

**United States Office of Government Ethics**

---

Compliance Division

# Ethics Program Review

U.S. Commission on Civil Rights

## Findings and Recommendations

---

The United States Office of Government Ethics (OGE) conducted a review of the ethics program at the United States Commission on Civil Rights (Commission). Program reviews entail an analysis of an agency's implementation of the basic statutory and regulatory elements for ethics programs in the executive branch, as well as unique elements of a program specific to the agency's mission. In the course of a program review, OGE's Compliance Division examines program elements such as ethics program structure and staffing, public financial disclosure, confidential financial disclosure, ethics training, ethics counseling, and mechanisms to address employees' employment or involvement with entities outside the government.

OGE initially conducted its review of the Commission's ethics program intermittently between May and June 2013. A follow-up meeting with Commission officials was also held in June 2014 to gather additional, updated information regarding the ethics program. Based on the results of our review, OGE concludes that the Commission has the basic foundational elements necessary to support an effective ethics program. However, improvements are needed to achieve compliance with applicable laws and regulations. The following list identifies OGE's concerns, OGE's recommendations, suggestions, and some model practices of the Commission's ethics program.

- Vacancies in key leadership positions had made it difficult for the Commission to maintain a viable ethics program.

### *Recommendation 1*

OGE recommends that the Commission ensure that specific ethics leadership strategies are developed and incorporated into the day-to-day management of the Commission's ethics program.

- While OGE found the Commission to have procedures for administering its public and confidential financial disclosure programs at the time of on-site examination, neither set of procedures were up-to-date.

### *Recommendation 2*

OGE recommends that the Commission update its written procedures to reflect all current processes and procedures to more fully comply with the requirements of section 402(d)(1) of the Ethics in Government Act.

- OGE's examination found deficiencies in the provision of ethics-related services provided to the Commission's State Advisory Committee (SAC) members. OGE did not find consistency in the filing of financial disclosure reports or the completion of annual ethics training among the SACs examined. Lack of adequate staffing within some of the regions

was also cited as a contributing factor. OGE found this to be the weakest element of the Commission's ethics program.

*Recommendation 3*

Ensure that the OGE-approved alternative financial disclosure form used to help screen SAC Board members for potential conflicts is filed in a timely manner.

*Recommendation 4*

Ensure that all SAC Board members receive annual ethics training in accordance with the exception at 5 CFR § 2638.705(d)(2).

*Recommendation 5*

Provide stronger oversight and compliance monitoring of the ethics program services provided to all SACs.

- Through discussions with the DAEO and ADAEO, and as a result of examining several pieces of documented advice, it was brought to OGE's attention that certain Commissioners have used their government titles/position/authority and Commission resources to promote their personal views both on matters before the Commission and on matters not before the Commission.

*Recommendation 6*

Develop a formal policy that documents when a Commissioner may speak or write in his/her official capacity. This policy should also make clear that when a Commissioner is speaking or writing in his/her personal capacity, the Commissioner may not use his/her official title, the agency seal, agency letterhead or otherwise leave a third party to think that the speaking or writing has the sanction of the Commission. When expressing a personal view in an official capacity, Commissioners should make clear that he/she is not speaking for the Commission.

In addition to the findings noted above, this report also provides a number of suggestions that OGE hopes will help the Commission manage its ethics program better. During the review OGE found these suggestions well received when they were presented.

*Suggestion 1*

OGE suggests that the DAEO develop written procedures that reflect the current practices for administering various elements of the Commission's ethics program in view of the importance of having a succession plan to help maintain the consistent administration of an ethics program.

*Suggestion 2*

OGE suggests that the Commission establish and implement written procedures to help ensure that agency ethics officials consistently and efficiently administer the Commission’s enforcement program in the absence of an Inspector General. Given the high turnover within the ethics program, these procedures should also make clear who at the Commission would be responsible for concurrently notifying OGE when a criminal conflict of interest referral is made to the Department of Justice.

*Suggestion 3*

OGE suggests that the Commission update its written procedures for requesting authorization for acceptance of travel payments from a non-Federal source to reflect the most up-to-date GSA changes to 41 C.F.R. part 304-1.

In the course of this program review, OGE also identified factors that support the Commission’s ethics program. For example, the Commission Staff Director has expressed a strong commitment toward supporting the agency’s ethics program. Technology has also been leveraged by Commission ethics officials through the adoption of an electronic-filing system (e-filing) to aid in ensuring an effective financial disclosure program for both public and confidential filers. Finally, as noted above, OGE identified two model practices of OGE’s ethics program that other agencies may want to consider adopting.

*Model Practices*

Ethics officials give employees an in-person overview on the importance of the ethics rules during IEO.

In-person, annual ethics training is provided to all Commissioners and to employees not required to be annually trained.

**Contents**

Objectives, Scope, and Methodology.....	5
Agency Background.....	5
Program Administration.....	6
Financial Disclosure .....	10
Special Government Employees.....	12
Education and Training.....	15
Advice and Counsel.....	17
Agency Supplemental Regulation.....	18
Enforcement.....	19
1353 Travel Acceptances.....	20
Agency Comments.....	21

## Objectives, Scope, and Methodology

OGE provides overall leadership and oversight of the executive branch ethics program which is designed to prevent and resolve conflicts of interest. OGE's Program Review Branch (PRB) carries out OGE's oversight responsibilities through onsite monitoring of agency ethics programs to ensure agencies are held accountable for compliance with applicable ethics requirements established by statutes, rules, regulations, and Executive Orders. PRB's oversight activities are also designed to mitigate program vulnerabilities, identify trends, and disseminate model practices as well as to advance OGE's overarching goals of uniformity, continuity and transparency. OGE has authority to evaluate the effectiveness of executive agency ethics programs pursuant to Title IV of the Ethics in Government Act and 5 C.F.R. part 2638.

