



U.S. Office of Government Ethics  
Program Review Division

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# Ethics Program Review

National Capital Planning Commission

Report No. 12-33  
February 2012

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## Results in Brief

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The United States Office of Government Ethics (OGE) conducted a review of the National Capital Planning Commission's (NCPC) ethics program between November and December, 2011. The results of the review indicated that NCPC's ethics program has many strong program elements. However, our review revealed that improvements are warranted in the areas of financial disclosure and special Government employee (SGE) identification and designation.

### Concern

- OGE identified action needed to be taken by NCPC to ensure that all SGEs are timely identified and designated in order to promptly comply with applicable financial disclosure and ethics training requirements.

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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 NCPC's ethics program, OGE examined a variety of documents provided by NCPC ethics officials such as training materials and policies and procedures governing elements of the program. OGE also examined public and confidential financial disclosure reports and a sample of ethics advice and counsel. In addition, the OGE review team met with the Designated Agency Ethics Official (DAEO) and the Alternate DAEO to obtain additional information on the ethics program, seek clarification on issues, and verify data collected. The OGE review team also met with a human resources (HR) office representative regarding the ethics program.

## Program Administration

The National Capital Planning Commission is the federal government's planning agency for the National Capital Region. The 12-member Commission adopts, approves, and provides advice on plans and projects that impact the nation's capital and surrounding areas. The Commission is supported by a staff of approximately 44 planners, architects, urban designers, and other professionals.

The General Counsel serves as the DAEO and the Executive Officer/Secretariat serves as the Alternate DAEO. The DAEO and ADAO share responsibility for the day-to-day functions of the NCPC ethics program.

## Financial Disclosure

### General

OGE reviewed all public and confidential financial disclosure reports filed in 2011. OGE found that public financial disclosure reports were filed in a timely manner and a thorough conflicts of interest analysis was conducted by ethics officials. Likewise, OGE found that confidential filers generally submitted financial disclosure reports on time and a thorough conflict of interest analysis was performed. However, OGE found that some financial disclosure reports were certified late. These reports were filed prior to annual filing deadlines. OGE reviewers noticed that the reason for the late certification was that ethics officials were certifying these reports on a set date, 60 days from the filing deadline as opposed to no later than 60 days from the date each report was filed. OGE reminds ethics officials that final certification of public and confidential financial disclosure reports must occur within 60 days of report receipt when the reports do not require additional information or remedial action (*See* OGE Advisory PA-04-11).

Some confidential financial disclosure reports did not include the date the report was received by the agency. OGE reminds ethics officials that a financial disclosure report is considered filed when the agency receives it. Dates of receipt must be entered on each report to help assess compliance with the filing due date and 60-day review requirements. In cases where there was no receipt date, OGE based filing timeliness on the filers' signature dates.

Additionally, in a number of instances, ethics officials granted verbal filing extensions to confidential filers. OGE was unable to determine the length of the filing extensions. Ethics officials should approve or deny such requests in writing and it should be maintained as part of the official report file. Ethics officials assured OGE reviewers that this would become a common practice in the future.

Finally, OGE noticed technical errors on some financial disclosure reports including reporting assets not required to be reported, entering incorrect new entrant dates, and not always indicating SGE status, as appropriate. During the course of the review, ethics officials provided training to filers on how to properly complete financial disclosure reports.

### **Commission Members**

The NCPC is comprised of 12 Commissioners. The President appoints three citizens, including the Chair. The Mayor of the District of Columbia appoints two citizens. The remaining seven members are ex officio. Three of the ex officio Commissioners are executive branch officials, two are Federal legislative branch officials, and two are officials of the DC government. Ex officio members typically appoint alternates to represent them at Commission meetings.

Ethics officials informed OGE that executive branch employees who serve in an ex officio capacity file requisite financial disclosure forms with their parent agency. NCPC relies on the parent agency to evaluate whether there are conflicts of interest relative to participation on the Commission. NCPC ethics officials do not communicate with ethics officials at parent agencies to verify whether there are conflicts of interests with NCPC related duties. However, the DAEO reviews some of the confidential financial disclosure reports for the alternates that consistently attend Commission meetings. Ethics officials often ask the remaining ex officio members to disclose financial information but they are not required to file a financial disclosure form because they are not executive branch employees. The four current appointed members, who are classified as SGEs, filed confidential financial disclosure forms with NCPC.

### Recommendations

- Adjust the certification schedule to ensure that final certification of public and confidential financial disclosure reports occur within 60 days of report receipt when the reports do not require additional information or remedial action.
- Include the date of receipt on each confidential financial disclosure report.
- Develop a process to ensure that no ex officio executive branch members and their alternates have conflicts of interest prior to the performance of NCPC-related duties.

