



U.S. Office of Government Ethics  
Program Review Division

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# Ethics Program Review

Defense Nuclear Facilities Safety Board

Report No. 12-50  
April 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 Defense Nuclear Facilities Safety Board's (Board) ethics program in April 2011. A follow-up discussion with the Board's Designated Agency Ethics Official (DAEO) was held in April 2012 to gather additional, updated information regarding the ethics program.

The results of our review find the Board's ethics program sound with respect to relevant ethics laws and regulations. The one deficiency was the timely forwarding of semiannual travel reports to OGE; however, this matter has been remedied and no formal recommendation is required. Our examination also revealed areas of the Board's ethics program that were not in full technical compliance at the beginning of our examination. Many of these same issues were identified during our last review of the Board's ethics program conducted in 2006. Since these non-compliance issues have already been remedied, OGE is making no formal recommendations. However, we urge the Board to provide more attention to these matters to ensure continued, future regulatory compliance.

### Highlights

- In-person, initial ethics orientation briefings are provided to all new employees.
- In-person, annual ethics training is provided to employees that are not required by regulation to receive training.
- In-person, post-employment briefings are provided to those employees departing from Federal service as part of the Board's employee check-out process.
- The ethics section on the Board's Intranet page is a comprehensive ethics tool for all Board employees.

### Concerns

- The Board's semiannual reports of payments of more than \$250 per event, including negative reports, are not being forwarded to OGE in a timely manner.

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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 Defense Nuclear Facilities Safety Board's ethics program, OGE examined a variety of documents that were provided by the agency's DAEO; other documents that the Board forwarded to OGE, including the annual ethics program questionnaire; prior program review reports; the public and confidential financial disclosure reports that were required to be filed in 2011; and advice and counseling provided to Board employees. In addition, members of OGE's Program Review Division met with the DAEO to obtain additional information about the strengths and weaknesses of the Board's ethics program, seek clarification on issues that arose through the documentation analysis, and verify data collected.

## Program Administration

The Defense Nuclear Facilities Safety Board is an independent agency whose mission is to provide technical safety oversight of the Department of Energy's defense nuclear facilities and activities in order to protect the health and safety of the public and workers. The Board consists of 109 employees headquartered in Washington, DC and at designated defense nuclear facilities throughout the country.

The Board's ethics program is organizationally located within the Office of General Counsel (OGC) and is managed by the Deputy General Counsel, who has served as the agency's DAEO since 1999. The General Counsel serves as the agency's Alternate DAEO. Assisting in the day-to-day administration of the program is a legal specialist. All three officials perform their ethics duties on a part-time basis.

## Financial Disclosure

OGE found the Board's financial disclosure program to generally accord with statutory and regulatory requirements. Examined reports were filed by the appropriate deadline and reviewed and certified in a timely manner. Despite the overall effectiveness of the Board's financial disclosure program, three issues were identified and discussed with the DAEO during our examination.

- **Development of Written Procedures.** At the time of OGE's review, the Board did not have written procedures outlining the process for administering its public and confidential disclosure system as required by section 402(d)(1) of the Ethics Act. Written procedures are important in establishing consistency and efficiency; they ensure that agency ethics officials follow the same step-by-step procedures for administering their

portion of the financial disclosure system. Beyond being required, written procedures ensure continuity in the case of any future personnel changes at the Board. Prior to the conclusion of our review, written procedures were drafted.

Given the agency's size and the DAEO's experience in ethics, we are not considering non-compliance to be an egregious matter; however, it is important to remember that maintaining written procedures is not just a procedural requirement but a compliance-based requirement of the Ethics Act.

- **Use of Agency Date Stamp.** None of the public reports examined had been date stamped, 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. Since compliance with the filing due date had been met, OGE reminds the DAEO that the agency date of receipt stamp is critical in determining timeliness of filing and review. OGE was assured that the practice of date-stamping reports would become routine during future filing cycles.
- **Financial Disclosure Tracking System.** The DAEO uses a list of filer names to track the public and confidential financial disclosure reports as they are received. Given the small number of financial disclosure filers at the Board, this tracking system works fine: all reports were filed by the appropriate deadline, and reviewed and certified in a timely manner. The DAEO may wish to consider a more robust and transparent system that tracks the progress of a report through the review and certification process and also the completion of required annual training. Such a system could include steps such as the following: (1) the filer was notified of the filing requirement; (2) the filer was provided with the financial disclosure report; (3) the report was filed; (4) intermediate review commenced; (5) intermediate reviewer signed and dated the report; (6) the final review commenced; (7) the reviewing official certified the report and (8) when filers received, or will receive, annual ethics training.

## Education & Training

OGE found the Board's education and training program to exceed the minimal training requirements found at subpart G of 5 CFR part 2638, as evidenced by the agency's commitment to provide in-person, initial and annual ethics training to both filers and non-filers. In addition to conducting the requisite initial ethics orientation and annual ethics training, the DAEO keeps employees aware of ethics-related issues through a variety of ways including sending periodic email blasts to all employees and providing ethics information on the Board's Intranet page. Despite the program's overall effectiveness, OGE did bring one issue to the attention of ethics officials which is described below in the "Annual Training Plan" section.

