

United States Office of Government Ethics

Program Review Division

Ethics Program Review

Institute of Museum and Library Services

Results in Brief

The United States Office of Government Ethics (OGE) conducted a review of the Institute of Museum and Library Services (IMLS) ethics program between September and October, 2012. The results of the review indicated that IMLS' ethics program appears to be effectively administered and in compliance with applicable laws, regulations, and policies. The ethics program continues to reflect the strengths observed in OGE's prior program review in 2005.

Highlights

- The IMLS Director visibly supports the ethics program by participating in annual ethics training and driving program improvements.
- IMLS ethics training exceeds the minimum training requirements through varied formats, supplemental information, and specialized training for agency leadership, supervisors, and general staff.
- Ethics officials request and receive training feedback from IMLS employees to assess course effectiveness and identify areas for enhancement.
- Ethics officials met all statutory financial disclosure review and certification deadlines.
- Ethics officials expand program awareness by including ethics elements in staff and leadership meetings and providing all IMLS employees with brief summaries of key ethics issues throughout the year.

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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 IMLS' ethics program, OGE examined a variety of documents provided by the Designated Agency Ethics Official (DAEO), Assistant General Counsel, and Legal Policy/Management Officer. OGE reviewed IMLS' annual questionnaire, the prior program review report, IMLS' public and confidential financial disclosure reports, education and training materials, and a sample of the advice and counseling rendered to IMLS' employees. A member of OGE's Program Review Division met with the DAEO, an Associate General Counsel, and the Legal Policy/Management Officer to verify data collected and to seek clarification on issues that arose through analysis of documentation.

Program Administration

The IMLS is a federal grant-making agency employing approximately 70 personnel that promotes museum, library, and information services throughout the United States. The ethics program is housed within the Office of General Counsel (OGC). The General Counsel serves as the DAEO, the Deputy General Counsel serves as the Alternate DAEO, and the Legal Policy/Management Officer and an Assistant General Counsel serve as ethics officers.

The ethics program is active and visible within IMLS. Ethics officials engage in regular ethics discussions with the IMLS Director and the Director's Assistant. They are also provided dedicated time during staff and Executive Leadership Team¹ meetings to address specific ethics issues. Live ethics training is made available to the entire agency and additional, targeted ethics training is provided to the Executive Leadership Team and IMLS supervisors. Ethics officials provide agency staff with short ethics summaries throughout the year addressing topics such as seeking employment, misuse of position, and post-government employment. IMLS' *Workplace Conduct* directive documents how ethical conduct failures should be addressed.

The ethics program also receives leadership support. The IMLS Director provided opening remarks for the agency's 2012 annual ethics training and participated in a live ethics training skit. The DAEO emphasized that the Director's support of the ethics program helped to drive improvements to the agency's electronic post-employment counseling system.

¹ The Executive Leadership Team includes the IMLS Director, Deputy Directors and Associate Deputy Directors for Museum and Library Services and Senior Advisor, General Counsel, Chief Financial Officer, Chief Information Officer, and the Directors of Communications and Government Affairs, Strategic Partnerships, Human Resources, and Policy, Planning, and Research.

Model Practice

- IMLS leadership has taken concrete actions to demonstrate commitment to ethics and promote an ethical culture.

Financial Disclosure

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 must publicly disclose their personal financial interests (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 reviews (OGE Form 450). Financial disclosure serves to prevent, identify, and resolve conflicts of interest by providing for a systematic review of the financial interests of officers and employees. See 5 CFR part 2634.

Written Procedures

Section 402(d)(1) of the Ethics in Government Act requires that each executive branch agency establish written procedures for collecting, reviewing, evaluating, and where applicable, making publicly available financial disclosure reports filed by the agency's officers and employees. IMLS' written procedures are published in the IMLS Administrative Directive: *Ethics Program – Financial Disclosure System*. The procedures fully meet the statutory requirements and describe ethics officials' responsibilities, filing criteria, notification protocols, the extension request process, review procedures, and follow-up activities with delinquent filers.

