



U.S. Office of Government Ethics  
Program Review Division

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# Ethics Program Review

The Morris K. Udall and Stewart L. Udall Foundation

Report No. 12-023  
January 2012

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## Results in Brief

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The United States Office of Government Ethics (OGE) conducted a review of the Morris K. Udall and Stewart L. Udall Foundation’s (The Foundation) ethics program during November 2011. In general, 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, aspects of the public and confidential financial disclosure, annual training and special Government employee systems need to be improved before the program is in full compliance.

### Highlight

- The Designated Agency Ethics Official (DAEO) provides in-person initial ethics orientation (IEO) to all required employees.

### Concerns

- The Foundation has not provided OGE a formal written designation letter delegating the functional authority to coordinate and manage the ethics program to the DAEO and Alternate Designated Agency Ethics Official (ADAEO). See 5 CFR 2638.202(c).
- The Foundation does not have written procedures for its financial disclosure system pursuant to Section 402(d)(1) of the Ethics in Government Act.
- The Foundation needs to improve the special Government employee (SGE) system in the areas of confidential financial disclosure and annual training.
- The Foundation has not made a formal determination as to the status of the scholarship readers based on the provisions of 18 U.S.C. §202(a).
- The Foundation’s annual ethics training does 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 Foundation's ethics program, OGE examined a variety of documents provided by ethics officials; other documents that the Foundation forwarded to OGE, including the annual questionnaire; public and confidential financial disclosure reports, Board of Trustees (Board) meeting minutes, training materials, and advice and counsel provided to employees. In addition, members of OGE's Program Review Division met with the DAEO, the ADAEO, a paralegal, and the Scholarship Program Manager to obtain additional information about the strengths and weaknesses of the Foundation's ethics program, seek clarification on issues that arose through the documentation analysis, and verify data collected.

## Program Administration

The General Counsel has served as the DAEO since 2008. The Executive Director serves as the ADAEO. The DAEO is primarily responsible for the day-to-day administration of the ethics program and is assisted by a paralegal. The Foundation has not provided OGE a formal written designation letter delegating the authority to coordinate and manage the ethics program. See 5 CFR 2638.202(c)

### Recommendation

- Provide to OGE a formal designation letter delegating the authority to coordinate and manage the ethics program to the DAEO and ADAEO as set forth in 5 CFR 2638.202(c).

## Financial Disclosure

### Written Procedures

The Foundation does not have written procedures for the administration of its financial disclosure system as required by Section 402(d)(1) of the Ethics in Government Act. Written procedures ensure consistency in the collection, review, and certification of financial disclosure reports. Written procedures are also an essential element for a good succession plan. OGE recommends the Foundation create written procedures for its financial disclosure system pursuant to Section 402(d)(1) of the Ethics in Government Act.

## Public Financial Disclosure

OGE reviewed the two required public financial disclosure reports filed by the DAEO and the ADAEO in 2011. The reports were filed and certified timely. OGE identified minor technical errors in the reports such as listing the complete address of rental properties and missing dates of receipt by the agency. Because the ethics official did not indicate the date it received the public financial disclosures reports, OGE reviewers used filers' signature to evaluate the timeliness of filing. OGE reminded ethics officials to document the date of receipt on all financial disclosure reports.

## Confidential Financial Disclosure

During the onsite portion of the review, ethics officials could not provide the two confidential financial disclosure reports required to be filed in 2011 to OGE for examination. Upon learning of these outstanding reports, the DAEO realized that filers were not notified timely about the filing requirement. Consequently, the DAEO took immediate action to bring the confidential financial disclosure program into compliance by having filers file their reports. Additionally the DAEO implemented internal controls to prevent future recurrences of failure to notify filers.

Confidential financial disclosure serves an important role in fostering trust in the work of Government. Preventing conflicts is the cornerstone of a successful ethics program. Because ethics laws prohibit Government employees from having financial conflicts of interest, it is essential that ethics officials identify and resolve all real or potential conflicts of interest or other violations in a timely manner.

