the Commissioners from the confidential reporting requirements by a determination under 5 C.F.R. § 2634.904(b) that the duties of the Commissioner position made remote the possibility a Commissioner would be involved in a real or apparent conflict of interest.

As previously mentioned, it appears that the Commissioners have not received annual ethics training for at least the last two years. OGE urges the DAEO and ADAEO to provide ethics training to the Commissioners as soon as possible. OGE has resources available to provide ethics training to the Commissioners without delay, including the web-based module tailored specifically for SGEs *Ethics Training for Special Government Employees* which may be supplemented with the pamphlet titled *To Serve With Honor: A Guide on the Ethics Rules that Apply to Advisory Committee Members Serving as Special Government Employees*.

### Recommendation

- Provide ethics training to the Commissioners as soon as possible and institute an action plan to ensure that the Commissioners receive the required training on an annual basis, as required.

### Suggestion

- Document the Commission’s determination that Commissioners should not be required to file financial disclosure reports.

### **1353 Travel Acceptances**

The Commission permits its 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.

OGE received the Commission's May 2011 and 2012 semiannual reports beyond the statutory deadlines. The ADAEO submitted the Commission's November 2011 and 2012 negative reports after the on-site portion of the review. The ADAEO could not provide a definitive reason for why the reports were late. However, he explained that ethics officials have set up a tickler system to remind them of the reports in the future so that they will be timely filed.

### **Agency Comments**

Comments provided by AMBC are attached in their entirety.



## AMERICAN BATTLE MONUMENTS COMMISSION

March 22, 2013

Office of Government Ethics  
Compliance Division  
Joseph Gangloff  
Deputy Director for Program Compliance  
By email

Dear Mr. Gangloff,

Thank you for the review conducted by the OGE staff in November 2012 and the subsequent report generated in February 2013. It has been helpful to have an outside entity review the Ethics Program here at the American Battle Monuments Commission (ABMC).

As you are aware ABMC is a very small agency with less than 75 employees who fall under the scope of the Ethics Program administered by OGE. Your review has noted a number of ways in which the program can be improved. We have already implemented some of the recommendations, and are working to correct the remaining procedural deficiencies in a timely manner. We expect to have processes and procedures in place to ensure compliance and ready access to documentation as recommended in the report in the near future.

While ABMC may be somewhat procedurally deficient in its program, it has not been deficient in its concern for and success at accomplishing its mission in a manner consistent with the underlying spirit and goals of existing ethics laws and regulations.

Sincerely,

A handwritten signature in blue ink that reads "Frank A. Manies". The signature is written in a cursive style.

Frank A. Manies  
Designated Agency Ethics Official