

*Mem. Copy*  
FY04



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

November 3, 2003

William C. Love  
Designated Agency Ethics Official  
National Transportation Safety Board  
490 L'Enfant Plaza East, SW.  
Washington, DC 20594

Dear Mr. Love:

As part of our agency monitoring activities, the Office of Government Ethics (OGE) has reviewed the National Transportation Safety Board's (NTSB) ethics program. The review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended (the Ethics Act). Our objective was to determine the effectiveness of the ethics program, largely measured by its compliance with applicable statutes and regulations. This review was conducted during August 2003.

#### HIGHLIGHTS

NTSB's ethics program has improved since OGE's last review which was conducted in 1999 and resulted in a notice of deficiency. However, we found that some improvements are still necessary. Currently, NTSB is enforcing policies concerning restrictions and prohibitions on employees' financial holdings and a requirement for prior approval of certain outside employment without a supplemental standards of conduct regulation. Additionally, covered employees were not notified timely to file financial disclosure reports for the last reporting cycle and not all public filers received 2002 annual ethics training timely. These timeliness issues occurred during your extended health-related absences. Nonetheless, you are in the process of publishing NTSB's supplemental regulation with OGE's concurrence and have taken the necessary steps toward ensuring that all program elements are adequately covered in your absence.

#### STAFFING FOR ETHICS PROGRAM IS APPROPRIATE

NTSB has three ethics officials whose responsibility is the ethics program: you, as the Designated Agency Ethics Official's (DAEO) and an attorney; the Alternate DAEO, who is the General Counsel; and a paralegal, who is currently being trained to assist the you. Other attorneys may assist the ethics program when necessary. Although ethics officials work on legal matters other than ethics, you informed us that the staffing level is appropriate given the agency's size and organizational structure.

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You have taken steps to ensure that covered employees receive adequate notice to file their financial disclosure reports by ensuring that the paralegal receives the necessary ethics training and by posting of ethics events on an electronic calendar that will be shared by the ethics officials.

#### AGENCY-SPECIFIC ETHICS PROHIBITIONS MAY NOT BE ENFORCEABLE

Until NTSB's supplemental regulation is published in accordance with 5 C.F.R. § 2635.105, the policies that prohibit its employees from retaining certain financial holdings and require employees to obtain written prior approval for outside activities may not be enforceable. On August 17, 1993, OGE provided comments to NTSB regarding the draft supplemental standards along with the repeal of NTSB's superseded residual standards of conduct regulation. However, NTSB's supplemental standards were never published.

#### FINANCIAL DISCLOSURE SYSTEMS NEED IMPROVEMENT

We found that NTSB's financial disclosure systems are in need of some improvements. The public and confidential filers must be notified timely to ensure that reports are filed timely.

##### Public System

In 2003, the incumbent public filers were not notified of their filing requirement until June 18, when they were notified that the deadline for filing their reports had been extended from May 15 to July 11, 2003. Although the employees are ultimately responsible for filing their reports timely, we believe that public filers should be reminded of their requirement to file. A reminder notice can be sent as early as January 1 but should not be sent later than April 15.

We found that, considering filing extensions, the public reports were filed, reviewed, and certified timely. This determination was based on our examination of all 22 public reports which were required to be filed in 2003 (as well as all 4 incumbent and termination reports required to be filed by Presidentially-appointed, Senate-confirmed (PAS) employees which, in addition, were transmitted to OGE timely). Your review of the 22 reports was thorough as revealed in the documents filed with the reports which indicated that specific holdings were analyzed for potential conflicts utilizing the Internet. Additionally, specific information was clarified with the filers via e-mail. We noted that your review identified a filer who unknowingly had two holdings that posed a potential of conflict of interest. Once you notified the filer of the potential conflicts, he immediately divested the holdings. This is an excellent example of the fundamental purpose for the timely filing and review of financial disclosure reports, which is to provide timely advice to avoid conflicts.

Confidential System

Due to the your absences, confidential reports for 2001 were not collected at all, and the confidential reports for 2002 were not collected until 2003 after filers were notified in July 2003 to file their reports by August 11. Incumbent reports are required on or before October 31 for the preceding 12 months ending September 30.

All 35 reports for 2002 were reviewed and certified within 60 days of filing. Your review of the reports was thorough as revealed in the documents filed with the reports which indicated that specific holdings were analyzed for potential conflicts utilizing the Internet. In addition, specific information was clarified with the filers via e-mail.

**ETHICS COUNSELING AND  
ADVICE IS PROVIDED**

Ethics counseling and advice services meet the requirements of 5 C.F.R. § 2638.203(b)(7) and (8). We examined over 50 written determinations that were provided to employees within the last year and found that they were accurate, consistent with applicable laws and regulations, and appeared to meet employees' needs. The types of advice covered gifts from outside sources, fund-raising activities, outside employment, post employment, potential conflicting interests, speaking, writing, use of Government resources, and use of public office.

