

**United States Office of Government Ethics**

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Compliance Division

# Ethics Program Review

Vietnam Education Foundation

Report No. 13-33  
July 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 Vietnam Education Foundation's (VEF) ethics program in April 2013. The review identified several weaknesses in VEF's ethics program, particularly in the areas of financial disclosure and ethics education and training. While this report recommends that VEF take steps to bring its ethics program into compliance with applicable laws, regulations, and policies, OGE also notes that VEF's recently appointed Designated Agency Ethics Official (DAEO) acted quickly to begin the process of strengthening the agency's ethics program and ensuring compliance with relevant requirements.

### Highlight

- VEF requires ethics training for all agency employees, including employees from its Hanoi office. This exceeds the minimum regulatory training requirement.

### Concerns

- Improvements are needed in the administration of the financial disclosure system.
  - Written procedures for the financial disclosure systems were not finalized at the time of the issuance of this report.
  - VEF has not collected public and confidential financial disclosure reports required to be filed by employees, including members of the Board of Directors.
- Improvements are needed in the administration of ethics training.
  - The VEF did not provide annual ethics training to covered employees in 2011 and 2012.
  - Compliance with initial ethics orientation requirements could not be verified.
- The VEF was not reporting payments accepted under the authority of 31 U.S.C. § 1353 prior to OGE's review.

## Contents

Objectives, Scope, and Methodology.....	3
Background and Program Administration.....	3
Financial Disclosure.....	4
Education and Training.....	5
Advice and Counsel.....	7
Enforcement.....	8
Special Government Employees.....	9
1353 Travel Acceptances.....	10
Agency Comments.....	11

## 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 VEF's ethics program, OGE examined a variety of documents provided by VEF, including the 2012 Agency Ethics Program Questionnaire, VEF's public financial disclosure reports, an orientation training agenda for new members of VEF's Board of Directors conducted in July 2012, and other documents. Members of OGE's Program Review Branch and Agency Assistance Branch also met with the DAEO and the Alternate Designated Agency Ethics Official (ADAEO) to verify data collected and to seek clarification of issues identified during OGE's review and analysis of documentation.

## Background and Program Administration

VEF was established as a result of the Vietnam Education Foundation Act of 2000. VEF's mission is to help Vietnam build excellence in science and technology, and by doing so, bring the United States and Vietnam closer together. This would be accomplished by bringing the most able Vietnamese nationals to leading U.S. universities for graduate and post-graduate training in science and technology and helping Vietnam strengthen its internal institutions. VEF is governed by a thirteen-member Board of Directors (Board) consisting of: two U.S. Senators; two U.S. Representatives; three U.S. cabinet members; and, six members from the U.S. citizenry appointed by the President. These last six Board members are special Government employees (SGE).

The Board appoints VEF's Executive Director who manages VEF programs which are administered through two offices: the U.S. Headquarters in the Washington, D.C. area; and the Vietnam Field office in Hanoi. VEF has four full-time Federal employees and also employs nine foreign nationals located its Hanoi office.

VEF's DAEO of approximately 3 years retired in March 2013. Subsequent to the previous DAEO's retirement, the Executive Director selected the recently hired Human Resources and Administration Specialist to serve as DAEO. The appointment occurred less than a month before OGE's review. The current DAEO had no prior experience as an ethics official. The ADAEO's position was vacant in 2012. The Executive Director became ADAEO at the same time the current DAEO was appointed.

## Assistance OGE Provided to VEF's Ethics Program

OGE has played an active role in supporting VEF's ethics program:

- The Executive Director along with other agency employees attended OGE ethics courses;
- In December 2009, the OGE desk officer met with VEF Executive Director, DAEO and ADAEO to discuss the administration of VEF's ethics program. Subjects discussed included: the Criminal Conflict of Interest Statutes; Standards of Conduct Regulations; the financial disclosure system (public and confidential); ethics education and training; ethics advice and counseling; acceptance of travel reimbursements from non-Federal sources; and general responsibilities of the DAEO.
- In January 2010, OGE staff conducted required ethics training for Board members.
- In May 2010, the DAEO attended the New Ethics Official Certification Program at the OGE Ethics Conference in Chicago.

Despite the training and assistance OGE has provided to VEF and the previous DAEO, VEF's ethics program was not in compliance with core ethics program requirements at the time of OGE's review. However, as noted in this report, the current DAEO has acted quickly to resolve a number of issues in the areas of advice and counsel, presenting and tracking ethics training and setting up reminder calendars in order to bring VEF's ethics program into compliance with relevant requirements.

