



U.S. Office of Government Ethics  
Program Review Division

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# Ethics Program Review

Occupational Safety and Health Review Commission

Report No.12-44  
March 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 ethics program at the Occupational Safety and Health Review Commission (Review Commission) in January 2012. The results of our review continue to find the Review Commissions' overall ethics program sound with respect to relevant ethics laws and regulations. However, certain improvements can be made to strengthen the program further, particularly in the areas of financial disclosure and education and training. OGE is making one formal recommendation in the area of financial disclosure and offering several suggestions for improvement regarding other matters.

### Highlights

- The Review Commission leadership plans to incorporate specific ethical leadership strategies into the day-to-day management of the ethics program.

### Concerns

- The Review Commission did not have detailed written procedures for administering both the public and confidential financial disclosure systems.
- The Review Commission did not satisfy the compliance-based annual training requirement for 2011.

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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 Review Commission's ethics program, OGE examined a variety of documents provided by ethics officials; other documents that the Review Commission forwarded to OGE, including the annual questionnaire; prior program review reports, and a sample of the Review Commission's public and confidential financial disclosure reports and advice and counsel provided to employees. In addition, members of OGE's Program Review Division met with the ethics staff at the Review Commission to obtain additional information about the strengths and weaknesses of agency's ethics program, seek clarification on issues that arose through the documentation analysis, and verify data collected.

## Program Administration

The Review Commission is an independent, adjudicatory agency that is responsible for ensuring the timely and fair resolution of cases involving the alleged exposure of American workers to unsafe or unhealthy working conditions. The Chairman, the administrative head of the agency, is one of three Presidentially-appointed, Senate confirmed commissioners (PAS). The Review Commission is headquartered in Washington, DC, with regional offices in Atlanta and Denver, and has approximately 60 full-time employees.

The Review Commission's ethics program is organizationally located within the Office of General Counsel and is managed by a Senior Attorney-Advisor who is appointed as the agency's Designated Agency Ethics Official (DAEO). An Attorney-Advisor serves as the Alternate DAEO and together they are responsible for the day-to-day management of the program. Assistance with the program's implementation is provided by the General Counsel, as necessary.

### Agency Leadership Support

In connection with this review, OGE met with the Chairman to discuss the scope of this review and the critical role that agency leadership plays in implementing an effective ethics program, in accordance with 5 CFR § 2638.202(a). OGE considers leadership involvement in an ethics program to be a model practice and was pleased to hear of the Chairman's commitment toward supporting the agency's ethics program. During this discussion, we shared with the Chairman, OGE's "Leadership Initiative" document which highlights several concrete actions that agency leaders could consider toward promoting an ethical culture and supporting the agency's ethics program.

Prior to the issuance of this report, OGE was informed that the Chairman approved an Ethics Program Development Plan for 2012 to help underscore leadership's support for ethics and the importance of an ethical culture at the Review Commission. The plan, which is currently being implemented by ethics officials, consists of several initiatives and from among them include:

- having ethics officials present ethics tips/reminders at each all-hands meeting,
- posting recusal information on the monthly case docket reports located on the agency's Open Government Website,
- updating the Review Commission's travel directive to reflect the most recent General Services Administration (GSA) changes made to 41 CFR part 304-1, and
- creating a welcome letter from the Chairman to give to new employees during initial ethics orientation to underscore the importance of ethics.

OGE considers this type of visible, direct leadership approach in ethics to be a model practice.

### Supplemental Requirement for Outside Employment

When OGE last reviewed the Review Commission's ethics program in 2001, we noted that the Review Commission had drafted a supplemental standard of conduct regulation that contained a provision for prior written approval for outside employment. The draft was also submitted to OGE for concurrence.

During current discussions with the DAEO regarding this issue, OGE was informed that the Review Commission no longer had an interest in issuing a supplemental regulation requiring prior approval. Thus, OGE will close this issue.

### Financial Disclosure

To evaluate the effectiveness of the Review Commission's financial disclosure system, OGE examined 15 public and the 4 confidential financial disclosure reports that were required to be filed at the agency in 2011. While OGE found the overall program to generally accord with statutory and regulatory requirements, as each report examined had been generally filed, reviewed, and certified timely, two issues were identified during our examination that were brought to the attention of ethics officials.