### Recommendation

- Create written procedures for its financial disclosure system pursuant to Section 402 (d)(1) of the Ethics in Government Act.

## 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*.

The Foundation is directed by the Board which is comprised of 13 members. As outlined in 20 U.S.C. § 5603(b), the Board includes four ex officio members: the Secretary of the Interior (or designee), the Secretary of Education (or designee), the President of the University of Arizona and the chairperson of the President’s Council on Environmental Quality. The remaining nine members are appointed by the President with the advice and consent of the Senate.

The nine members of the Board who are appointed by the President with the advice and consent of the Senate are SGEs and along with the President of the University of Arizona are required to file confidential financial disclosure reports. The remaining ex officio members file financial disclosure reports with their agency.

### **Confidential Financial Disclosure for SGE**

The Foundation has established February of each year as the date of collection for SGE confidential financial disclosure reports. SGEs are required to file their financial disclosure reports before attending a board meeting or rendering any advice. OGE examined the minutes of two semiannual board meetings including a meeting in April 2011 and found that two of the three board members who had not filed their confidential financial disclosure reports attended the meeting. Because ethics laws prohibit Government employees from having financial conflicts of interest, it is essential that ethics officials identify and resolve all real or potential conflicts of interest or other violations in a timely manner. See 5 CFR § 2634.903 (b)(3) and OGE Advisory opinion 00 X 1.

OGE examined all of the remaining seven required confidential financial disclosure reports filed by SGEs in 2011. Because ethics officials did not indicate the date it received the reports, OGE reviewers used filers' signatures to evaluate the timeliness of filing. Although reports were filed timely, OGE noticed that all reappointed SGEs indicated the type of report as "incumbent" instead of selecting the "new entrant" box on their financial disclosure reports. An "incumbent" financial disclosure report covers the prior calendar year, while a "new entrant" financial disclosure report covers the 12 months preceding the filing date.

### **Ethics Training for SGEs**

OGE reviewed the process and the materials used to provide annual training to SGEs in 2011. While SGEs received written ethics training, the materials focused on the Federal travel regulations and, therefore, did not meet the requirements for annual training.

### **Scholarship Review Panel**

The Foundation awards scholarships to college students committed to careers related to the environment, tribal public policy, or Native American health care. Members of the Foundation staff appoint a panel of 14 readers to review approximately 500 annual nominations for the Foundation's scholarships and recommend awards. The reader panel consists of members of university faculty and alumni from the scholarship program. The readers receive a \$400 honorarium paid from the agency's operating budget and are reimbursed for travel and lodging to include per diem.

According to the Foundation's staff, the readers are volunteers. However, the Foundation has not documented a formal determination of the status of the readers. OGE recommends that the Foundation make a formal determination as to the status of the readers based on the provisions of 18 U.S.C. §202(a).

### Recommendations

- Ensure that SGEs file their confidential financial disclosure reports before attending a committee meeting or rendering any advice .
- Ensure that reappointed SGEs select the “new entrant” box on their confidential financial disclosure reports and include information for the preceding 12 months preceding filing date.
- Provide all SGEs with annual ethics training containing the Standards, the Principles, and the criminal conflict of interest statutes, in accordance with 5 CFR § 2638.705.
- Make a formal determination as to the status of the readers based on the provisions of 18 U.S.C. §202(a).

### **Education & Training**

The Foundation ethics officials reported that all required employees received IEO as of the time of the review. The DAEO provides IEO in person. OGE reviewed the Foundation’s IEO materials and found them to be in compliance with 5 CFR § 2638.703.

OGE reviewed the process and the materials used to provide annual ethics training in 2010. The written ethics training materials focused on Federal contracting regulations, and, therefore, did not meet the relevant requirements for annual training.