Public Financial Disclosure

The Human Resources office notifies the ethics staff when a new employee joins IMLS. The ethics staff reviews the filing requirements and position description to determine if the employee should file a financial disclosure report. The ethics office includes filing reminders in a new employee's initial ethics materials, as applicable. Ethics officials provide reminders to annual financial disclosure filers one month before the May filing deadline. Terminating employees are directed to contact the ethics office as part of the agency's mandatory separation procedures and are notified of requirements to submit a termination financial disclosure report as applicable.

IMLS uses *FOnline*, an electronic financial disclosure filing system, in conjunction with detailed written procedures to manage the financial disclosure program. The ethics staff reviews electronically-submitted financial disclosures for potential conflicts of interest, and the DAEO provides final certification. Primary conflict of interest analysis focuses on outside positions related to libraries and museums, gifts to employees, and assets that might pose conflicts with IMLS' mission. Ethics officials verify that outside employment reported on a financial disclosure report has a corresponding outside employment approval form as required by IMLS regulation.

OGE reviewed all eight public financial disclosure reports filed by IMLS employees in 2012. Of the eight reports, five were annual reports, two were termination reports, and one was a new entrant report. Seven of eight public financial disclosure reports were submitted, reviewed, and certified by the statutory deadlines. One termination report was not submitted timely. Ethics officials indicated they had difficulty contacting a filer who had left the agency. Once contact was established, the filer promptly submitted the termination report. IMLS documented a waiver of the late filing penalty, citing extraordinary personal circumstances for the loss of contact and subsequent filing delay. The report was then reviewed and certified within the statutory deadlines.

Confidential Financial Disclosure

Confidential financial disclosure collection, review, and certification functions the same as the public financial disclosure program at IMLS. OGE reviewed all 11 confidential financial disclosure reports required to be filed by IMLS employees in 2012. Of the 11 reports, 7 were annual reports and 4 were new entrant reports. All 11 confidential financial disclosure reports were submitted, reviewed, and certified by the statutory deadlines.

Education & Training

OGE found IMLS' education and training program to exceed OGE's initial and annual training requirements. Highlights of the training program include participation by the IMLS Director, supplemental ethics training for new employees, and targeted training for the Executive Leadership Team, supervisors, and general staff.

Initial Ethics Orientation (IEO)

OGE regulation requires all new employees receive ethics official contact information along with 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 (the Principals) to keep. Employees must receive one hour of official duty time to review the material. See 5 CFR § 2638.703.

All new IMLS employees receive a packet of ethics materials (the *IMLS Ethics Toolkit*) containing the required IEO material. Employees have two hours of official duty time to review the materials and are required to confirm completion of training through a signed Ethics Certification. In addition, employees receive summaries of the criminal conflict of interest statutes; financial disclosure forms (if applicable), six OGE-produced pamphlets covering conflicts of interest, gifts, job-seeking, post-employment, representation, and the role of OGE; and detailed information on IMLS' requirement for outside employment approval, included a blank request form and a summary of frequently asked questions. All new IMLS employees also attend an employee orientation. A component of the new hire orientation is conducted by ethics officials and addresses ethics topics including impartiality, misuse of position, and outside

employment and reiterates ethics official contact information. Existing IMLS employees who are promoted into financial disclosure filing positions also receive the *IMLS Ethics Toolkit* a second time as a refresher. OGE reviewed Ethics Certification statements to confirm that all 11 employees required to receive IEO in 2011 completed training.

Annual Ethics Training

OGE regulation requires all covered employees receive annual ethics training consisting of a review of: (1) the Principles; (2) the Standards; (3) any agency supplemental Standards; (4) the Federal conflict of interest statutes; and (5) ethics official contact information. Training length and delivery method varies by an employee's financial disclosure filing status. See 5 CFR § 2638.704 and 705.