## **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).

VEF has not completed written procedures for the administration of the public and confidential financial disclosure systems and has not collected public financial disclosure reports. Both the written procedures and collection of public reports will be required to be completed to bring VEF into compliance with financial disclosure requirements. VEF should also reevaluate whether additional employees should be required to complete confidential financial disclosure reports.

### **Written Procedures**

Section 402(d)(1) of the Ethics in Government Act requires all agencies to develop written procedures for administering the public and confidential financial disclosure systems. VEF did

not have the required written procedures prior to the start of OGE's review. OGE shared an example of written procedures with the DAEO to serve as guidance in the development of VEF's procedures. During the course of the review, the DAEO provided the review team with draft written procedures customized for VEF. Beyond merely compliance for compliance' sake, having procedures in place is an important step in establishing a viable succession plan. The DAEO took immediate action to address this issue. OGE recommends that VEF continue its efforts to finalize its written procedures.

### **Public Financial Disclosure**

VEF had two public financial disclosure filers in 2012, the DAEO and the Executive Director. To evaluate the effectiveness of the VEF's public filing system, OGE asked to examine the reports required to be filed by the DAEO and the Executive Director in 2012. The current DAEO acknowledged that neither report had been filed. The former DAEO did submit a termination report in March 2013.

### **Confidential Financial Disclosure**

Only VEF's SGE Board members are currently required to file confidential financial disclosure reports. Determining if an employee should be required to file a confidential report is generally within the agency's purview. However, such determinations are to be based on application of specific regulatory criteria established by OGE. The review team suggested that VEF review the regulatory criteria for determining who should be required to file confidential reports found at 5 C.F.R. § 2634.904(a) and reassess whether any positions meet the confidential filing criteria. VEF should document its analysis and determinations.

### Recommendations

- Finalize written procedures to administer the public and confidential financial disclosure systems.
- Collect, review and certify missing public financial disclosure reports of the Executive Director.

### Suggestions

- Develop ethics officials' financial disclosure review proficiency through training, such as classes provided by OGE.
- Review confidential filing criteria, determine if any agency positions meet the criteria, document VEF's determination, and obtain any additional reports, as appropriate.

## **Education and Training**

VEF did not track completion of initial ethics orientation (IEO) in 2012 and OGE could not confirm that the content of the training that was conducted met applicable requirements. IEO conducted in 2013 has been tracked and OGE confirmed that content met and exceeded

requirements. VEF exceeded minimum requirements for annual ethics training by providing training to all employees. OGE could not confirm that the content of 2012 annual training met applicable requirements. The current DAEO plans to continue the practice of providing annual training to all employees in 2013. OGE reviewed the training materials the DAEO intends to use for 2013 and confirmed they satisfy content requirements.

### Initial Ethics Orientation

Agencies must provide new employees with 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. This training must be provided within 90 days from the time an employee begins working for an agency. *See* 5 C.F.R. § 2638.703. IEO is an important introduction to ethics-related rules that serves to educate employees regarding the standards of conduct to which they will be held accountable.

Between January 1, 2013 and the time of OGE's fieldwork, VEF hired only one new employee. OGE determined that the IEO provided to this employee (the current DAEO) met applicable requirements. The DAEO received two videos to watch, *Integrity in Public Service: Earning the Public's Trust* and *The Ethical Choice*. The DAEO updated the guidelines for IEO during the review and provided OGE with a copy. IEO now includes a guide listing the Employee's Name, Position Title and Office Location and instructs the employee to watch an online module on gifts between employees, gifts from outside sources and misuse of government position. New employees are also instructed to watch the OGE produced *Integrity in Public Service: Earning the Public's Trust* and *Ethical Choice* via YouTube. These video presentations cover the Standards and the 14 Principles of Ethical Conduct. The employee also receives a hard copy of the Standards, a copy of A Code of Ethics: Principles of Ethical Conduct for Government Officers and Employees, and the pamphlet: A Wrap on Ethics from the DAEO. The DAEO's contact information is listed on the IEO instruction guide to the new employee. After not finding tracking records to confirm whether new employees at VEF received IEO in CY 2012, the current DAEO immediately created a spreadsheet to track the completion of IEO for 2013. Given the size and nature of the agency, OGE believes this method of tracking is sufficient.

