



U.S. Office of Government Ethics
Program Review Division

Ethics Program Review

Broadcasting Board of Governors

Report No. 11-027
July 2011

Results in Brief

The United States Office of Government Ethics (OGE) conducted a review of the Broadcasting Board of Governors' (BBG) ethics program in May 2011. The results of the review indicated that BBG's ethics program generally appears to be in compliance with applicable laws, regulations, and policies. Additionally, OGE found that BBG has implemented a number of model practices that enhance the ethics program.

Highlights

- The governing board adopted a resolution to implement a model ethics program. Ethics-related responsibilities are included in supervisors' and managers' performance standards.
- Ethics officials are in the process of providing ethics training to all employees in 2011.

Concerns

- Almost all public financial disclosure reports were certified late and some did not meet OGE's standards of completeness.
- Evidence of compliance with ethics agreements was not provided to OGE within the requisite 90 days.

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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 BBG's ethics program, OGE examined a variety of documents provided by ethics officials; other documents that BBG forwarded to OGE, including the annual questionnaire; the prior program review report; a sample of BBG's public and confidential financial disclosure reports; and advice and counsel provided to BBG's employees. In addition, members of OGE's Program Review Division met with ethics officials to obtain additional information about the strengths and weaknesses of BBG's ethics program, seek clarification on issues that arose through the documentation analysis, and verify data collected.

Program Administration

BBG's ethics program is administered within the Office of General Counsel. The Deputy General Counsel serves as the Designated Agency Ethics Official (DAEO). An Associate General Counsel serves as the Alternate DAEO and an Assistant General Counsel serves as the Deputy DAEO. The Deputy DAEO and the Ethics Officer serve as the primary, day-to-day administrators of the ethics program.

Since OGE's ethics program review in 2009, BBG has increased the ethics staff from two to four employees. BBG's new program structure appears sufficient to meet the needs of an agency of this size. While ethics officials are performing the necessary ethics requirements, they have yet to develop comprehensive written procedures to administer the ethics program. Given the recent increase in ethics staff and changes to the ethics program, BBG should develop written policies and procedures in the event of further changes in personnel. A greater effort towards developing written procedures would not only clarify processes and procedures, it would ultimately aid BBG ethics officials with succession planning.

On November 19, 2010, the agency's governing board adopted a resolution to design and manage a comprehensive agency-wide ethics program focused on inspiring a culture of ethical behavior throughout the agency. The resolution strongly encouraged senior leadership within BBG to visibly support the ethics program to aid in fostering an ethical culture. In addition, the resolution urged employees to become familiar with ethics rules and regulations and to participate in ethics program activities. As an example of BBG's commitment to leadership support throughout the agency, supervisors' and managers' performance standards identify ethics as one organizational goal and priority on which they will be rated. OGE is pleased to acknowledge the governing board's support of the ethics program in passing this resolution aimed at improving BBG's ethical culture.

Suggestion

- Develop written procedures for all elements of the ethics program to clarify processes and procedures and aid in succession planning.

Financial Disclosure

The review team examined 19 public financial disclosure reports required to be filed in 2010 and a sample of confidential financial disclosure reports required to be filed in 2011. OGE was impressed by BBG's high rate of timely annual financial disclosure submissions.

The review team found significant issues with the public financial disclosure reports examined. First, report certification was substantially late. Second, the income type and amount were omitted from some reported assets and personally identifiable information was not redacted on several reports. Third, ethics officials did not follow up with filers to resolve discrepancies or obtain required information missing from the reports. Given the high visibility of public filers, it is important that BBG ensure that public financial disclosure reports are thoroughly reviewed and certified in a timely manner.

Incomplete reporting on public financial disclosure reports and the failure to obtain required information are significant vulnerabilities. Effective review of financial disclosure reports aids in the prevention of conflicts of interest and is the cornerstone of an effective ethics program. In addition to being a regulatory requirement, full disclosure of the value and type of asset is necessary to conduct a conflicts determination. Therefore, OGE is making a formal recommendation in the area of public financial disclosure.

Despite minor technical issues on some confidential financial disclosure reports, it was evident that the confidential system is well-managed. Some confidential financial disclosure reports displayed evidence of reviewer notes and e-mail follow-up with filers. Additionally, ethics officials conduct a year-to-year comparison of filers' assets and use filers' position descriptions in the review of confidential financial disclosure reports.

A vulnerability of the confidential financial disclosure system was the late certification of a small number of reports. The OGE review team reminded ethics officials that certification of financial disclosure reports should occur within 60 days of submission unless the ethics office is awaiting additional information from the filer.

Currently, the ethics office receives a bi-weekly notice of new employees from the Office of Human Resources (HR); however, the positions are not coded to easily identify those employees who should file. The onus is on ethics officials to identify new entrant filers as well as those employees who have been promoted to a filing position. While ethics officials are confident that new entrants are being captured OGE strongly suggests that a memorandum of understanding be established with HR to code filing positions and include the filing designation in position descriptions.

Recommendations

- Ensure that public financial disclosure reports are complete before certifying.
- Ensure that financial disclosure reports are reviewed and certified within 60 days of submission unless additional information is needed.