To assess the Commission's ethics program, OGE examined a variety of documents that were provided by agency ethics officials. These included: the annual ethics program questionnaire; public and confidential financial disclosure reports that were required to be filed in 2012, 2013, and 2014; and, advice and counseling provided to Commission employees. Other documents that the Commission forwarded to OGE were also examined. In addition, members of OGE's Program Review Branch met with agency ethics officials to obtain additional information about the strengths and weaknesses of the Commission's ethics program, discuss and clarify certain matters, and verify the accuracy and origin of data collected.

## Agency Background

Headquartered in Washington, D.C., the Commission was established by Congress in 1957 as an independent, bipartisan, fact-finding federal agency to inform the development of national civil rights policy and enhance enforcement of federal civil rights laws. As the only independent agency in the federal government exclusively concerned with the full range of issues related to civil rights, the Commission is responsible for studying alleged deprivations of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, or national origin, or in the administration of justice. The agency also plays a vital role in advancing civil rights through objective and comprehensive research and analysis on issues of fundamental concern to the federal government and the public.

The Commission is led by eight members (Commissioners), not more than four of whom are appointed from the same political party. Four members are appointed by the President, two members are appointed by the President pro tempore of the Senate, and two members are appointed by the Speaker of the House of Representatives.<sup>1</sup> None of these members require Senate confirmation and, for conflict of interest purposes, all are designated as special

---

<sup>1</sup> The Chair and Vice Chair of the Commission are designated by the President with the concurrence of a majority of the Commissioners. Commissioners serve six-year terms. During part of OGE's program review, two Commissioners positions were vacant. On July 24, 2014, the President appointed two new Commissioners, so there are currently eight Commissioners.

Government employees (SGE).<sup>2</sup> Each Commissioner has a full-time Special Assistant who is a Schedule C appointee under the delegation authority of the Office of Personnel Management.<sup>3</sup>

The Commission's Staff Director, who is also appointed by the President with the concurrence of a majority of the Commissioners, serves as the agency's administrative head. The Staff Director is responsible for providing leadership and direction to the agency's approximately 31-member staff located within headquarters and the Commission's six regional offices. The six regional offices are responsible for coordinating the Commission's operations within their respective regions and for assisting the agency's state advisory committees (SAC). Each regional office is staffed with a director and one or more civil rights analysts and/or other administrative personnel.

### Prior OGE Reports

Prior OGE reports of ethics reviews at the Commission were issued in 1985, 1992, 1996, 2000, and 2006. OGE made recommendations for improvement in all of these reviews. OGE also examined the Commission's ethics program in 2011. However, since the Commission was undergoing major transitions in leadership and staff, OGE decided that a consultation review would be more appropriate than a compliance-based plenary review. A consultation review is intended to advise and assist an agency in the establishment and development of its ethics program, rather than assess an ethics program's compliance with statutory and regulatory requirements. Areas of concern in the financial disclosure and education and training elements of the Commission's ethics program were identified and discussed with ethics officials during that review. Although OGE made no formal recommendations for improvement during that review, the Commission assured OGE that steps to correct identified weaknesses would be taken.

### **Program Administration**

While OGE believes the Commission has been and still is committed to maintaining a viable ethics program for its employees, OGE recognizes that longstanding internal challenges have made it difficult for the Commission to sustain long-term systematic improvement following our reviews. At the time of OGE's on-site examination in June 2013, the Commission was again under the direction of new leadership, and was again working to overcome profound management challenges, which have developed over a period of many years, to address longstanding concerns voiced by Congress, the Government Accountability Office (GAO), and others about the agency's management.

At the time of examination OGE found the Commission's ethics program faced with the following challenges:

---

<sup>2</sup> As defined by 18 U.S.C. § 202(a), an SGE is someone who provides a temporary service to the Federal Government with or without compensation for not more than 130 days during any 365 day pay period.

<sup>3</sup> Schedule C positions are excepted from the competitive service because of their confidential or policy-determining character. The immediate supervisor of a Schedule C position must be a Presidential appointee, a Senior Executive Service appointee (career or noncareer) occupying a General position, or a Schedule C appointee.

- The Commission Had Vacancies In Key Leadership Positions.

Similar to the concerns raised during OGE’s 2011 consultation review, the Commission was dealing with vacancies in key leadership positions. From January 2011 to June 2013, the Commission was without a permanent Staff Director to help provide the leadership support necessary to help maintain a viable ethics program. Additionally, the General Counsel position had been vacant from April 2012 to December 2013.

This is critical to note because, in accordance with current Commission regulations,<sup>4</sup> the General Counsel also serves as the agency’s Designated Agency Ethics Official (DAEO). In advance of OGE’s review, OGE reviewers were advised that since Commissioners do not have supervisory authority over career staff, the General Counsel/DAEO position had to remain vacant until the Presidential appointment of a Staff Director. The General Counsel reports directly to the Staff Director.