### Recommendation

- Provide all covered employees with annual ethics training containing the Standards, the Principles, and the criminal conflict of interest statutes, in accordance with 5 CFR § 2638.704.

### **Advice & Counsel**

The DAEO serves as the primary provider of advice for all ethics-related questions. The ADAEO may occasionally provide advice in the absence of the DAEO. OGE reviewed a sample of the Foundation’s written advice and found that all pieces of advice and counsel appeared thorough and were given in a timely manner. OGE noted the DAEO’s commitment to providing advice and counsel to employees by taking advantage of quarterly agency wide staff meetings to discuss actual ethics-related situations or issues that arose in the previous quarter.

### **Enforcement**

The Foundation does not have an Office of Inspector General (OIG). The Foundation’s DAEO in consultation with the Executive Director/ADAEO (unless implicated) would refer cases of potential ethics violations to the Department of Justice (DOJ) for investigation.

There were no violations of the Standards or criminal conflict of interest statutes referred to the DOJ during 2010.

### **1353 Travel Acceptances**

The Foundation rarely accepts payments from non-Federal sources under 31 U.S.C. § 1353. All semi-annual reports were submitted to OGE in a timely manner.

### **Agency Comments**

The Foundation provided comments on the draft version of this report. The Foundation's comments in their entirety are attached.

December 30, 2011

TO: Kingsley Simons  
Ciara Guzman

From: Jeff Silvyn, General Counsel

Below are suggested corrections and comments regarding the draft Ethics Program Review. If you have any questions or concerns regarding this information, please do not hesitate to contact me at (520) 901-8576 or via email [silvyn@udall.gov](mailto:silvyn@udall.gov). Thank you for your professional courtesy throughout the review process/

### Suggested corrections

In the section on SGEs:

For the description of the board composition, it would be more accurate to say for two of the ex officio members: the Secretary of the Interior (or designee), the Secretary of Education (or designee). These are the only two Board positions that may delegate their responsibilities to someone else.

### Comments

Program Administration

The Udall Foundation notified OGE in 2008 that the General Counsel had assumed the role of DAEO. Following the OGE program review, the Udall Foundation prepared a formal designation letter for submission to OGE.

## Financial Disclosure

Following the OGE program review, the Udall Foundation began to document its procedures.

## Special Government Employees

### Confidential Disclosure for SGE

Concerning the one Board member who attended a meeting without having filed a confidential financial disclosure report, as reflected in the agenda and minutes for the referenced meeting, the Board did not consider or vote on any matters that could entail an actual conflict of interest or the appearance of a possible conflict of interest of the types that might be revealed by the information contained in a confidential financial disclosure report. Given the nature of the Udall Foundation's work and the role of its Board, it would be extremely unusual for a conflict of interest or appearance of a conflict of interest to arise of the type that might be revealed by the information contained in a disclosure report.

In the event of a recurrence, the Udall Foundation will continue to ensure that a Board member who has not filed a required financial disclosure statement does not participate in the review or vote on a matter for which there could be a conflict of interest or appearance of a conflict of interest that could have been revealed by a disclosure report.

For the 2011 confidential financial disclosure reports, the Udall Foundation will advise all SGE filers to select the "new entrant" box.

### Ethics Training for SGEs

The Foundation notes that the prior ethics training met the requirements for ethics trainings and that the training mentioned in the review report focused on specific ethics and travel rules that had been the subject of apparent confusion by some Board members. The next ethics training will include a broader review of the ethics rules in compliance with the recommendation.

### Scholarship Review Panel

The Udall Foundation will make a formal determination of the status of its scholarship application readers under the provisions of 18 U.S.C. § 202(a).

## Education and Training

The Udall Foundation will provide all covered employees with annual ethics training containing the Standards, the Principles, and the criminal conflict of interest statutes, in accordance with 5 CFR § 2638.704. One of the covered employees received such training shortly after the ethics program review.