



United States  
**Office of Government Ethics**  
1201 New York Avenue, NW., Suite 500  
Washington, DC 20005-3917

December 13, 2011

Philip R. Hertz  
Designated Agency Ethics Official  
Pension Benefit Guaranty Corporation  
Room 12505  
1200 K Street, NW  
Washington, DC 20005-4026

Dear Mr. Hertz:

The United States Office of Government Ethics (OGE) recently conducted an on-site follow-up review of the ethics program at the Pension Benefit Guaranty Corporation (PBGC) to determine whether the improvements recommended or suggested in our February 2011 report have been achieved.

During its initial review, OGE examined a sample of confidential financial disclosure reports and found one instance in which a filer listed an outside position closely related to his Government duties. OGE inquired about the conflict of interest analysis performed for this entry. Ethics officials responded that they had equipped confidential filers with the knowledge necessary to identify and avoid potential conflicts of interest. Therefore, they were not routinely cautioning confidential filers who had outside positions that might conflict with their PBGC employment. Instead, PBGC held these filers responsible for identifying and avoiding matters that could create conflicts of interest or appearance concerns. OGE recommended that PBGC, “[E]nhance the confidential financial disclosure review process by ensuring that outside positions do not pose a conflict and make a conflict of interest determination on the one instance in which the filer’s outside position appears to be closely related to his Government duties.”

To address OGE’s recommendation, PBGC now reviews each outside position to determine if the position is with a prohibited source, e.g., a regulated entity or contractor. PBGC compares the outside position to the filer’s official position and responsibilities. If there is any chance a conflict could arise based on an outside position, the filer receives a cautionary memo. In its comments on a draft report on the initial 2011 review, PBGC noted that its Alternate Designated Agency Ethics Official (ADAEO) had discussed the outside position with the filer specifically mentioned in the report. The ADAEO noted that the filer had not engaged in the outside position since beginning work at PBGC. The ADAEO also noted that he had discussed with the filer the reasons for concern regarding the outside position and issued the filer a cautionary memo. During the follow-up review, OGE was provided with a copy of the cautionary memo which appears to fully address the relevant issues. The ADAEO determined that the outside position had not created a conflict of interest for the filer.

OGE's initial review also noted that PBGC had retained financial disclosure reports beyond the six-year retention period specified by 5 C.F.R. §§ 2634.603(g) and 2634.604(a). OGE's report on the initial review recommended that PBGC, "[E]nsure that financial disclosure reports not required to be kept beyond the six-year retention period are destroyed." As soon as the retention of reports beyond the six-year retention period was brought to PBGC's attention, ethics officials took steps to begin destroying reports, as appropriate. PBGC provided documentation during the follow-up review which indicates reports no longer required to be maintained have been destroyed in accordance with regulations.

OGE's initial review of PBGC's ethics program noted that some of the confidential financial disclosure reports examined were certified more than 60 days after they had been filed and there was no indication that ethics officials were seeking additional information or planning to take remedial action. During the course of OGE's review, PBGC stated that it will make changes to its tracking system to better track status of reviews and certification. OGE's report included a suggestion that PBGC, "[S]treamline the system used to track certification of financial disclosure reports to facilitate timely certification of confidential reports."

Based on OGE's suggestion, PBGC now uses spreadsheets to manually track the status of all public and confidential financial disclosure reports. The spreadsheets were provided during the follow-up review and appear to comprehensively track reports from report filing through final review and certification. The spreadsheets are updated at least weekly to track the progress in processing reports. The spreadsheets contain all the data required to effectively administer the public and confidential financial disclosure systems, including ensuring reports receive timely certification. Ethics officials are also taking steps to modify PBGC's electronic filing system, FDOOnline, to ensure it will track reports to efficiently record the status of each report filed within the system.

Based on our follow-up, we have determined that PBGC has adequately implemented the recommendation in the February 2011 review report. As a result, OGE has closed the recommendations. Thank you for your assistance during the follow-up process. Please contact me at 202-482-9317 if you require any additional information.

Sincerely,



Rashmi Bartlett  
Associate Director