



U.S. Office of Government Ethics
Program Review Division

Ethics Program Review

National Endowment for the Arts

Report No. 11-025
May 2011

Results in Brief

The United States Office of Government Ethics (OGE) conducted a review of the National Endowment for the Arts' (NEA) ethics program during March 2011. The results of the review indicated that the majority of the elements of NEA's ethics program generally appear to be effectively administered and in compliance with applicable laws, regulations, and policies. However, aspects of the training element need to be improved in order to be in full compliance.

Highlights

- NEA's intranet ethics site provides easily accessible and up-to-date ethics information and guidance to agency employees.

Concerns

- NEA's annual ethics training is missing required content.

Contents

Objectives, Scope, and Methodology.....	3
Program Administration.....	3
Financial Disclosure.....	3
Education & Training.....	4
<i>Recommendation</i>	
Advice & Counsel.....	4
<i>Model Practice</i>	
Agency-Specific Ethics Rules.....	5
Enforcement.....	5
1353 Travel Acceptances.....	5
Agency Comments.....	5

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 NEA's ethics program, OGE examined a variety of documents provided by ethics officials; other documents that NEA forwarded to OGE, including the annual questionnaire; prior program review reports; and a sample of NEA'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 Designated Agency Ethics Official (DAEO) and the Alternate DAEO (ADAEO) to obtain additional information about the strengths and weaknesses of NEA's ethics program, seek clarification on issues that arose through the documentation analysis, and verify data collected.

Program Administration

NEA's ethics program is administered within the Office of General Counsel (OGC). The General Counsel (GC) serves as the DAEO. An Ethics Specialist serves as the ADAEO. The DAEO and ADAEO are primarily responsible for the day-to-day administration of the ethics program. They are assisted by two attorney-advisors.

Because the DAEO also holds the position of GC, ethics officials consistently have a voice in matters affecting NEA. OGE believes this agency structure is advantageous in proactively addressing ethics concerns that could affect the agency.

Financial Disclosure

OGE reviewed a sample of NEA's financial disclosure reports and found that the reports were generally filed, reviewed, and certified in a timely manner, though a few of the reports were missing information such as the employee's date of appointment or date of entry on duty. Additionally, OGE found that relevant documentation such as reviewer notes, follow-up emails, and requests for extensions were included in the individual employee files. NEA also has detailed written procedures for the administration of the financial disclosure system.

Education & Training

NEA ethics officials reported that all required employees received initial ethics orientation (IEO) within 90 days of their date of entry in 2010. OGE reviewed NEA's IEO materials and found them to be in compliance with 5 CFR § 2638.703. OGE also examined NEA's 2011 annual training plan and found that it met the requirements of 5 CFR § 2638.706.

Additionally, OGE reviewed the process and the materials used to provide annual training to covered employees in 2010. Public filers received annual in-person ethics training from the DAEO. However, the presentation focused on the Hatch Act and therefore did not meet the relevant requirements for annual training.

The same finding applies to the training provided to the confidential filers. To comply with the annual training requirement, since 2005 confidential filers have been administered a 10-question quiz for which they are encouraged to consult the Government ethics regulations. The results of the quiz were then analyzed to determine deficiencies. Ethics staff were available to answer questions both during and after the quiz. According to the DAEO, if an employee failed the quiz, the DAEO would contact the employee for a one-on-one follow-up discussion. A group follow-up session or brown bag session would be held if needed.

The review team examined the quiz used in 2010 and found that 7 of the 10 questions covered the Hatch Act while the remaining 3 questions covered gifts. The quiz did not cover the majority of the Standards of Conduct, the criminal conflict of interest statutes, nor NEA's supplemental regulations, as required by 5 CFR § 2638.705. Additionally, since NEA has been using a quiz to provide annual training to confidential filers since 2005, OGE is concerned that the requirement of providing verbal training every three years has not been met.