### Annual Ethics Training

Agencies are required to provide covered employees with annual ethics training. The training must include a review of the Principles, the Standards, any agency supplemental standards, the Federal conflict of interest statutes, and the names, titles, office address, and telephone numbers of the DAEO and other agency ethics officials available to advise the employee of ethics issues. *See* 5 C.F.R. § 2638.704 and 5 C.F.R. § 2638.705. Agencies are also required to develop an annual ethics training plan each calendar year. *See* 5 C.F.R. § 2638.706. Annual ethics training is a vital component of an agency's ethics program and is intended to assist employees in carrying out their official responsibilities in a manner consistent with ethics-related statutes and regulations. Additionally, annual training helps to prevent violations and maintain the public's confidence that Government officials act impartially and free of conflicts of interest.

Annual ethics training was provided to all VEF employees in 2012, however; OGE was unable to verify that all required content was included. The previous DAEO provided a presentation along with a question and answer session to meet the annual training requirements. Since the current DAEO could only provide a copy of the draft annual presentation and the question and answer session there was no way to confirm that all required content was addressed. The tracking list of employees in attendance as well and the training schedule for 2012 were provided to OGE during the review.

While the annual training provided to all employees should have satisfied IEO content requirements, as noted, content of the annual training could not be verified. Additionally, IEO is required to be provided within 90 days from the time an employee begins working for an agency. Annual training that may have otherwise satisfied IEO content requirements may not have met the 90-day deadline for providing the training.

The current DAEO has prepared an annual training presentation which meets content requirements and is scheduled to present the material to VEF's Arlington Staff on September 19, 2013. The DAEO provided live ethics training for staff in the Hanoi office on June 2, 2013. VEF did not have a 2012 annual ethics training plan. The DAEO began drafting a 2013 annual training plan as soon as the requirement was brought to her attention by the OGE review team.

#### Model Practice

- All employees receive annual ethics training.

#### Recommendation

- Develop an annual training plan for 2013.

### **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(b)(7) and (8).

VEF could not provide samples of written advice provided in 2012. Without documentation, OGE was unable to determine what topics were covered or if the advice rendered was timely and consistent. There was evidence that VEF ethics officials have contacted their desk officer at OGE in the past for assistance in providing advice and counseling to employees and Board members. VEF created a dedicated email address to be monitored and answered by the DAEO to more readily provide advice and counseling to employees.

The review team discussed with the DAEO the administrative elements of an advice and counseling program. The discussion included ways to communicate with employees using available resources. OGE also suggested documenting the advice provided by ethics officials. This is particularly advisable when the advice is novel or complex. Documenting advice serves

to protect employees who, in good faith, seek and follow advice and to ensure that the advice rendered is accurately and completely recorded. OGE encourages VEF ethics officials to use resources on the OGE website, OGE training and the OGE's desk officer service.

OGE suggested that a written policy be developed, whether formal or informal, on the circumstances that weigh in favor of reducing ethics advice to writing. For example: advice that is provided to Board members and the Executive Director; advice on the application of criminal laws to specific facts; and advice on any complicated or sensitive ethics issues. Additionally, as a good management practice (see DAEOgram D0-05-019) we suggest that any written documentation of ethics advice that is rendered incorporate the following: (1) an indication of when the advice was given; (2) a summary of the relevant facts as described by the employee; (3) a citation to the applicable legal authority; (4) an analysis of the application of the law to the facts; and (5) a conclusion.

The DAEO has already acted on OGE's suggestions. She provided OGE with information about the newly created ethics section within VEF's on-line management system (OMS) which includes a database to document formal and informal written advice. Additionally, the DAEO provided a sample of written advice submitted on a new advice template as well as standard operating procedures outlining guidelines on timeliness, referencing and the documentation of advice for the DAEO and ADAEO. The database, template, and procedure are sufficient to address OGE's suggestions.

## **Enforcement**

VEF reported no disciplinary actions based wholly or in part upon violations of the Standards (5 CFR part 2635) in 2011 or 2012. VEF 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 CFR part 2635).

VEF does not have an Office of the Inspector General (OIG) or its equivalent. According to the DAEO and ADAEO, the VEF will consider whether to establish procedures for dealing with allegations that warrant investigations and referrals to Department of Justice. The review team explained to the DAEO that similarly situated agencies have entered into memoranda of understanding (MOUs) with existing OIGs at other agencies. Because the General Services Administration provides legal advice to VEF, the DAEO will look into the possibility of working with GSA's OIG.

### Suggestion

- The VEF should continue its efforts to establish procedures to delineate responsibilities in the event allegations warrant investigation and referrals to DOJ.

## Special Government Employees

An 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.