- The Commission’s Ethics Program Lacked A Succession Plan

The Alternate Designated Agency Ethics Official (ADAEO), a senior attorney within the Commission’s Office of General Counsel, was administering the program as the agency’s sole ethics practitioner. The ADAEO was hired in May 2012 by a former acting Staff Director/General Counsel who left the position prior to the ADAEO’s arrival and left the agency thereafter. This departure left the ADAEO without a supervisor or access to institutional knowledge.

Succession planning is important because ethics staff turnover can create inherent risks for an agency’s ethics program, including the inability to routinely comply with regulatory requirements. It also helps new ethics officials maintain consistency and provide for continuity within the ethics program. Despite the circumstances, however, OGE commends the ADAEO’s positive efforts toward maintaining the Commission’s ethics program.

- Questions Were Raised As To Whether Commissioners Cross The Line Between Their Official Duties and Outside Activities. We address this concern in more detail in the “Advice and Counseling” section within this report.

- There Was Limited Monitoring and Oversight Over State Advisory Committees.

Due to the vacancies in leadership, the ADAEO had limited oversight and control over the agency’s SACs, which are considered the eyes and ears for the agency. We address the SACs in more detail in the “Special Government Employees” section within this report.

Although OGE remains concerned about the Commission’s ethics program and the recurring issues which have resurfaced, OGE is pleased to see the positive actions that have been made since the time of our on-site examination to help ensure the continuity of the Commission’s ethics program.

---

<sup>4</sup> Reference to 45 C.F.R. part 701.13 (Staff organization and functions).

- A new Staff Director was appointed by the President on June 4, 2013. During the on-site portion of this review, OGE reviewers met with the Staff Director to discuss the critical role that agency leadership plays in implementing an effective ethics program, in accordance with 5 C.F.R. § 2638.202(a). The Staff Director expressed a strong commitment toward supporting the agency's ethics program and shared a plan to fill the General Counsel/DAEO position vacancy in fiscal year 2014.
- The Staff Director hired a new General Counsel/DAEO on January 23, 2014. OGE reviewers met with the Commission DAEO on June 16, 2014, to discuss our review findings, to give insight on the recurring weaknesses identified from prior OGE reviews, and to help provide expertise and advice to assist in sustaining ethics program requirements. The DAEO expressed a strong commitment to improve the ethics program and indicated that he has already reached out to the OGE Desk Officer assigned to the Commission on several issues for direction and advice. The DAEO also indicated that he, along with the ADAEO, meet regularly with the Staff Director to discuss relevant ethics issues that impact the Commission.
- The Commission Appears Committed To A Strong Financial Disclosure and Education and Training Program. In advance of OGE's review, OGE learned that the ADAEO implemented the use of an electronic-filing system (e-filing) in 2012 to aid in ensuring an effective financial disclosure program for both public and confidential financial disclosure filers. OGE also found during the examination the Commission's education and training program to exceed the minimum training requirements found at subpart G of 5 C.F.R. 2638 based on the ADAEO's commitment to provide in-person initial ethics orientation (IEO) to new employees and in-person annual ethics training to all headquarters employees.
- The Commission's Plan To Increase Oversight Over SACs  
The Staff Director has supported the DAEO and ADAEO's efforts to improve oversight over the SACs. During follow-up discussions with the DAEO and ADAEO, OGE reviewers indicated their plan to periodically request from the regional offices a list of all recently approved SAC members, along with dates of ethics training. In addition, the DAEO and ADAEO indicated that they will also conduct random checks of the financial disclosure forms and documents certifying training. The first periodic report will cover January 1 through June 30, 2014 and is due to the DAEO on July 18, 2014.

While OGE believes the Commission is moving in the right direction to effect positive change, we see this also as a good time to reiterate again the fundamental requirements that make up a strong ethics program. As we have shared with the Commission in prior reports, support from the top is critical in maintaining a viable ethics program, for employees as well as for the ethics officials who are responsible for administering the program on behalf of the agency. To help build a strong ethics program at the Commission, it is important for the Commission's Staff Director to become involved by exercising personal leadership in maintaining and carrying out the agency's ethics program, as required by 5 C.F.R. § 2638.202(a). Not only will this help to better coordinate and manage the ethics program, but it also helps to ensure the public's trust in an ethical Government, which is a fundamental purpose of an agency's ethics program.

For this reason, OGE recommends that the Staff Director develop and incorporate specific ethics leadership strategies into the day-to-day management of the Commission's ethics program to provide the leadership necessary to facilitate improvement that results in a positive and effective ethics program. Although this can be done in a number of ways, we reiterate several suggested strategies made during prior OGE reviews for the new Staff Director to consider:

- Become vocally supportive of ethics (e.g., making announcements/speeches in support of the activities of the ethics office, including ethics in senior staff meetings, routinely or even occasionally issuing agency-wide memoranda that reiterates the Commission's dedication to maintaining an ethical culture).
- Attend ethics education and training classes with employees to highlight the importance of ethics training to the agency.
- Support administrative action by ensuring that appropriate action is taken in the cases of ethics violations or delinquency of financial disclosure reports.
- Contribute personally to ethics program policies.
- Incorporate ethics-related challenges/accomplishments as part of strategic plans and annual reports.
- Participate in OGE or other ethics community events.