Recommendation

- Provide all public and confidential filers with annual ethics training containing the Standards, the Principles, the criminal conflict of interest statutes, and NEA's supplemental regulations in accordance with 5 CFR § 2638.704.

Advice & Counsel

OGE reviewed a sample of NEA's written advice and counsel issued to employees and found that all pieces of advice and counsel appeared thorough and that ethics officials responded to employee requests for advice in a reasonable amount of time. NEA's advice and counsel process is clearly defined within the agency, with the DAEO handling almost all ethics-related questions and the ADAEO assisting on some routine matters. The DAEO and ADAEO meet to discuss determinations before they are issued.

Additionally, NEA ethics officials make general ethics guidance and ethics reference materials available to employees on the OGC intranet site. OGE examined the OGC intranet site and

found it to be user friendly and informative. Providing easily accessible and up-to-date ethics information and guidance promotes an ethical culture within the agency and helps to ensure that employees do not run afoul of the ethics rules. OGE considers NEA's use of its intranet site to provide ethics-related information to agency employees to be a model practice.

Agency-Specific Ethics Rules

NEA's supplemental regulation, found at 5 CFR § 6601.102, requires that agency employees receive prior approval before engaging in outside employment. OGE found that a process is in place to ensure employees receive approval prior to engaging in outside employment.

Enforcement

NEA reported no disciplinary actions based wholly or in part upon violations of the standards of conduct provisions (5 CFR part 2635) or the criminal conflict of interest statutes, 18 U.S.C §§ 203, 205, 207, 208, and 209. NEA made no referrals to the Department of Justice of potential violations of the criminal conflict of interest statutes in 2010.

1353 Travel Acceptances

NEA submitted to OGE in a timely manner the required semi-annual reports of payments accepted from non-Federal sources. Additionally, NEA has established written procedures for the administration of the travel element of the ethics program as well as a checklist with detailed instructions to employees outlining the requirements for submitting travel payment requests.

Agency Comments

NEA provided comments on the draft version of this report, some of which have been incorporated into this final version. NEA's comments in their entirety are attached to this report as an appendix.



ART WORKS.
arts.gov

May 9, 2011

Megan Granahan
U.S. Office of Government Ethics
1201 New York Avenue, NW, Suite 500
Washington, DC 20005

Dear Megan:

Thank you for the opportunity to respond to OGE's draft report of its review of the NEA ethics program.

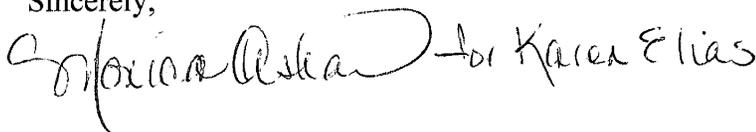
We are pleased that you found the NEA's ethics program in compliance with OGE requirements with respect to financial disclosure, advice and counseling, and 1353 gift travel acceptance. The program review also found that the agency specific rule requiring employees to receive prior approval before engaging in outside employment ensures such approval. We are particularly pleased that you cited NEA's use of its intranet site as a model practice.

OGE has a single recommendation, with respect to training and education; namely that all public and confidential filers be provided with the Standards, the Principles, the criminal conflicts of interest statutes, and NEA's supplemental regulations in accordance with 5 CFR 2638.704. NEA accepts this recommendation, and will adopt it for 2011 annual training, rather than our past practice of focusing on a limited number of ethics rules in more detail.

We would like to make one clarification concerning training; namely that a brown bag session is not held following every ethics quiz for those who fail. Those who fail are contacted directly for a one-on-one discussion. A group session or brown bag session would be held if the failure numbers warrant.

Additionally, the NEA will ensure that confidential filers will be given in-person training at least every three years. Finally, we note OGE's observation that training regarding Hatch Act requirements does not meet the annual ethics training requirements.

Sincerely,



Karen Elias
General Counsel and DAEO

National Endowment for the Arts
The Nancy Hanks Center
1100 Pennsylvania Avenue NW
Washington DC 20506-0001