Suggestion

- Formalize the relationship with Human Resources in order to identify all new entrant filers and those employees who have been promoted to a filing position.

Education & Training

BBG's training program meets all relevant requirements. BBG reported on the 2010 Agency Ethics Questionnaire that six required employees did not receive initial ethics orientation in 2010. During the review, ethics officials confirmed that initial ethics training was provided to those six employees. All required employees received annual ethics training in 2010. At the time of the review, BBG did not have an annual training plan that met the requirements outlined in 5 CFR 2638.706. Prior to the end of the on-site portion of the review, BBG ethics officials drafted an annual training plan. Consequently, we are not making a formal recommendation. OGE reminds BBG ethics officials that an annual training plan must be in place at the beginning of every calendar year.

BBG's high compliance rate in training employees is due in part to an agency requirement that confidential financial disclosure filers complete annual training by the confidential financial disclosure report due date. This requirement allows the ethics office sufficient time to follow up with any employees who missed the training deadline before the end of the year. In addition to training required employees, ethics officials plan to provide ethics training to all employees in 2011. OGE commends BBG on its efforts to provide training to all employees regardless of filing status.

Advice & Counsel

OGE reviewed a sample of BBG's written advice and counsel issued to employees. OGE found that all pieces of advice and counsel in the sample appeared thorough. Ethics officials provide advice and counsel primarily via email, which is shared throughout the office and tracked using a spreadsheet.

Historically, BBG has required employees to seek prior approval before engaging in certain outside activities. However, this requirement can only be enforced by a supplemental regulation. During the 2009 ethics program review, OGE recommended that BBG remove language from all published policies and memoranda requiring the prior approval for engaging in certain outside activities. Since the last review, BBG removed the language from its website and in practice, stopped requiring the prior approval of certain outside activities; however, the language

remained in the Broadcasting Administrative Manual (BAM). During the drafting of the current report, BBG informed OGE that the language requiring prior approval of certain outside activities had been removed from the BAM. BBG provided OGE with the revised language that encourages employees to seek advice concerning these activities. As a result of this revision, OGE is not making a recommendation.

Enforcement

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

BBG ethics officials appear to have a good working relationship with the Office of Inspector General (OIG). Each office is aware of its responsibilities and they communicate as necessary. The OIG is responsible for making referrals to the Department of Justice and concurrently notifying OGE.

Ethics Agreements

The governing board of BBG is comprised of Presidentially appointed, Senate-confirmed special Government employees and the Secretary of State who serves ex-officio. Seven members of the governing board entered into ethics agreements in 2009. At the time of the on-site portion of the review, OGE had not received confirmation that these employees complied with their ethics agreements. Ethics officials informed the review team that while scheduling conflicts prevented the governors from signing screening arrangement memoranda, the screening process had been established and was in place for each of them. OGE reminds BBG that formal evidence of compliance with ethics agreements must be provided to OGE no later than 90-days after an employee enters into such an agreement.

Recommendation

- Provide OGE with formal evidence of compliance for the seven ethics agreements.
- Ensure that a process is in place for future compliance with this statutory requirement.

1353 Travel Acceptances

BBG submitted the required semi-annual reports of payments accepted from non-Federal sources to OGE in a timely manner. BBG has an established process for approving requests for travel payments accepted from non-Federal sources. Ethics officials perform a conflicts of interest analysis on all requests before they are approved.

Agency Comments

On June 7, 2011, OGE provided a draft of this report to BBG ethics officials for comment. BBG responded with the following comments on June 16, 2011:

“We greatly appreciate the time and effort you and Ms. Clarke spent reviewing our program and the insightful suggestions and recommendations on how to improve it. We are also pleased that OGE recognizes the hard work and successes we have already achieved, and we look forward to building on those further as we move toward our goal of establishing a model Ethics Program here at the BBG.

Overall, we think the report is a professional and accurate account of the current state of our program. The only item that we would ask you to consider revising is the concern and recommendation under the Advice and Counsel section regarding the Manual of Operations and Administration (which is actually titled the Broadcasting Administrative Manual). We have succeeded in formally replacing the old section 5-520 that required employees to obtain clearance prior to engaging in outside activities with the attached revised version, which only encourages employees to coordinate with supervisors and seek ethics advice prior to engaging in outside activities. The attached version is now the official governing regulation for the agency. Please review the new section of BAM and see if it ameliorates OGE’s concern and recommendation pertaining to approval of outside activities.

Regarding OGE’s two other concerns, we would request that you include the following comments in your report:

BBG comment regarding OGE concern that almost all public financial disclosure reports were certified late and did not meet the standards of completeness:

Deficiencies in the public financial disclosure report certification and review process were attributable to turnover of ethics personnel within the agency. The identified deficiencies are currently being addressed and will be fully corrected for the 2011 public financial report filing period.

BBG comment to OGE concern that evidence of compliance with ethics agreements was not provided to OGE within the requisite 90 days:

All eight Governors signed ethics agreements prior to commencing their employment in 2010 and all eight are in compliance with them; evidence that they have reviewed their individual Screening Arrangements will be forwarded to OGE.

If the revisions we made to section 5-520 do not eliminate OGE's concerns regarding outside activities, please let us know what the published concern will be so we may draft an appropriate comment."