



United States  
**Office of Government Ethics**  
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March 2, 2012

Christopher Parker  
Designated Agency Ethics Official  
International Boundary and Water Commission  
4171 North Mesa Street  
Suite C-100  
El Paso, TX 79902-1441

Dear Mr. Parker:

The United States Office of Government Ethics (OGE) has completed a follow-up review of the ethics program at the International Boundary and Water Commission (the Commission). OGE's primary objective was to determine whether the improvements recommended or suggested in our April 2011 report on our initial review of the Commission's ethics program have been achieved.

Enclosed is a report on the results of the review. The results of the review indicated that the Commission is not yet in full compliance with applicable statutes and regulations. Therefore, some of the recommendations in OGE's April 2011 report remain open. OGE will continue to follow-up with the Commission until all recommendations have been adequately addressed.

I appreciate the cooperation extended to the OGE program review staff. If you would like to discuss the follow-up report, please contact me at 202-482-9317.

Sincerely,

A handwritten signature in cursive script that reads "Rashmi Bartlett".

Rashmi Bartlett  
Associate Director

Enclosure



U.S. Office of Government Ethics  
Program Review Division

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# Ethics Program Follow-up Review

International Boundary and Water Commission

Report No. 12-38F  
March 2012

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## Results in Brief

The United States Office of Government Ethics (OGE) conducted a follow-up review of the International Boundary and Water Commission (the Commission) ethics program in February 2012. The purpose of the follow-up review was to determine whether the improvements recommended or suggested in OGE's April 2011 report on the initial review of the Commission's ethics program have been achieved. Based on the results of the follow-up review, OGE has determined the recommendations and suggestions in the April 2011 report have been closed or remain open as indicated.

Recommendations	Status
Ensure the Commissioner's ethics agreement has been complied with in accordance with 5 CFR 2634 Subpart H.	Closed
Verify no conflicts of interest have occurred relating to the commitments contained in the Commissioner's ethics agreement.	Closed
Complete the financial disclosure section of the ethics program directives.	<b>Open</b>
Resolve State's financial disclosure role regarding the Commission and formally document each agency's responsibilities.	<b>Open</b>
Update the annual training to meet the full regulatory requirements.	Closed
Clarify and formalize the relationship between the Commission and State OIG and the procedures for handling a criminal conflict of interest violation.	Closed
Suggestions	Status
OGE strongly suggests the responsibilities of DAEO return to the Legal Affairs Office and be held at a level of authority appropriate for the position.	Closed
Establish procedures to ensure non-ethics-related issues are addressed by the appropriate personnel.	Closed
Further examine the reports available from HC regarding accessions, promotions and terminations to find the most effective mechanism for identifying changes in filing status.	Closed
Enhance departing employees' out-processing procedures to ensure the ethics office has an opportunity to provide post-employment counseling.	Closed

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## Objectives, Scope, and Methodology

The purpose of a follow-up review is to determine whether the improvements recommended or suggested<sup>1</sup> as the result of an OGE-conducted ethics program review have been achieved. Generally, only issues identified during the initial ethics program review are addressed during the follow-up review. This follow-up review was conducted to address the issues identified in OGE's report on the Commission's ethics program issued in April 2011 (Report Number 11-016). To conduct the follow-up review of the Commission's ethics program, OGE examined a variety of documents provided by the Commission and also considered the Commission's responses to questions regarding the actions taken in response to OGE's recommendations and suggestions.

## Program Administration

At the time of OGE's initial review, the Commission's ethics program was administered from within the Compliance Programs Office. The Internal Auditor served as the Designated Agency Ethics Official (DAEO) and the Compliance Officer served as the Alternate DAEO. OGE's primary concern with this program structure was that the Internal Auditor's relatively junior position within the organization did not provide a level of authority commensurate with the responsibilities of the DAEO position. A further concern was that, in addition to concurrent DAEO and Internal Auditor responsibilities, the DAEO was also the primary point of contact for many non-ethics related issues including criminal complaints, questions on the use of government vehicles, Equal Employment Opportunity concerns, and prohibited personnel practices. OGE's report made two suggestions directed at improving the structure of the Commission's ethics program:

<sup>1</sup> Recommendations are made to direct action required to bring an ethics program into compliance with statutes or regulations. Agencies are required to take action to address a recommendation. Suggestions are made based on OGE's collective experience in improving program effectiveness and efficiency and are meant to assist agencies in enhancing their ethics programs. Agencies are not required to take action to address a suggestion. However, OGE does review whether an agency acted on its suggestions.

- OGE strongly suggests the responsibilities of DAEO return to the Legal Affairs Office and be held at a level of authority appropriate for the position.
- Establish procedures to ensure non-ethics-related issues are addressed by the appropriate personnel.

The Commission has determined that the ethics program will be located within the Office of Legal Affairs. However, the Commissioner has yet to appoint someone within the Office of Legal Affairs as DAEO. At the time of this follow-up review, the Internal Auditor was still serving as the DAEO. However, the Internal Auditor position has been moved to the Office of the Commissioner and the Internal Auditor is a direct report to the Commissioner. Also, in close coordination with the Chief Counsel, the DAEO has declined to opine on certain matters, which were more appropriately addressed by management. While OGE encourages the Commission to complete the transition of the ethics program into the Office of Legal Affairs, it is acknowledged that the actions taken are responsive to OGE's suggestions and these issues are closed.