As specified in Sec. 205(g) of the Vietnam Education Foundation Act of 2000, presidential appointees will be special Government employees. Board members appointed by the President serve three-year terms with a maximum total of six years allowed. Members of Congress appointed to the Board are limited to one term of six years. The voting Board members elect a Chairperson from among those appointed by the President. The Board meets in April and November of each year. VEF’s DAEO provides ethics services such as review and certification of financial disclosure reports and education and training for the six PAs. Other Board members receive ethics services from their respective agencies.

### Financial Disclosure

Prior to OGE’s review, SGE Board members filed new entrant public financial disclosure reports when they were appointed to their positions. After coordinating with personnel officials and OGE, VEF will require future Board members to file new entrant confidential financial disclosure reports when they are appointed. Each year thereafter, the Board members will be required to file new entrant confidential reports. (OGE Form 450). Board members usually serve fewer than 60-days in any 365 day period and, therefore, are not required to file annual public financial disclosure reports (OGE Form 278). *See* 5 C.F.R § 2634.204. OGE gives agencies the discretion to establish a common filing due date for the agency’s SGEs for administrative convenience. *See* DAEOgram DO-03-021.

VEF’s six board members were required to file annual confidential financial disclosure reports in 2012. VEF could not locate these reports. Only two new entrant public financial disclosure reports filed in 2011 could be found. These two reports had not been reviewed or certified at the time of OGE’s on-site review. This puts both Board members and VEF at risk. Board members risk potential inadvertent violation of criminal conflict of interest statutes. The agency is at risk of the damage that could result in the event of a Board member’s violation. These vulnerabilities have been recognized by the current DAEO, and she has made strides to strengthen VEF’s ethics program by informing Board members of their duty to file financial disclosure reports each year at the April 2013 board meeting. At the conclusion of the ethics program review, VEF collected all six board members’ confidential disclosure reports required to be filed in 2013; however, the reports have not been certified.

### Initial Ethics Orientation

The DAEO was able to provide OGE with a schedule for new Board member’s IEO in July 2012. The schedule indicated that the former DAEO provided new Board members with an

ethics training presentation. However, because the ethics materials the Board members received were not available for the review team to examine, OGE could not determine if the live ethics training covered all required content. The current DAEO prepared and submitted a slide presentation to give live training to new SGE board members which does meet the requirements of 5 C.F.R. § 2638.703. Even though VEF is a small agency, the DAEO has developed a new tracking spreadsheet to record the initial training orientation completion date. The spreadsheet can be used by the DAEO in carrying out the important administrative elements of the DAEO's duties as specified by 5 C.F.R. § 2638.203.

### Annual Ethics Training

Ethics officials could not verify that annual ethics training took place in 2012. In fact, there is no evidence to verify that Board members received annual training in the past two years. OGE recommended VEF provide ethics training to all Board members as soon as possible. OGE has resources available to assist agencies in providing ethics training to Board members. This includes a web-based module tailored specifically for SGEs titled *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*. During the April 2013 Board meeting, the DAEO instructed the members to meet annual ethics training requirements by completing the OGE web-based module and to print their certificate of completions by May 15, 2013. VEF's five board members completed annual training by May 14 with one Board member receiving an extension and completed her web-based training on May 20, 2013. At the conclusion of the ethics program review, the DAEO created education and training standard operating procedures including guidelines addressing Board members' initial and annual training and an agency spreadsheet to document the Board members' annual training in 2013. Given the size and nature of the agency, OGE believes this method of tracking is sufficient.

### Recommendations

- Collect, review and certify missing 2012 annual reports from the Board Chairman and five members of the Board and certify the 2013 annual reports to bring VEF into compliance with financial disclosure requirements.
- Develop written procedures to address annual collection, review and certification of SGEs financial disclosure reports. These can be incorporated into VEF's overall procedures for administering the financial disclosure program.

### **1353 Travel Acceptances**

VEF 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.

Prior to the review of the agency's ethics program, OGE had not received any reports from VEF. The DAEO submitted VEF's 2012 negative reports after the on-site portion of the review. The ADAEO and DAEO could not provide definitive reason for why reports were not submitted to OGE. At the conclusion of the program review, the DAEO created standard operating procedures and a calendar of events reminder in order to help ensure that the reports are transmitted to OGE by the applicable deadlines.

### **Agency Comments**

VEF understands the importance of promoting an ethical workforce and building a strong ethics program; therefore, the current DAEO is working diligently with OGE to shape VEF's program. The DAEO position became vacant in early 2013; however, with a newly appointed DAEO and ADAEO we believe this transition will be a smooth. As the current DAEO has had no formal ethics training from OGE, VEF is looking forward to enrolling the DAEO in any upcoming classes offered by OGE.