An agency is required to determine SGE status at the time of appointment or retention for any individual who is retained, designated, appointed, or employed to perform temporary duties either on a full-time or intermittent basis, with or without compensation for a period not to exceed 130 days during any consecutive 365-day period (*See* 18 U.S.C. 202(a) and 5 CFR § 2640.102(t)). NCPC has two types of SGEs. Four SGEs are appointed members of the Commission. The other type of SGEs, intermittent temporary employees, is a rarity for NCPC. During the course of preparing for OGE's program review, NCPC determined that two intermittent temporary employees should have been designated as SGEs. One individual was a former Chairman and Commission member until 2005. He was hired as an intermittent temporary employee pursuant to a one year arrangement in 2008, which lasted into 2009, and then was subsequently retained again in 2010 and 2011. As an SGE, this individual should have filed a financial disclosure report in 2008 and each year retained thereafter. During OGE's review, ethics officials asked the filer to submit a confidential financial disclosure report by the end of the year. The filer submitted the report accordingly in December 2011. During the review, ethics officials reviewed and certified the financial disclosure report of this individual. Ethics officials also made a determination that the individual did not perform work for which he could have benefitted financially or caused the agency harm. Ethics officials informed OGE that the individual did receive ethics training while serving in prior positions at NCPC, the latest ending in 2005. However, regardless of the prior training, this individual should have received ethics training in 2008 and met subsequent annual training requirements as a confidential filer thereafter. OGE recommended and ethics officials provided training to this individual during the course of the review.

The second individual that should have been designated as an SGE was an employee for a four-month period in 2011 and has no further involvement with NCPC. This individual did not file a financial disclosure report but received ethics training. The DAEO indicated that the individual had limited responsibilities and would have been eligible for an exclusion from confidential reporting requirement. An SGE may be excluded from all or a portion of the confidential reporting requirement when the agency head or designee determines that the duties of a position make remote the possibility that the incumbent will be involved in a real or apparent conflict of interest (*See* 5 CFR § 2634.904(b)). However, the determination should be made at the time of retention, designation, appointment, or employment rather than retrospectively.

Ethics officials acknowledged a need to identify and designate these unique types of SGEs at the outset of employment. The DAEO noted that the lapses regarding the two SGEs resulted from poor communication between the ethics office and the HR office regarding the SGE status of these two individuals when they first came on board. The ethics office has developed a plan to ensure the DAEO's inclusion in the hiring process to facilitate SGE identification, designation, and compliance with ethics requirements.

## Recommendation

- Formalize procedures with HR to make a determination on SGE status at the time of retention, designation, appointment, or employment for any individual who performs temporary duties either on a full-time or intermittent basis, with or without compensation for a period not to exceed 130 days during any consecutive 365-day period.

### **Education & Training**

NCPC's ethics education and training program meets the relevant content requirements. As part of the on boarding process, an HR representative provides new employees with an ethics package with instruction to review for one hour. The ethics package includes the "Standards of Ethical Conduct for Employees of the Executive Branch." The HR office also provides contact information for the DAEO and ADAEO. New employees are required to sign a certification form acknowledging the receipt of the Standards of Ethical Conduct and the provision of one hour of official duty time to review the materials. Ethics officials noted that they are informed by the HR office of new employees and contact these employees after they receive IEO to see if they have follow-up questions. Additionally, the DAEO provides in-person IEO to public filers. As detailed in the section on SGEs above, because of late identification, one SGE was not provided ethics training within the required timeframe. OGE reminds ethics officials that as financial disclosure filers, SGEs should be provided ethics training annually.

NCPC produced an informal annual ethics training plan for 2011, containing a description of the planned training and content of the training itself. OGE reminds ethics officials that the annual training plan required to be developed at the beginning of the year should also include estimates of the number of employees who will receive training in accordance with 5 CFR § 2638.706.

NCPC's annual training for 2011 was comprised of an hour-long computer-based training. Covered employees were required to affirmatively acknowledge review. As part of annual training, the participants were provided with contact information for the DAEO and the ADAEO. The DAEO and ADAEO indicated that they covered the same content during face-to-face annual training provided to the Chairman.

### **Advice & Counsel**

The DAEO and ADAEO provide ethics advice and counsel upon request. The HR office notifies ethics officials of departing employees, facilitating post employment counseling prior to departure. Written advice and counsel samples reviewed by OGE appeared to be consistently thorough and timely.

### **Enforcement**

NCPC does not have an Inspector General. The DAEO is responsible for referring potential violations of the criminal conflict of interest statutes to the Department of Justice (DOJ). Non-criminal ethics violations are handled in accordance with the agency's policies and procedures for disciplinary actions of employees.