In addition to the above, we also reiterate several suggested strategies for the DAEO to consider in carrying out the ethics program on behalf of the agency. These include:

- Periodically assess (or review) the state of the ethics program during periods when the ethics program is not subject to an OGE ethics program review;
- Regularly update ethics policies and procedures, including written procedures required for various program elements;
- Regularly disseminate OGE and other pertinent ethics-related guidance, with advice on how the guidance applies to the Commission's ethics program;
- Keep records of advice that is rendered, when appropriate, on ethics and standards of conduct matters, including post-employment and conflict of interest matters;
- Have filers and reviewers pay more attention to the errors associated with incomplete information on financial disclosure reports;
- Timely submit to OGE semiannual reports of certain travel payments accepted, including negative reports; and

- Annually assess agency training needs, reflecting the results in the ethics training plan and training materials, and monitor attendance at ethics training sessions.

### Recommendation

- Ensure that specific ethics leadership strategies are developed and incorporated into the day-to-day management of the Commission's ethics program.

## **Financial Disclosure**

Financial disclosure serves to prevent conflicts of interest and to identify potential conflicts by providing for a systematic review of the financial interests of both current and prospective officers and employees. Financial disclosure reports also assist agencies in administering their ethics programs and providing counseling to employees. See 5 CFR § 2634.104(b). Title I of the Ethics in Government Act requires that agencies ensure confidence in the integrity of the Federal Government by demonstrating that officials are able to carry out their duties without compromising the public trust. High-level Federal officials demonstrate this by disclosing publicly their personal financial interests by completing OGE Form 278. Title I also authorizes OGE to establish a confidential financial disclosure system for less senior executive branch personnel in certain designated positions to facilitate internal agency conflict of interest review. OGE implements this authority by requiring the covered executive branch personnel to complete OGE Form 450.

The Commission's financial disclosure program has improved since our 2011 consultation review as a result of the efforts undertaken by the current ADAEO to sustain and improve the Commission's financial disclosure program.<sup>5</sup> In particular, the ADAEO adopted an electronic filing system (e-filing) for both public and confidential financial disclosure filers. E-filing was officially launched at the Commission during the 2013 filing cycle. Since OGE identified during its 2011 consultation review that some financial disclosure reports were not properly reviewed for potential conflicts of interest, OGE believes the movement to an e-filing system is a step in the right direction that will yield significant benefit for the Commission's ethics program over time. Agencies that have implemented e-filing systems have found great efficiencies in time and resources which can be redirected to more substantive aspects of financial disclosure—such as conflicts analysis—and other ethics program requirements.

### Written Procedures

The Ethics Act requires the DAEO to develop agency-wide written procedures that provide the overall framework for administering both the public and confidential financial disclosure systems. Beyond being required, written procedures are important in establishing consistency

---

<sup>5</sup> OGE identified the following concerns during its 2011 review: 1) the inadequate review of some financial disclosure reports for potential conflicts of interest; 2) the lack of ethics officials following established procedures for collecting and retaining public financial disclosure reports; and, 3) the inability to certify a required termination financial disclosure report filed by a former Commissioner because the report was incomplete and illegible.

and efficiency in ensuring that agency ethics officials follow the same step-by-step procedures for administering their portion of the financial disclosure system. When properly used and updated, complete procedures decrease the risk of disruption in an ethics program. Written procedures are also beneficial for the training of current and new ethics officials and are a valuable resource in the event an ethics official leaves.

While OGE found the Commission to have procedures for administering its public and confidential financial disclosure programs at the time of on-site examination, neither set of procedures were up-to-date. The written procedures governing the public financial disclosure system had not been updated since December 1996 and procedures for administering the confidential financial disclosure system have not been updated since December 2006. Additionally, these procedures still referenced the Solicitor position as the agency's DAEO, which no longer exists, and should be revised. OGE recommends that the Commission update its written procedures for administering both the public and confidential financial disclosure systems.<sup>6</sup>

#### Recommendation

- Update the Commission's written procedures to reflect all current processes and procedures to more fully comply with the requirements of section 402(d)(1) of the Ethics in Government Act.

#### Suggestion

- In view of the importance of having a succession plan to help maintain the consistent administration of an ethics program, OGE also encourages the DAEO to develop written procedures that reflect the current practices for administering other elements of the Commission's ethics program as well. OGE considers an agency's use of individualized written procedures to be a model agency practice and a valuable resource to both employees and ethics officials.

#### Public Financial Disclosure

At the time of OGE's on-site examination, the public financial disclosure reports that were required to be filed on May 15, 2013 were not yet due. Therefore, to evaluate the Commission's financial disclosure program, OGE examined the 18 public reports that were required to be filed in 2012. OGE found these reports to have been generally filed, reviewed, and certified in a timely manner. Reports appeared to have been reviewed for conflicts as evidenced by the ADAEO's annotations during follow-ups with some filers. Although a few common reporting errors were identified, such as the filer's failure to report the full name of an asset and the omission of the agency date stamp to help assess filing timeliness, OGE believes the Commission's e-filing system should help alleviate these issues in the future.

---

<sup>6</sup> OGE's DAEOgram 09-03-92 provides guidance for creating written procedures.