### Annual Training Plan

At the time of fieldwork, a written training plan had not been developed for 2011. However, during our current discussion with the DAEO, OGE confirmed that a written plan had been developed for 2012. OGE notes that while the Board is in compliance with § 2638.706 for 2012,

the creation of annual training plans appears sporadic at best since this issue was also identified during our last program review. OGE reminds the DAEO that beyond being required, written training plans can focus an agency's training needs on what to cover and how to deliver the training, and what facilities and resources will be needed to implement the training. While we are making no formal recommendation regarding this matter, we do suggest that the DAEO give more attention in the requirement to update the Board's written training plan each year.

### Initial Ethics Orientation and Annual Ethics Training

The Board exceeds OGE's initial ethics orientation (IEO) requirements in that all new employees receive in-person training by the DAEO when they first come on board. In addition to the in-person briefing, new employees receive official duty time to view OGE's Integrity in Public Service: Earning the Public's Trust ethics video which is linked from the Board's Intranet page. IEO briefings were provided to 13 new employees in 2011.

To satisfy the annual training requirement, the DAEO requires all Board employees to attend in-person annual ethics training, which exceeds OGE's annual training requirement. In preparation for the 2011 training, employees were encouraged to complete OGE's interactive web-based training module on Misuse of Position prior to attending the training which had been conducted during all-employee meetings held in April 2011. The DAEO continues to track the completion of annual ethics training using the Board's staff directory; employees are required to initial beside their name to certify that they have completed training. Our independent examination of the 2011 staff directory showed that the majority of financial disclosure filers had already been trained by the time of our fieldwork.

### Model Practices

- In-person, initial ethics orientation briefings are provided to all new employees.
- In-person, annual ethics training is provided to employees that are not required by regulation to receive training.
- OGE found the ethics section on the Board's Intranet page to be a very comprehensive ethics tool for all Board employees. This resource features immediate access to OGE regulations and points of contact information for ethics officials; links to separate modules for financial disclosure filing, ethics training and internal agency documents, and other helpful ethics resource links.

### **Advice & Counsel**

In accordance with 5 CFR § 2638.203(b)(7), the DAEO provides ethics advice and counseling, including post-employment, that appears to be responsive to employee needs. OGE examined three pieces of advice which had been memorialized in writing in 2010 and 2011 on matters pertaining to seeking and post-employment, outside activity, and gift acceptance. In all three instances the advice fully documented the specific issue and the basis for the advice being rendered.

Additionally, the DAEO provides in-person, post-employment briefings to those employees departing from Federal service as part of the Board's employee check-out process. OGE finds this approach to providing guidance on the relevant Federal post-Government service employment restrictions to departing employees to be a model agency practice.

#### Model Practice

- In-person, post-employment briefings are provided to those departing from Federal service as part of the Board's employee check-out process.

### **Enforcement**

The Board does not have its own Office of Inspector General (IG). However, in 2011, the Board needed for the first time the services of an Inspector General to help investigate an alleged ethics violation of a senior-level Board official. Since no formal agreement had been established with an outside investigative organization, the DAEO sought assistance from OGE's Office of General Counsel on suggestions of who the Board might consider. OGE sought the assistance from the Inspector General community and as a result the Inspector General at the Nuclear Regulatory Commission agreed to investigate the case.

#### OGE Suggestion

- While OGE regulations do not require agencies that do not have its own Inspector General to utilize the services of an outside investigative organization, in light of the circumstances, we strongly suggest that the Board consider doing so. This could be done by means of a memorandum of understanding with an investigative organization and OGE would be happy to work with the DAEO in this endeavor.

### **1353 Travel Acceptances**

Board employees are permitted 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 CFR chapter 304, implementing 31 U.S.C. § 1353. To meet the semiannual reporting requirement, the DAEO is responsible for collecting the information to be reported, drafting the Board's semiannual report of payments of more than \$250 per event, and forwarding it to OGE.

During our examination, we noticed that the last two semiannual travel reports covering the periods from October 1, 2010 – March 31, 2011 and April 1, 2011 - September 30, 2011, had not been reported to OGE. The DAEO indicated that this was due to an oversight and prior to the conclusion of the review forwarded both reports. In total, 11 travel payments had been accepted during these timeframes.

OGE has received both semiannual reports. Therefore, OGE is making no formal recommendation for improvement. Nevertheless, we remind the DAEO that semiannual reports must be forwarded to OGE timely and submitted via email using one of the two OGE-approved forms available on our website. Semiannual travel reports are available for public inspection; therefore, it is important that the Board ensure that all future semiannual reports, including negative reports, are reported to OGE timely.

#### **Agency Comments**

A draft of this report was sent to the DAEO for review and comment. No objections or technical corrections were provided to our written findings.