IMLS annual ethics training is open to all employees, regardless of filing status. OGE reviewed the 2012 training sign-in sheets to verify that all 18 covered employees attended annual training. Ethics officials conducted annual training in a classroom setting and used multiple delivery methods to engage the audience including a lecture, skit, and training game. While the lecture material was sufficient to meet the applicable training requirements, the ethics skit and training game developed by ethics officials provided further coverage of the selected ethics topics. In addition to 2012 annual ethics training, ethics officials have provided supplemental training on financial disclosure to the IMLS staff and training on conflicting financial interests to the Executive Leadership Team. In November 2012, IMLS plans to provide general ethics training to IMLS supervisors. Ethics officials also communicate with the IMLS staff during the year through brief, emailed summaries of selected ethics topics. OGE regulation encourages agencies to vary the content of training from year to year, and IMLS has developed a diverse catalog of training material including multiple lecture presentations, video clips, ethics skits, and interactive training games.

Ethics officials also request employees' feedback on ethics training. Employees are asked to complete an evaluation form discussing the training content, how employees might use what they learned, and suggested improvements to future training. According to the DAEO, employee feedback on the content, methodology, and usefulness of training helps the ethics office assess the relevance of training and identify areas that should be improved or covered in more detail in future training sessions.

Model Practice

- IMLS varies training content, format, and delivery methods to improve the quality of ethics training, raise employee awareness of ethics rules, and provide visibility to the ethics program.

Advice & Counsel

The DAEO is required to ensure that a counseling program for agency employees, concerning ethics and standards of conduct matters, including post-employment matters, is developed and conducted. See 5 CFR § 2638.203. The DAEO may delegate to one or more deputy ethics officials the responsibility for developing and conducting the counseling program. See 5 CFR § 2638.204.

IMLS ethics officials provide advice and counseling in-person, by phone, or through email. Ethics advice is generally documented in physical files and stored electronically on IMLS' network for reference by ethics officials. Although basic ethics questions are not always archived, novel or complicated situations requiring broader analysis are discussed among the ethics staff, archived, and receive a formal memorandum.

According to the DAEO, advice and counsel at IMLS focuses primarily on outside activities and widely attended gatherings. For these common situations, ethics official use in-house forms to capture the basic information necessary to begin the counseling process. OGE reviewed 29 samples of advice and counsel from 2011 and 2012 that covered a variety of ethics subjects including endorsements, seeking employment, impartiality, conflicting financial interests, widely attended gatherings, and fundraising. IMLS ethics officials responded to employee requests for advice and counsel in a timely manner.

Agency-Specific Ethics Rules

Executive branch agencies may publish regulations to supplement OGE's Standards where the agency and OGE determine such regulations are necessary and appropriate to support the agency's programs and operations. IMLS' supplemental Standards are published at 5 CFR part 7701. Employees of IMLS must obtain prior written approval from their supervisors and the DAEO before engaging in any outside employment with a prohibited source, whether or not for compensation. Employees who wish to engage in outside employment must submit a questionnaire for approval from a direct supervisor and the DAEO. The questionnaire collects the employee's current duties at IMLS and the nature and scope of the proposed outside employment. Because ethics rules are emphasized throughout the year in different formats, the DAEO indicated that the outside employment approval requirement is common knowledge among IMLS employees and has become ingrained into IMLS' culture.

Outside employment is also recorded on public and confidential financial disclosure reports. OGE reviewed 19 IMLS financial disclosures for outside activities and observed no prohibited outside employment. OGE reviewed eight outside employment requests from IMLS employees who were not required to file financial disclosures. All questionnaires reviewed by OGE appeared complete and contained the appropriate approvals.

