

United States Office of Government Ethics

Program Review Division

Ethics Program Review

U.S. Chemical Safety and Hazard Investigation Board

Results in Brief

The United States Office of Government Ethics (OGE) conducted a review of the Chemical Safety and Hazard Investigation Board (CSB) ethics program in September 2012. The results of the review indicated that CSB's ethics program generally appears to be effectively administered and in compliance with applicable laws, regulations, and policies.

Highlights

- CSB officials prepare an ethics goals document each year which aligns with the agency's mission and tracks the progress made toward each goal.
- CSB officials provide in-person annual ethics training for public filers, mandatory annual ethics training for all employees, and provide supplemental ethics information to employees throughout the year.
- CSB officials maintain detailed and well-organized files regarding all aspects of the ethics program.

Concern

- CSB officials should certify reports immediately after completing the final review to ensure the 60-day final certification deadline is met.

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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 CSB's ethics program, OGE examined a variety of documents provided by the Designated Agency Ethics Official (DAEO), Alternate Designated Agency Ethics Official (ADAEO) and an Attorney Advisor. OGE reviewed CSB's annual questionnaire, the prior program review report, CSB's public and confidential financial disclosure reports and a sample of the advice and counseling rendered to CSB employees. Members of OGE's Program Review Division met with the DAEO, ADAEO, and the Director for Administration to seek clarification on issues that arose through analysis of documentation and to verify data collected. Lastly, members of OGE's Program Review Division also obtained additional information from the Counsel to the Inspector General of the U.S. Environmental Protection Agency (EPA), who holds the position of Inspector General for CSB.

Program Administration

The CSB is an independent federal agency charged with investigating industrial chemical accidents. The CSB conducts root cause investigations of chemical accidents. The agency does not issue fines or citations, but does make recommendations to plants, regulatory agencies, industry organizations, and labor groups. Headquartered in Washington, D.C., the agency's five Board members are appointed by the President and confirmed by the Senate. The Board members serve fixed terms of five years. The Board Chairman serves as the Chief Executive Officer and is responsible for agency management, while the full Board is responsible for strategic planning and direction, and approval of investigation reports and studies. CSB has 40 full-time employees.

The ethics program at CSB is organizationally located within the Office of the Chairman. The Senior Counselor to the Chairman serves as DAEO. The agency's Deputy General Counsel serves as Alternate DAEO. In addition to the DAEO and ADAEO, the Director of Administration and an Attorney Advisor play a supporting role in the ethics program. The DAEO is responsible for the day-to-day operation of the CSB ethics program. The review team observed that all ethics-related documentation was very well-organized and readily accessible to all ethics officials. The DAEO also maintains an ethics goals document each year which aligns with the agency's mission and tracks the progress made toward each goal.

Model Practice

- CSB's DAEO demonstrates strong leadership by developing strategies to identify and achieve ethics-related goals.
- CSB maintains detailed and well-organized files regarding all aspects of the ethics program.

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 must publicly disclose their

personal financial interests (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 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 CFR § 2634.104(b).

Written Procedures

Section 402(d)(1) of the Ethics in Government Act requires that each executive branch agency establish written procedures for collecting, reviewing, evaluating, and where applicable, making publicly available, financial disclosure reports filed by the agency's officers and employees. CSB has comprehensive written procedures for the public and confidential financial disclosure systems as required. In addition to covering statutorily required information, CSB's procedures include a checklist for reviewers to help ensure a consistent and systematic review and a glossary of important terminology. CSB's written procedures to administer the public and confidential financial disclosure systems clearly delineate responsibilities and provide a basis for a robust succession plan.

Public Financial Disclosure

CSB has six public financial disclosure filers, including three Presidentially appointed and Senate-confirmed Board members.¹ To evaluate the effectiveness of CSB's public system, OGE examined all public financial disclosure reports that were required to be filed in 2012 and compared them, for technical completeness, to the reports submitted in 2011. All of the reports were submitted timely. OGE found that three of the public reports were certified beyond the 60-day deadline. However, in one case the review occurred only a few days after the 60-day deadline. We also noted that there was ample evidence that the DAEO, as certifying official, reviewed the reports prior to the 60-day deadline, but elected not to sign the reports until all were ready for submission to OGE. OGE reminds CSB that financial disclosure reports must be reviewed and certified, by signature, within 60 days of report receipt when the reports do not require additional information or remedial action. *See* 5 C.F.R. § 2634.605(a) and PA-11-04.

CSB's review of the public financial disclosure reports is thorough. The review and certification of public reports at CSB is comprehensive and well-supported. The DAEO keeps records of analysis, research, and interactions with filers. OGE found only minor technical errors such as three public filers over-reporting some non-reportable assets. The review team brought the technical errors to the attention of the DAEO, who noted the errors and indicated that he would be more vigilant when conducting his technical review.

Confidential Financial Disclosure

CSB has 14 confidential financial disclosure filers. To evaluate the effectiveness of CSB's confidential system, OGE examined all 14 annual confidential financial disclosure reports that

¹ For the year under review, CSB officials also collected two termination reports. Both termination reports were submitted timely. However, one of the reports was certified by the DAEO well over the 60-day deadline.

were required to be filed in 2012 and compared them, for technical completeness, to the reports submitted in 2011. Eleven of the 14 annual confidential financial disclosure reports we examined were submitted timely. The three reports that were submitted late were all submitted no more than 15 days late. While there is no grace period for confidential financial disclosure reports, the review team does not believe these slightly late reports indicate a systemic problem that would merit a formal recommendation. The DAEO agreed to be more proactive about providing filing extensions in the future when warranted. All 14 annual confidential reports were reviewed and certified timely.