**First**, the Review Commission did not have detailed written procedures that outlined the process for administering the agency's financial disclosure systems as required by section 402 of the Ethics in Government Act (Ethics Act). Instead, the Review Commission established an Ethics Directive that set out OGE's standards and regulations; the financial disclosure requirements for certain employees; and the policies and procedures developed by the Review Commission to meet those standards and requirements.

While OGE found the financial disclosure section of the Directive to generally comply with the requirements of the Ethics Act, we identified areas that could be strengthened. For example, OGE did not find the directive to address the process for obtaining additional information from a filer when a financial disclosure report is incomplete, ambiguous, or raises

conflict of interest issues; the process on following-up with delinquent filers; or the process on maintaining custody of these reports.

As a result, OGE is recommending that the Review Commission develop either a separate set of written procedures outlining the financial disclosure process or modify the financial disclosure section within the Directive to more fully comply with the prescribed requirement. Written procedures are important in establishing consistency and efficiency in ensuring that agency ethics officials follow the same step-by-step procedures for administering the financial disclosure system. When properly used and updated, written procedures also provide ethics officials with the opportunity to plan for system improvement. OGE suggests that these procedures remain updated to reflect significant changes as they occur to help ensure compliance with all applicable laws, regulations, and executive orders, as required by the Ethics Act.

With regard to the Ethics Directive itself, OGE considers the development of such a document to be a model practice. OGE considers the document to serve as a component of an effective succession plan to help maintain the consistent administration of the Review Commission's ethics program and a valuable resource to both employees and ethics officials.

**Second**, technical reporting issues were identified on both the public and confidential reports OGE examined. However, OGE is making no formal recommendation for improvement regarding these matters based on assurances received by the DAEO that these issues will be corrected during future filing cycles. Provided below are the issues that were brought to the attention of ethics officials.

- During the examination of the public system, OGE noticed that some reports had been certified even though additional information from the filer was needed. For example, OGE identified several reports that did not list the value of a particular asset or the income amount derived from them. We also found one report to have been filed without all appropriate report schedules. In view of this, OGE advised the DAEO to go back to each filer OGE identified as needing additional information.

OGE reminds ethics officials that reviewers must seek additional information when a report is incomplete (e.g. when a filer fails to check an asset value); when a report reveals one entry (or the absence of one) that is inconsistent with another entry on the report or on the filer's previous report; when a report omits an entry for which the reviewing official has independent knowledge; or when a reviewing official requires more information to ensure the filer's compliance with Federal ethics laws and regulations or with other laws and regulations. Any lack of completeness or accuracy detected on a report should be resolved prior to a report being certified by the reviewing official. To prevent future occurrences, OGE suggests that the DAEO institute the practice of documenting when entries require additional information, clarification, or correction. This would not only help ensure that future incomplete reports are not certified but would also allow for greater efficiency during a year-to-year review. Ethics officials could also meet with filers to ensure they understand the filing instructions on how to properly complete a public financial disclosure report.

- During the examination of the confidential system, OGE noticed that two of the four confidential reports examined did not have a date stamp, as required by 5 CFR § 2634.605(a). Therefore, OGE based filing timeliness on the filers' signature dates. Using this method, OGE confirmed that all reports were filed timely. OGE was assured that the practice of date-stamping reports would become routine during future filing cycles.

#### OGE Recommendation

- Establish detailed written procedures for administering both the public and confidential financial disclosure systems in accordance with the requirements of the Ethics Act.

### **Education & Training**

OGE found the Review Commission meeting the requirements of subpart G of 5 CFR part 2638 by documenting its annual ethics training plan and satisfying initial ethics orientation requirements. However, in view of the importance of ethics education and training in preventing employees from committing ethics violations, improvements can be made to strengthen the annual ethics training element of the program. Our suggestions for improvement are discussed below.

#### Annual Ethics Training

At the time of OGE's fieldwork in January 2012, annual ethics training for 2011 had not been completed. However, ethics officials were making an earnest effort to comply with the requirements of 5 CFR §§ 2638.704 and 2638.705 by planning a training session by the end of the first quarter of 2012 to satisfy the 2011 training requirement. OGE was advised that annual training is usually satisfied during the agency's annual judicial conference held each fall, but due to budget constraints the conference was not held in 2011.