During OGE's follow-up examination in June 2014, OGE reviewers examined the status reports associated with the Commission's e-filing system for 2013 and 2014. Based on discussions with the ADAEO, OGE determined that all required public reports had been filed and reviewed for 2013 and 2014.

### Confidential Financial Disclosure

Reports filed by the Commission's three confidential financial disclosure report filers were filed and reviewed timely. This assessment is based on OGE's examination of all three confidential reports that were required to be filed in 2013.

## **Special Government Employees**

Statutorily, the Commission is supposed to maintain 51 State Advisory Committees (SACs), one for each state and the District of Columbia (DC).<sup>7</sup> These committees are established to assist the Commission with its fact-finding, investigative, and information dissemination functions. Membership is composed of citizen volunteers who are familiar with local and state civil right issues. Each committee is made up of no more than 19 members who are all appointed by the Commissioners. Members serve on these committees for two-years with a total duration of not more than 10 years (or five 2-year terms) unless there is sufficient basis for extending the appointment beyond 10 years. As noted, the Commission's six regional offices provide administrative support to the SACs that are within their respective areas of responsibility. All members are properly classified as SGEs.

OGE's examination found deficiencies in the provision of ethics-related services to committee members. OGE did not find consistency in the filing of financial disclosure reports or the completion of annual ethics training among the SACs examined. Lack of adequate staffing within some of the regions was cited as a contributing factor. OGE found this to be the weakest element of the Commission's ethics program and has detailed below the actions necessary to bring this element of the Commission's ethics program into full compliance.

### Financial Disclosure

Of the 51 SACs, 16 had active charters in 2012. These 16 committees were located in the following states and Commission regions:

- Western Regional Office: Arizona, California, Hawaii, and Nebraska
- Central Regional Office: Alabama, Oklahoma, and Nevada
- Southern Regional Office: Georgia and Tennessee
- Midwestern Regional Office: Illinois and Minnesota
- Eastern Regional Office: Washington, DC, New Hampshire, and Connecticut
- Rocky Mountain Regional Office: North Dakota and Montana

---

<sup>7</sup> Reference to 42 U.S.C. 1975a(d)

To evaluate the ethics-related services provided to these members, OGE requested and was provided:

- alternative financial disclosure reports from OGE selected committees.
- the ethics training materials used to satisfy the annual training requirement and evidence of training for all committees,
- copies of ethics advice provided to all committee members, and
- Committee charters to confirm that membership status properly classified these members as SGEs.

During the examination of these materials, OGE identified the following:

- **Western Regional Office:** OGE selected the California SAC for examination since this was the region's largest committee. OGE identified that alternative disclosure forms were not collected from members serving on this committee. According to information provided by the region, this omission was attributable to the vacancy in the Western Regional Director position. OGE was advised at the time of examination that the Southern Regional Director was also serving as the acting Western Regional Director. However, the acting Director was only in the Western Regional Office on a limited basis, and there were no other professional staff in that office. The acting Director confirmed for OGE that these members had not participated in a briefing before the Committee or on any deliberations on a project proposal or committee report. Prior to the conclusion of this review, the acting Director did act to correct the situation by scheduling a meeting to collect all outstanding reports. With regard to annual ethics training, OGE identified that not all members on this committee were trained as a result of their not being present at the meeting at which the training was provided. According to information provided by the region, a make-up training was not offered due to a lack of staff and resources within the region.
- **Central Regional Office:** OGE selected the Oklahoma SAC for examination. According to information provided by the region, this committee did not meet or deliberate in 2012; therefore, alternative disclosure forms were not collected. OGE was advised that in May 2013, the Central Regional Director retired. However, at the time of OGE's onsite examination, the Commission had not designated an acting Director for this regional office. As a result, OGE also could not determine whether alternative forms were filed by the other two active committees (Alabama and Nevada) for which this region was responsible. With regard to annual ethics training, OGE could not determine whether members on this committee were trained.
- **Southern Regional Office:** OGE selected the Tennessee SAC for examination. OGE identified that 10 of the 11 members that were required to file an alternative form did so. Information provided by the region indicated that an alternative form was never received by one member who was required filed. The region confirmed for OGE that this member did not engage in any deliberations during the year. With regard to annual ethics training, OGE identified that not all members on this committee were trained as a result of not being present at the meeting at which the training was provided. According to information

provided by the region, a make-up training was not offered due to a lack of staff and resources within the region.

- **Midwestern Regional Office:** OGE selected the Minnesota SAC for examination. According to information provided by the region, this committee did not meet or deliberate in 2012; therefore, alternative disclosure forms were not collected. OGE could not readily determine whether alternative forms had been filed by the other active committee (Illinois) for which this region was responsible. With regard to annual ethics training, none of the members on this committee were trained according to information provided by the region.
- **Eastern Regional Office:** OGE selected the Washington, DC SAC for examination. OGE found that appropriate alternative disclosure forms were filed by all members on this committee. With regard to annual ethics training, all members on this committee were trained.
- **Rocky Mountain Regional Offices:** OGE selected the North Dakota SAC for examination. OGE found that appropriate alternative disclosure forms were filed by SAC members. With regard to annual ethics training, all members on this committee were trained.