Education & Training

CSB has detailed written procedures for the administration of the education and training element of the ethics program. The procedures define important terms and describe the process for providing ethics training to new employees, public filers, and confidential filers. OGE found CSB's education and training program to be in compliance with OGE's initial and annual training requirements, including documenting an annual ethics training plan.

Initial Ethics Orientation (IEO)

According to 5 CFR § 2638.703, within 90 days from the time an employee begins work for an agency, the agency must provide the new employee with an IEO that includes the Standards of Ethical Conduct for Employees of the Executive Branch (the Standards), any agency supplemental standards, contact information for the agency's ethics officials, and one hour to review the materials. OGE examined CSB's IEO materials and found them to be in compliance with 5 CFR § 2638.703. Given the small size of the agency, the DAEO is immediately aware of new employees. The DAEO conducts an in-person IEO with all new employees, provides the required documentation, and reviews the ethics documentation available on the CSB website. CSB requires employees to certify completion of IEO training. For the year under review, there were nine new employees. The review team examined the certification documentation to confirm that all nine new employees received IEO within 90 days.

Annual Ethics Training

In 2012, the DAEO provided in-person training to all six public financial disclosure filers and exceeded the basic program requirements by providing supplemental training via computer-based modules. All 14 confidential financial disclosure filers received annual training via computer-based modules. CSB also requires all employees who do not file financial disclosure reports to take an hour of ethics training via computer-based modules.

Employees receive further ethics instruction through a mandatory review of the CSB Ethics Handbook that includes an introduction from the Chairman, the 14 Principles of Ethical Conduct, the Standards, the Federal conflict of interest statutes, and the contact information for the CSB DAEO. CSB employees also receive additional ethics training during CSB "all-hands" meetings and through quarterly email reminders regarding seasonal ethics issues, such as gifts during the

holiday season. OGE examined CSB's annual training material and found it to be in compliance with 5 CFR § 2638.704 and 705.

Model Practice

- CSB ethics officials provide annual ethics training to all employees. Additionally, CSB ethics officials reinforce ethics training at "all hands" meetings and via periodic email reminders.

Advice & Counsel

The DAEO is required to ensure that a counseling program for agency employees concerning ethics and standards of conduct matters, including post-employment matters, is developed and conducted. See 5 CFR § 2638.203. The DAEO may delegate to one or more deputy ethics officials the responsibility for developing and conducting the counseling program. See 5 CFR § 2638.204.

CSB's counseling program for agency employees implements 5 CFR § 2638.203(b)(7) and (8) which require the DAEO to render counsel on ethics and standards of conduct matters and that records are kept, when appropriate, on advice rendered. Currently, the DAEO provides all advice and counseling but the ADAEO and Attorney Advisor will also perform these functions in the future. OGE reviewed a sample of 10 instances of written advice and counsel issued to agency employees in the areas of seeking employment, post-employment, use of official title, misuse of government property, conflicts of interest, gifts from outside sources, widely attended gatherings. The advice reviewed was accurate and rendered timely.

Enforcement

The Environmental Protection Agency's (EPA) Office of the Inspector General (OIG) provides oversight of the programs and operations of CSB. The EPA OIG is responsible for concurrently referring potential violations of criminal conflict of interest statutes to the Department of Justice and OGE, as required under 5 CFR § 2638.603. CSB reported no disciplinary actions based wholly or in part upon violations of the standards of conduct provisions (5 CFR part 2635) in 2011. CSB 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 of conduct provisions (5 CFR part 2635).

The review team contacted EPA OIG to inquire about the relationship with the CSB ethics office. The EPA Counsel to the Inspector General described the relationship between the EPA OIG and the CSB ethics office as close, ongoing, and engaged, adding that both offices refer matters back and forth to ensure the appropriate office handles ethics issues.

1353 Travel Acceptances

Federal agencies may 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 CFR 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.

Historically, CSB has rarely permitted the acceptance of travel payments from non-Federal sources; however, it recently accepted two instances of such travel. CSB has written procedures to implement 31 U.S.C. § 1353 which clearly delineate all roles and responsibilities in the process. CSB's "Request for Acceptance of Payment From Non-Federal Source" form and its instructions mandate a thorough review by the DAEO. If the DAEO finds that it is permissible to accept the payment, the request must then be approved by the CSB Chairman and voted on by the Board.

Prior to the on-site portion of OGE review, OGE did not have a record of the semiannual report on payments covering the period from April 1, 2011 – September 30, 2011. CSB provided OGE with a copy of the missing report and evidence that the report had been submitted to OGE via U.S. Mail at a time when OGE was transitioning to accepting electronic submissions only. The October 1, 2011 – March 31, 2012 was submitted timely. CSB is now aware that semi-annual reports must be submitted electronically.

Agency Comments

CSB made some relatively minor technical changes, primarily to update the organizational reporting lines for the DAEO.

With respect to your reminder that:

- CSB officials should certify reports immediately after completing the final review to ensure the 60-day final certification deadline is met.

CSB agrees and will ensure that public reports are certified in a timely manner. Among other options, CSB will consider implementation of an electronic filing system that will better enable the tracking of all pertinent deadlines.

CSB thanks OGE for a thorough and helpful program review.