### Financial Disclosure

OGE's initial review found that the Commissioner's new entrant public financial disclosure report contained an ethics agreement with resignation and recusal requirements that--at the time of the review--had not been acted upon by the Commission's ethics office. The initial review also found that the Commission's written procedures for administering the financial disclosure program were only in draft form. Additionally, while the U.S. Department of State (State) has a role in reviewing the Commissioner's financial disclosure report, as well as other elements of the Commission's ethics program, that role was poorly defined at the time of the initial review. OGE made four recommendations based on these issues:

- Ensure the Commissioner's ethics agreement has been complied with in accordance with 5 CFR 2634 Subpart H.
- Verify no conflicts of interest have occurred relating to the commitments contained in the Commissioner's ethics agreement.
- Complete the financial disclosure section of the ethics program directives.
- Resolve State's financial disclosure role regarding the Commission and formally document each agency's responsibilities.

The Commissioner has complied with all the requirements specified in his ethics agreement, as verified by the DAEO. The DAEO also verified that no conflicts of interest relating to the commitments contained in the Commissioner's ethics agreement occurred. OGE has closed these two recommendations.

OGE asked for a copy of the written procedures for administering the public and confidential financial disclosure systems as part of the follow-up review. In response, OGE was advised that the Commission's Ethics Directive, of which the procedures for administering the financial disclosure programs are part, is not yet complete. The Commission did provide a draft

of the Ethics Directive. It was noted that portion of the draft which addresses financial disclosure so far only states what the Commission is required to do and not how the requirements will be met, as required. For instance, the draft notes that the DAEO will establish an effective system and procedure for the annual solicitation of the OGE 450 in accordance with the OGE annual schedule of important ethics dates. While this is an accurate statement of what is required, the Commission is reminded that the final written procedures must describe how this will be accomplished. This recommendation will remain open until written procedures for administering the public and confidential financial disclosure systems are complete, in accordance with section 402(d)(1) of the Ethics in Government Act of 1978, as amended. To ensure written procedures comply with applicable requirements, the commission is encouraged to consult the guidance contained in DAEOgram DA-09-03-92, available on OGE's website.

The Commission is still working to resolve State's financial disclosure role regarding the Commission. This recommendation will remain open until State's role is clearly defined and documented.

OGE's initial report also contained a suggestion regarding the Commission's ability to identify when an employee enters a position which requires them to file a financial disclosure report:

- Further examine the reports available from HC [Human Capital] regarding accessions, promotions and terminations to find the most effective mechanism for identifying changes in filing status.

The Commission responded that the DAEO is now on the distribution list for all Executive Staff Minutes which are read weekly and retained by the DAEO. The DAEO also receives and reads monthly reports made available from HC regarding accessions, promotions, and terminations. The Commission has determined that these two new tools are the most effective mechanism for identifying changes in filing status. OGE has closed this issue.

## Education & Training

OGE's initial review also found that annual training given to covered employees inadvertently omitted some elements required by 5 CFR 2638.705(b). OGE's report recommended that the Commission:

- Update the annual training to meet the full regulatory requirements.

Supplemental materials used to update the training were provided during the follow-up review. They contain the additional required information and bring the Commission's annual training into full regulatory compliance. This recommendation has been closed.

## Advice & Counsel

OGE's initial review found that the Commission was making post-employment counseling available to departing employees. However, departing employees rarely engaged the ethics office as part of their out-processing. Counseling on post-employment restrictions is typically conducted when employees contact the ethics office on their own initiative. OGE believed it was in the Commission's best interests to enhance out-processing procedures to help ensure employees took full advantage of the availability of advice. Therefore, OGE suggested the Commission:

- Enhance departing employees' out-processing procedures to ensure the ethics office has an opportunity to provide post-employment counseling.

Ethics officials have more formally incorporated an ethics briefing into the check-out process and will have the opportunity to provide post-employment counseling to all departing employees. This action is fully responsive to OGE's suggestion and the issue is closed.

## Enforcement

OGE's initial review disclosed that there was uncertainty regarding the Department of State's (State) jurisdiction to conduct oversight of the Commission's activities, including the investigation of potential violations of the criminal conflict of interest statutes. State's position was that they do have authority to conduct oversight audits and investigations while the Commission's position is that State's authority is informal and its jurisdiction is questionable. OGE's concern was that the apparently unresolved jurisdictional issue may leave the ethics program vulnerable. The procedures for handling criminal violations should not be left unresolved and therefore OGE included the following recommendation in its report:

- Clarify and formalize the relationship between the Commission and State OIG and the procedures for handling a criminal conflict of interest violation.

The Commission does have a formal memorandum of understanding (MOU) with State. While this MOU clearly defines various aspects of the relationship between the two parties it does not address the procedures for handling criminal conflict of interest matters. However, there is an understanding between the Commission and State OIG that if a potential violation of a criminal conflict of interest statute occurs, the matter will be referred to State OIG for investigation. The MOU includes a provision calling for both parties to review and make mutually agreeable changes to the MOU every two years or sooner if both parties agree. OGE encourages the Commission to negotiate with State to amend the MOU to include provisions defining State OIG's role in investigating and handling criminal conflict of interest matters at the next available opportunity. While encouraging the commission to more formally define State OIG's role, OGE believes that the Commission has established sufficient policies and procedures to warrant closing this recommendation and has done so.