OGE notes that the public's confidence in the impartiality of the advisory committees, in part, relies on advisory committee members being free of conflicts of interest. Lapses in the administration of the ethics program for committees can undermine the public's confidence in committee members' impartiality. Moreover, allowing members to serve without having a current financial disclosure report that has been properly reviewed on file subjects the filer, the committee, and the agency, to potential ethical violations and criticism. This includes term appointees who may not participate in a committee meeting during a given calendar year.

#### Efforts To Improve The SACs

Since joining the Commission, the Staff Director, DAEO, and the ADAEO have worked to improve this area of the Commission's operations. OGE notes that prior to the conclusion of this review, OGE reviewers were advised of the following actions that have taken place since OGE's on-site examination.

- Since many of the SACs charters had been dormant for many years, the Staff Director has been working to activate these SACs. While only 16 SACs had active charters in by the end of 2012, 27 SACs had active charters by the end of 2013.
- The Western Regional Director is now permanently filled by the previous Southern Regional Director. The vacancy announcement for the Southern Regional Director closed on May 21, 2014.
- The vacancy for a permanent Regional Program Coordinator Unit (RPCU) Chief closed on June 18, 2014. The RPCU Chief will be responsible for the oversight of the regional offices.

- As mentioned earlier a plan of action has been developed by the DAEO and ADAEO to increase oversight and compliance monitoring.

While OGE is pleased to see the Commission moving in the right direction, OGE is recommending that the Commission take the following actions to ensure program compliance.

#### Recommendations:

- Ensure that the OGE-approved alternative financial disclosure form used to help screen SGE Board members for potential conflicts is filed in a timely manner.
- Ensure that all SGE Board members receive annual ethics training in accordance with the exception at 5 C.F.R. § 2638.705(d)(2).
- Provide stronger oversight and compliance monitoring of the ethics program services provided to all SACs.

### **Education and Training**

An ethics training program is essential to raising awareness among employees about ethics laws and rules and informing them of an agency ethics official's availability to provide ethics counseling. Each agency's ethics training program must include at least an initial ethics orientation (IEO) for all employees and annual ethics training for covered employees.

As mentioned earlier, OGE found the Commission's education and training program to exceed the minimum training requirements found at subpart G of 5 C.F.R. 2638. Ethics officials have committed to providing in-person initial ethics orientation (IEO) to new employees and in-person annual ethics training to all covered employees. OGE also found the Commission satisfying the requirements at 5 C.F.R. § 2638.706 by documenting its annual ethics training plan.

#### Initial Ethics Orientation

OGE regulations at 5 C.F.R. § 2638.703 require that all new employees receive contact information for agency ethics officials and the following material within 90 days of beginning work for an agency: (1) the Standards of Ethical Conduct for Employees of the Executive Branch (the Standards) and any agency supplemental standards to keep or review; or (2) summaries of the Standards, any agency supplemental Standards, and the Principles of Ethical Conduct to keep. Employees must also receive one hour of official duty time to review the material.

OGE found the Commission exceeded IEO requirements by providing in-person IEO to new Commission employees when they begin working. The ADAEO used sign-in sheets to certify training attendance. Based on discussions with the ADAEO and an examination of a sign-in sheet used to track training completion, OGE confirmed that IEO briefings were provided to all nine new Commission employees in 2012 and 2013. OGE examined the power point presentation used to provide the IEO briefing and found it to satisfy the content requirements of § 2638.703. OGE considers in-person IEO to be a model agency practice since it may be the first and the potentially only ethics training employees will receive. OGE encourages the Commission to continue this practice.

## Annual Ethics Training

Agencies are required to provide covered employees with annual ethics training. The training must include a review of the Principles, the Standards, any agency supplemental standards, the Federal conflict of interest statutes, and the names, titles, office address, and telephone numbers of the DAEO and other agency ethics officials available to advise employees on ethics issues. See 5 C.F.R. § 2638.704 and 5 C.F.R. § 2638.705. Annual ethics training is a vital component of an agency's ethics program and is intended to assist employees in carrying out their official responsibilities in a manner consistent with ethics-related statutes and regulations. Additionally, annual training helps to prevent ethics violations and maintain the public's confidence that Government officials act impartially and free of conflicts of interest.

To satisfy the annual training requirement for 2012, the ADAEO provided in-person training to the Commission's public filers, which includes all eight Commissioners and their Special Assistants. This training was conducted by the ADAEO over the course of a three month period in conjunction with Commission meetings held in September 2012, October 2012, and December 2012. Each month the ADAEO discussed a different ethics topic. To help satisfy the one hour requirement, each session ranged in duration from 10 minutes to 30 minutes, as indicated:

- In September 2012, 20 minutes was allotted for discussion on the financial disclosure provisions of the Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act);
- In October 2012, 30 minutes was allotted for discussion on Outside Teaching, Writing, and Speaking, and
- In December 2012, 10 minutes was allotted for discussion on Fundraising.

The ADAEO used sign-in sheets to track training attendance. The ADAEO advised OGE that public filers were also instructed during the training to review the 14 Principles of Ethical Conduct, the Standards, the Commission's supplemental regulation, and the Federal conflict of interest statutes to fully meet the basic requirements for annual ethics training. Collectively, the in-person training and review of the required materials meet content requirements for annual ethics training. OGE's review of the Commission's internal training records for 2012 indicates that all of the Commission's public filers were trained in 2012.