### **1353 Travel Acceptances**

The required semi-annual reports of payments accepted from non-Federal sources were submitted to OGE in a timely manner. The DAEO reviews offers of reimbursement of travel expenses by a non-Federal source to assess whether there is a conflict of interest and advises acceptance when no conflict of interest or an appearance of a conflict of interest is present. Policies pertaining to payments from non-Federal sources are addressed in the NCPC Travel Policy No.-8.

### **Agency Comments**

NCPC provided comments on the draft version of this report. NCPC's comments in their entirety are attached to this report as an appendix.

February 8, 2012

Ms. Rashimi Bartlett  
Associate Director  
U.S. Office of Government Ethics  
1201 New York Avenue, NW  
Washington, D.C. 20005

**Original by Mail**  
**Copy by Electronic Mail**

Dear Ms. Bartlett:

This letter responds to the draft report of the Office of Government Ethics (OGE) prepared upon completion of the review of the National Capital Planning Commission's ("NCPC") ethics program. The NCPC appreciates the time and effort OGE expended on the review and the report and its recommendations. The NCPC commends Ms. Karen Rigby and Ms. Michelle MaGee for their professionalism, diligence, and assistance through-out the review process.

In response to the report's recommendations, I would like to offer the following comments.

**Recommendation 1:**

- Adjust the certification schedule to ensure final certification of public and confidential financial disclosure reports occurs within 60 days of report receipt when the reports do not require additional information or remedial action.
- Include the date of receipt on each confidential financial disclosure report.
- Develop a process to ensure no ex-officio executive branch members and their alternatives have conflicts of interest prior to the performance of NCPC-related duties.

**Response:** The Designated Agency Ethics Official ("DAEO") has already corrected the technical deficiencies addressed in this recommendation. All confidential financial disclosure reports submitted in response to the forthcoming February 15, 2012 filing deadline have been dated immediately upon receipt. Reviews of those reports submitted thus far have been undertaken shortly after receipt, well in advance of the 60 day review period as measured from the date of receipt. This practice will pertain to all remaining confidential financial disclosure reports and public financial disclosure reports due on May 15, 2012. Moreover, this practice will be maintained for all future financial disclosure reports.

In the past, the DAEO has requested copies of the relevant financial disclosure report required to be submitted to their respective agencies by all ex-officio members not just those within the executive branch. A majority of the ex-officio members have complied with this request especially those within the executive branch. Upon receipt, the relevant financial disclosure reports have been reviewed to determine the presence of potential conflicts of interests. None have been found. This year, all ex-officio members were again contacted and asked to submit

their financial disclosure reports. See, Attachment A. Thus far, the response has been positive with most indicating they will respond affirmatively. For executive agency ex-officio members, the DAEO will aggressively pursue copies of financial disclosure reports for those individuals who fail to respond and contact agency ethics officials, as necessary, to obtain the required financial disclosure document to undertake a conflict of interest analysis. In future reporting periods, the DAEO will continue this practice to ensure compliance with the OGE recommendation.

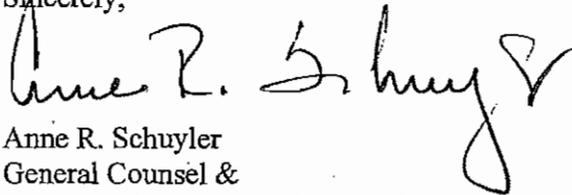
**Recommendation 2:**

Formalize procedures with HR to make a determination on SGE status at the time of retention, designation, appointment, or employment for any individual who performs temporary duties either on a full-time or intermittent basis, with or without compensation for a period not to exceed 130 days during the consecutive 365-day period.

**Response:** The NCPC has devised a policy responsive to this recommendation which was put into effect immediately upon discovery of the issue during the ethics program review. Most recently, the policy has been formalized by approval and signature of the NCPC's Executive Director to whom responsibility for implementing the agency's ethics program has been delegated by the Chairman of the Commission. See, Attachment B.

As the responses indicated, the DAEO has already put into place policies and procedures that respond to OGE's recommendations. Should you require any additional information regarding the NCPC's response to the recommendations or any other information, please contact me at (202) 482-7223 or at [anne.schuyler@ncpc.gov](mailto:anne.schuyler@ncpc.gov).