NTSB's use of a standardized format for providing certain advice to employees ensures consistent advice. Standardized formats are used for responses regarding acceptance of free attendance at a widely attended gathering, approval of outside employment, and approval of the acceptance of travel payments from non-Federal sources.

Currently, post-employment advice is provided for the departing high salaried staff including covered employees. However, you are considering providing post-employment advice for all departing employees.

**ETHICS AGREEMENTS ARE SATISFIED**

We found that actions under all ethics agreements, entered into by two PAS employees, were completed in accordance with the time limit prescribed at 5 C.F.R. § 2634.802(b), and evidence of requisite action taken, in accordance with § 2634.804, was submitted to OGE timely. In addition, all employees, as a condition of employment, have been required to execute ethics agreements, as appropriate, to comply with the restricted and prohibited holdings provisions in NTSB's as yet unpublished supplemental regulation. These agreements, completed by seven non-covered employees, all called for divestiture. Once the regulation is published and the restrictions and prohibitions become enforceable, non-covered employees would be given a reasonable period of

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time, in accordance with § 2635.403(d), to carry out divestiture. Covered employees would have to comply with the very similar time limit prescribed at § 2634.802(b).

All employees with potential conflicts enter into ethics agreements as a condition for hiring. You determine whether an agreement is necessary when you interview prospective employees for potential conflicts of interest. Copies of the agreement are forwarded to the employee's supervisor and office director. Any actions that need verification, such as divestitures, are posted on the ethics calendar to verify that the agreements were satisfied within 90 days. We commend this one-on-one interview process that emphasizes the importance of ethics in Government.

#### **ETHICS TRAINING CURRENTLY MEETS OR EXCEEDS REQUIREMENTS**

Ethics training currently meets or exceeds regulatory requirements. Due to your absence, you were unable to provide public filers with the required verbal training in 2002, but provided written ethics materials to all employees. Additionally, all employees receive an ethics orientation prior to being hired.

#### Initial Ethics Orientation

All employees receive one-on-one ethics orientation prior to their employment, either by telephone or face-to-face. The orientation consists of a standards of conduct briefing and a conflicts-of-interest interview. The PAS filers are the only prospective employees who complete a financial disclosure report prior to starting. Additionally, once a new employee is hired the personnel office provides the required ethics materials in the new employee package.

#### Annual Ethics Training

According to you, you provided verbal ethics training to all covered employees, including public filers, in 2001. However, you were unable to provide all the public filers with the required verbal training in 2002. Nonetheless, you provided the PAS filers one-on-one verbal training and you provided all other covered employees and non-covered employees with written ethics training during 2002. In February 2003, you provided verbal ethics training to the public filers, and plan to offer computer-based ethics training to all other covered employees and non-covered employees, to be completed by the end of 2003.

#### Other Ethics Training

You also provide ethics training to offices upon request. For example, you conducted an ethics briefing to the Office of Marine Safety's employees in May 2003. Additionally, you provide ethics information using e-mail and NTSB's Intranet Conduct & Ethics site.

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## TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES ARE ACCEPTED

NTSB accepts payments for travel, subsistence, and related expenses from non-Federal sources authorized under 31 U.S.C. § 1353. We examined the 23 approvals for the acceptance of travel payments during the period from April 2002 through March 2003 and found that they appeared to be in compliance. The types of meetings consisted of conferences, presentations, and training courses.

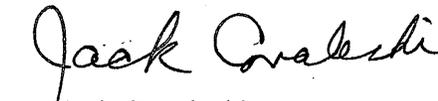
## RECOMMENDATIONS

To more fully comply with ethics regulatory requirements, we recommend that NTSB:

1. Ensure that the prohibitions and requirements in the draft supplemental standards are not enforced until NTSB publishes the standards in the Federal Register in accordance with 5 C.F.R. § 2635.105.
2. Ensure that the financial disclosure reports are filed timely by notifying filers timely.

In closing, I would like to thank everyone involved in this review for their cooperation on behalf of the ethics program. Please advise me within 60 days of the specific actions the agency plans to take on our recommendations. A brief follow-up review will be scheduled within six months from the date of this report. In view of the corrective action authority vested with the Director of OGE under subsection 402(b)(9) of the Ethics Act, as implemented in subpart D of 5 C.F.R. part 2638, it is important that our recommendations be implemented in a timely manner. Please contact Jean Hoff at 202-482-9246 if we may be of further assistance.

Sincerely,

  
Jack Covaleski  
Deputy Director  
Office of Agency Programs

Report Number 03 - 022