Although the Commissioners are public financial disclosure filers, the regulation at 5 C.F.R. § 2638.704(e)(2) allows the Commission to provide them with only written annual ethics training because they are SGEs. Therefore, OGE recognizes the ADAEO's decision to provide the Commissioners with in-person training as a model practice. OGE considers in-person training to be more effective at conveying the importance of adherence to ethical principles and provides employees with the opportunity to meet ethics officials face-to-face. This is an important step in establishing a relationship between employees and ethics officials to facilitate discussions regarding ethics issues when they arise. To help satisfy the annual training requirement for the Commission's three confidential filers, the ADAEO required these filers, as well as employees not required by regulation receive annual training, to attend an hour long in-person training session that was conducted over a two day period in November 2012. The topic discussed was Outside Teaching, Writing, and Speaking. Based on our discussion with the ADAEO the content requirements of § 2638.705 were satisfied. OGE notes that providing ethics training to non-

covered employees exceeds the minimum regulatory requirements. OGE also encourages the Commission to continue this practice.

### Model Practices

OGE identifies model practices and shares them when it appears they may benefit agency ethics programs. The following are model practices OGE noted the Commission implemented to enhance its ethics program:

- Ethics officials give employees an in-person overview on the importance of the ethics rules during IEO.
- In-person, annual ethics training is provided to all Commissioners and to employees not required to be annually trained.

### **Advice and Counsel**

OGE found the Commission's ethics advice and counseling services to meet the requirements of 5 C.F.R. § 2638.203(b)(7). OGE also found that records are kept, where appropriate, on advice rendered, as required by 5 C.F.R. § 2638.203(b)(8). This is significant to note since prior OGE reports raised concerns regarding when and how Commission ethics officials should document ethics advice. Since the Commission's ethics program has experienced high staff turnover over the years, maintaining written records of past advice and counseling can be an important learning tool for a new ethics official to help in understanding the types of questions raised by employees and to help provide timely responses that are consistent and accurate. As a good management practice, OGE suggests that Commission ethics officials continue to routinely document the ethics advice and counseling it renders to employees.

To evaluate the Commission's advice and counseling program, OGE examined 10 pieces of written advice provided by the ADAEO in 2012 and in the first quarter of 2013. The majority of the advice examined was on Outside Teaching, Writing, and Speaking; other topics included the Commissioner's use of agency letterhead, the Stop Trading of Congressional Knowledge Act (Stock Act), gift acceptance, the criminal conflict of interest statutes, and post-employment. The advice examined appeared to be consistent with appropriate laws and regulations. OGE also noted that the ADAEO provided in-person, post-employment briefings to departing public filers.

### Questions Raised Concerning Commissioner's Official Duties and Outside Activities

Through discussions with the DAEO and ADAEO, and as a result of examining several pieces of documented advice, it was brought to OGE's attention that certain Commissioners have used their government titles/position/authority and Commission resources to promote their personal views both on matters before the Commission and on matters not before the Commission.

Some examples of this include:

- Three Commissioners writing a letter to the Congressional Black Caucus in their individual capacities on Commission letterhead.

- Two Commissioners writing letters to 75 universities in their individual capacities on Commission letterhead.
- The Commission Chairman’s use of the agency seal and speaking as though an event is hosted and sanctioned by the Commission.
- Amicus briefs filed by Commission Special Assistants on behalf of Commissioners in their individual capacities which cite their membership with the Commission.

OGE was advised by Commission ethics officials that when speaking or writing on behalf of the Commission in his/her official capacity, a Commissioner can speak or write about matters upon which the Commission has opined on, voted on, and written on. The only caveat is that when any particular Commissioner is speaking or writing about such a matter, the Commissioner must make it clear that he/she is not speaking or writing on behalf of the Commission and make known the position of the body as a whole, whether unanimous or with dissent. In this instance, a Commissioner may permit his/her Special Assistant to assist with the speaking or writing engagement using agency resources.

When a Commissioner is speaking or writing in his/her personal capacity, the Commissioner may also speak about any matter. However, as is true for any federal employee, the Commissioner cannot use his/her official title, the agency seal, agency letterhead or otherwise leave a third party to think that the speaking or writing has the sanction of the Commission. In this instance, a Commissioner may not permit his/her Special Assistant to assist with the speaking or writing engagement using agency resources.

#### Recommendation

- Develop a formal policy that documents when a Commissioner may speak or write in his/her official capacity. This policy should also make clear that when a Commissioner is speaking or writing in his/her personal capacity, the Commissioner may not use his/her official title, the agency seal, agency letterhead or otherwise leave a third party to think that the speaking or writing has the sanction of the Commission. When expressing a personal view in an official capacity, Commissioners should make clear that he/she is not speaking for the Commission.

#### **Agency Supplemental Regulation**

On June 13, 2008, the Commission, with OGE’s concurrence, published a final rule in the Federal Register to supplement the standards of conduct regulation, in accordance with 5 C.F.R. § 2635.105. The Commission’s supplement to the standards of conduct regulation found at 5 C.F.R. § 7801.102 requires employees, other than special Government employees, to obtain prior written approval from the DAEO (or the ADAEO in the DAEO’s absence) before engaging in outside employment. Commission employees who wish to engage in outside employment for which advanced authorization is needed are required to use an “Outside Employment Approval Request” form.