While OGE recognizes the Review Commission's efforts to conduct make-up training for 2011 with plans to provide additional training later in 2012, OGE reminds ethics officials that training should not be delayed in view of the importance of ethics education and training in preventing employees from committing ethics violations. In cases when it may be impractical to provide in-person training with a qualified instructor available due to unforeseen events or circumstances, written training prepared by a qualified instructors should be given in accordance with the exceptions at § 2638.704(e) and § 2638.705(d). To meet this exception, one hour of official duty time must be provided for the training and a written determination must be made by the DAEO regarding the impracticality of providing verbal training with a qualified instructor available. OGE acknowledges that ethics officials were working on a plan at the time of fieldwork to show an ethics video developed by the Department of Justice to all financial disclosure filers to satisfy the 2011 training requirement. (Apart from this training, ethics officials were also planning to provide agency-wide refresher training to all employees by the first quarter of 2012). Prior to the issuance of this report, OGE was advised that 12 of the 19 financial disclosure filers had satisfied the training requirement for 2011. OGE encourages ethics officials to continue its efforts.

As a good management practice, OGE suggests that when developing the agency's written training plan each year, the Review Commission discuss and document how OGE's annual ethics training requirement can be satisfied in the event that the annual judicial conference is not held. Developing a contingency plan helps to ensure that training can still be met in light of an unforeseen event or circumstance. OGE also suggests that the Review Commission consider offering discretionary ethics training each year to non-filers to help keep them aware of ethics laws and regulations as well.

### Suggestions

- Document in the annual training plan how the agency will satisfy the annual training requirement in the event that the judicial conference is not held.
- Offer ethics training each year to non-filers to help keep employees aware of ethics laws and regulations.

### **Advice & Counseling**

OGE found the advice and counseling program to be responsive to the needs of Review Commission employees in making ethical decisions, which is key in preventing conflicts of interest and other ethics violations from occurring. During the review, OGE examined samples of email advice dispensed by ethics officials in 2011 and 2010 and concluded that the advice rendered was comprehensive and consistent with the appropriate laws and/or regulations as well as responsive to employees' needs in terms of timeliness, as responses were generally rendered promptly to the questions that were posed.

### **Enforcement**

The Review Commission does not have its own Inspector General nor does it utilize, in general, the services of an outside investigative organization to help ensure that certain program elements described at 5 CFR § 2638.203(b)(11) and (12) are carried out.

During the review, OGE was advised that the Review Commission recently needed the services of an outside investigative organization to help investigate an alleged ethics violation. The Review Commission sought the assistance of the Inspector General at the Railroad Retirement Board who agreed to investigate the case. OGE was advised that the matter did not require a referral be made to the Department of Justice for a criminal conflict of interest violation. However, if it had OGE was advised that the DAEO would be responsible for concurrently notifying OGE of the referral in accordance with 5 CFR § 2638.603.

Although OGE regulations do not require agencies that do not have their own Inspector General to utilize the services of another agency's investigative organization, OGE was pleased to see agency leadership take this approach.

#### Suggestion

- Agency leadership should consider establishing a more formal memorandum of understanding with an investigative organization that it might consider to provide investigatory services to Review Commission for potential ethics violations.

### **1353 Travel Acceptances**

The Review Commission allows its employees to accept payments, on behalf of the agency, from non-Federal sources for travel, subsistence, and related expenses incurred on official travel under 31 U.S.C. § 1353. OGE notes that two travel payments greater than \$250 were accepted by the Chairman and the former Counsel who were both on official travel during the reporting periods of October 1, 2010 to March 31, 2011 and April 1, 2011 to September, 30, 2011, respectively. OGE found both semiannual travel reports to have been submitted using one of the two prescribed reporting formats highlighted in OGE's March 30, 2011, Program Management Advisory on reporting payments accepted under § 1353 to OGE.

While OGE found the Review Commission to have written procedures in place to accept travel payments from non-Federal sources, we noticed that updates had not been made to them since December 1993. Despite the infrequency of Review Commission employees accepting travel payments from non-Federal sources, OGE advised ethics officials that the agency's written procedures should still reflect the most up-to-date GSA changes made to 41 C.F.R. part 304-1.

#### Suggestion

- As a good management practice, OGE suggests that the Review Commission consider updating these written procedures and to keep them updated to reflect significant changes as they occur.

### **Agency Comments**

A draft of this report was provided to the DAEO for review and comment. The DAEO offered several technical corrections which OGE incorporated within the final report.