Sincerely,



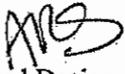
Anne R. Schuyler  
General Counsel &  
Designated Agency Ethics Official

cc: Marcel Acosta  
Barry S. Socks  
Deborah Young

Attachment A



To: Ms. Harriet Tregoning  
Ms. Jennifer L. Steingasser  
Mr. Peter May  
Mr. Bradley Provancha  
Ms. Mina Wright  
Mr. Michael S. McGill  
Mr. Tommy Wells  
Ms. Elyse Greenwald  
Mr. Howard A. Denis

From: Anne R. Schuyler   
General Counsel and Designated Agency Ethics Official (DAEO)

Subject: Financial Disclosure

Date: January 18, 2012

As an ex-officio alternate member of the Commission, you make decisions on a regular basis that have a direct and substantial impact on land use within the National Capital Region, and your decisions impact not only federal government agencies but non-federal government entities as well, i.e. private business, non-profit entities, and state and local governments. Given this impact, and to maintain the integrity of the Commission and its decisions, it is imperative that all members avoid conflicts of interests between their official duties and private financial interests or affiliations.

The members of the Commission appointed by the President and the Mayor are required by federal regulations to file annual confidential financial disclosure reports. Several of you are covered by these regulations because of your full time employment with the federal government and file mandated federal financial disclosure reports with your respective agencies each year. The District of Columbia and Congress also exercise their own ethics laws with similar financial reporting obligations.

As the DAEO, I am asking each of you to share with me the ethics reporting document you use for your respective employers. This will render it possible for me to (i) assess potential conflicts between your Commission duties and private financial interest/affiliations, and (ii) if necessary, fashion appropriate protections for you and NCPC in the event a conflict or the appearance thereof exists.

All information contained in the report will be treated in a confidential manner with only myself or Deborah Young, the Alternate Designated Agency Official (ADAEO) having access to the document. Financial Disclosure Reports submitted this year should cover calendar year 2011 (January 1, 2011 – December 31, 2011) and should be submitted at the latest on the date of your agency's reporting deadline (May 15 for District of Columbia ex-officio representatives, February 15 for Federal government ex-officio representatives filing SF 450 and May 15 for

Federal government ex-officio representatives filing SF 278, and May 15 for congressional ex-officio representatives).

Please feel free to contact me ([anne.schuyler@ncpc.gov](mailto:anne.schuyler@ncpc.gov), (202) 482-7223), or Deborah Young ([deborah.young@ncpc.gov](mailto:deborah.young@ncpc.gov), (202) 482-7228) if you have any questions regarding this request.

Thank you in advance for your cooperation.

Attachment B

**MEMORANDUM**

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**Date:** February 8, 2012

**To:** Marcel Acosta  
Executive Director

**From:** Anne R. Schuyler *ARS*  
General Counsel and Designated Agency Ethics Official

**Subject:** New Ethics Policy to Ensure Identification of New Employees as Regular or Special Government Employees

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As I have been delegated the authority to implement the agency's ethics program by the Chairman of the National Capital Planning Commission, I hereby adopt the following policy. This policy is intended to ensure new employees are correctly identified as either regular government employees or Special Government Employees (SGEs) by the Designated Agency Ethics Official (DAEO) for purposes of application of the requisite ethical requirements.

**Policy**

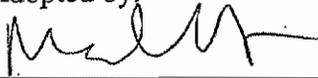
Prior to the entry of a new employee, NCPC's Human Resources personnel will notify NCPC's DAEO of the hiring of a new employee. Based on information obtained from Human Resources personnel, the DAEO will classify the new employee as either a regular government employee or an SGE.

For those individual's designated as an employee, the DAEO will determine if the nature of the new employee's duties requires the filing of either a SF 278 or a SF 450 as a new entrant upon entry into employment with the agency, and require the employee to file accordingly. If a new employee is identified as a filer of either form, going forward they will file as an annual filer as long as the duties of their employment subject them to filing requirements.

For those individuals qualifying as SGEs, the DAEO will seek input from Human Resources personnel on the number of days the SGE is expected to work. If the number falls below 60 and the income level is less than \$119,553 annually, the DAEO will require the SGE to file a SF 450 as a new entrant. If the number of anticipated employment days is greater than 60 and the income level is greater than or equal to \$119,553 annually, the DAEO will require the SGE to file a SF 278 as a new entrant. If an SGE's employment is renewed upon expiration of the original appointment, at the start of a new appointment period the SGE will be required to file the appropriate financial disclosure report based on the anticipated number of days of employment and income earned in the course thereof.

Regardless of status, all new employees will be provided entry ethics training in accordance with NCPC's current policy. Further, all new employees will be brought to the DAEO's office on the first day they report for work at NCPC to be introduced to the DAEO. The DAEO will inform the new employee of the DAEO's role in the agency ethics program and invite the new employee to seek advice whenever ethics questions/issues arise.

Adopted by:



Date 2/8/2012

Marcel Acosta, Executive Director

cc: Barry S. Socks, Chief Operating Officer  
Phyllis A. Vessels, Human Resources Specialist