To evaluate compliance with the Commission’s supplemental regulation, OGE examined the two prior approval requests that had been submitted in 2012 and 2013. Of the two requests, one was

submitted by a confidential filer and one was submitted by a non-filer. OGE found both requests to have received appropriate approval and concurrence by the ADAEO. At the time of report issuance there were no prior approval requests made or approved in 2014.

## **Enforcement**

Historically, the Commission has not had its own Office of Inspector General (OIG) nor has the Commission used the services of an outside OIG or its equivalent to help ensure that certain ethics program elements described at 5 C.F.R. § 2638.203(b)(11) and (12) were carried out. Although OGE regulations do not require agencies that do not have their own Inspector General to utilize the services of another agency's investigative organization, prior OGE reports have strongly encouraged the Commission's leadership to consider doing so.

In 2012, Congress through the Consolidated and Further Continuing Appropriations Act designated the Inspector General of the Government Accountability Office (GAO) to serve as the Commission's Inspector General due to concerns about the management and financial challenges that have existed at the Commission over a period of many years.<sup>8</sup> The legislation directed that personnel of GAO's OIG provide Inspector General-related services for the Commission. This included auditing and investigating programs and operations administered or financed by the Commission, and to keep the Commissioners and Congress fully and currently informed about fraud or other serious problems, abuses, and deficiencies identified. The Inspector General was also charged with recommending and reporting on the progress the Commission made in correcting any issues that were identified.

In 2013, as part of the Inspector General's 2013 semiannual report to Congress covering the period from October 1, 2012 through March 31, 2013, the IG reported on the management challenges that existed at the Commission in 2012. These challenges highlighted by the Inspector General included: (1) the vacancies in key leadership positions that have significantly hindered the Commission from establishing an efficient and effective organization; (2) the need for the Commission to align its organizational structure with its budget, which has remained constant for more than a decade, and (3) the better use of SACs to help the Commission achieve its mission. Although the report made no recommendations for improvement, the Commission leadership agreed with these reported challenges.

OGE notes that prior to the conclusion of this review, the Commission's appropriations for FY 2014 no longer provided for the services of the GAO Inspector General. Instead, Congress has directed GAO itself to update its prior work by conducting a new management review of the Commission, including assessing the role of the State Advisory Committees in accomplishing the mission of the agency, studying the organizational structure of the Commission and the roles and responsibilities of Commissioners, and identifying the Commission's progress in implementing GAO's prior recommendations.

---

<sup>8</sup> These challenges are well documented by a series of GAO and Office of Personnel Management (OPM) reports dating back to the 1990s. These reports document financial management, internal control, strategic planning, project planning, and internal communications failures, compounded by diminishing budgetary resources.

### Suggestion

- In the absence of an Inspector General, OGE suggests that the Commission establish and implement written procedures to help ensure that agency ethics officials consistently and efficiently administer the Commission's enforcement program. Given the high turnover within the ethics program, these procedures should also make clear who at the Commission would be responsible for concurrently notifying OGE when a criminal conflict of interest referral is made to the Department of Justice.

### **1353 Travel Acceptances**

Federal agencies may accept payments from non-Federal sources for travel, subsistence, and related expenses incurred by employees on official travel under the authority of the General Services Administration regulation at 41 C.F.R. chapter 304, implementing 31 U.S.C. § 1353. Semiannual reports of payments accepted under § 1353 must be submitted to OGE by May 31 and November 30 of each year.

The Commission has written procedures for requesting authorization for acceptance of travel payments from non-Federal sources which are detailed in the Commission's Administrative Instruction 3-10. However, the Commission has had a limited history of accepting gifts of travel under this authority. Therefore, OGE was not able to inspect instances of travel acceptances to verify adherence with written procedures. To evaluate compliance with the semi-annual reporting requirement, OGE examined the Commission's last four semiannual reports, covering October 1, 2011 through March 31, 2014. OGE confirmed the timely receipt of negative reports for the reporting periods of October 1, 2013 through March 31, 2014; October 1, 2012 through March 31, 2013; April 1, 2012 through September 2012; and October 1, 2011 through March 31, 2012.

#### Written Procedures

OGE observed during its examination of the Commission's written procedures implementing the requirements of §1353 that they had not been updated since December 2006. While OGE considers the development of these procedures to be a model practice, it's important that they reflect the most up-to-date agency approval process and GSA changes made to 41 C.F.R. part 304-1. For example, OGE found these procedures to still reference the Solicitor position, which no longer exists, as an integral part of the agency's approval process and the preparer of the Commission's semiannual travel reports to OGE.<sup>9</sup> Despite the Commission's limited history of accepting these types of payments, as a good management practice, OGE believes it would be in the Commission's best interests to update these procedures.

---

<sup>9</sup> In prior years, the Solicitor served as the agency's DAEO.

### Suggestion

- Update the Commission's written procedures for requesting authorization for acceptance of travel payments from a non-Federal source to reflect the most up-to-date GSA changes to 41 C.F.R. part 304-1.

### **Agency Comments**

The Commission was given the opportunity to review a draft version of this report. The Commission agreed with the recommendations and suggestions made in this report and will provide a formal written response within 60 days. In addition, the Commission would like OGE to be aware that the following has occurred since OGE conducted its review: a new DAEO was hired and the Staff Director has taken steps to demonstrate leadership support of the ethics program. For example, the Staff Director has attended an annual ethics training session with staff.