Conflict Remedies

The Ethics in Government Act expressly recognizes the need for Presidentially appointed, Senate-confirmed (PAS) nominees to address actual or apparent conflicts of interest by requiring written notice of the specific actions to be taken in order to alleviate the conflict of interest. The Director of IMLS is the agency's only PAS official and satisfied the terms of the ethics agreement in accordance with 5 CFR § 2634.802(b). In addition, all requisite evidence of action taken was submitted to OGE in accordance with 5 CFR § 2634.802(a).

Enforcement

IMLS reported no disciplinary actions based wholly or in part upon violations of the criminal conflict of interest statutes (18 U.S.C §§ 203, 205, 207, 208, and 209) or the Standards of Conduct provisions (5 CFR part 2635).

IMLS does not have its own Office of Inspector General (OIG) nor does the agency utilize the services of an outside investigative body. The DAEO is actively attempting to establish a Memorandum of Understanding (MOU) with another agency's OIG to provide investigative and referral services for alleged statutory and regulatory ethics violations. Until an MOU is established with another OIG, the ethics office will perform these functions should the need arise.

OGE provided the DAEO with contact information for the Council of the Inspectors General on Integrity and Efficiency (CIGIE) to assist the Committee in securing IG services. CIGIE is statutorily established as an independent entity within the executive branch. CIGIE members include all Inspectors General whose offices are established under section 2 or section 8G of the Inspector General Act of 1978 as amended (5 U.S.C. App.). CIGIE could be a valuable resource should the Board require services to investigate potential ethics violations.

Special Government Employees

Special Government employees (SGE) are officers or employees of the executive or legislative branch, retained, designated, appointed or employed to perform their duties, full-time or intermittently, for not more than 130 days in any 365 day period. SGEs typically serve on agency advisory boards or commissions.

The IMLS' National Museum and Library Services Board (the Board) is comprised of 20 SGEs who meet no less than twice per year or at the call of the IMLS Director. The Board advises the Director on general policies and procedures with respect to the duties, powers, and authority of IMLS relating to museum, library, and information services. IMLS has determined that Board members' outside positions pose the highest risk of conflicts of interest. Therefore, IMLS developed an alternative confidential financial disclosure procedure approved by OGE to document Board members' outside positions. The ethics staff reviews the Board's financial disclosures and generates a list of outside affiliations. Prior to a Board meeting, the ethics staff

review this list against the meeting's agenda, identifies potential conflicts of interest based on the Board members' affiliations, and requests Board members recuse themselves if a potential conflict exists. OGE reviewed all 20 Board members' confidential financial disclosures. All financial disclosures were submitted, reviewed, and certified by the statutory deadlines.

Ethics training is provided in-person or through written materials to coincide with Board meetings. OGE reviewed the ethics training material provided to Board members and confirmed both the written and in-person materials met the training requirements. OGE reviewed IMLS' training log and verified all 20 Board members received written training in 2012 prior to the first Board meeting. Additional live training, which exceeded the minimum training requirements, was provided to 10 Board members.

IMLS also engages between 650 and 700 museum and library professionals each year to act as peer reviewers for IMLS. Peer reviewers provide expert advice on applications for financial assistance submitted to IMLS.

IMLS peer review Program Officers are responsible for selecting peer reviewers and convening review panels. Program Officers examine prospective peer reviewers' outside affiliations for potential conflicts of interest and provide peer reviewers with training material developed by or in consultation with IMLS ethics officials. According to the DAEO, most conflicts of interest for peer reviewers are readily apparent and Program Officers will contact the ethics office for guidance on those situations requiring further analysis.

IMLS uses an OGE-approved alternative procedure for identifying and addressing potential conflicts of interest. The peer review program staff carries out this procedure by applying a series of five conflict of interest "checkpoints" when selecting peer reviewers and convening review panels.

- When a peer reviewer is identified by IMLS, the peer review program staff provides the reviewer a list of proposals to be reviewed. In an introductory email, an IMLS program staff member asks the reviewer to evaluate the list of proposals for any potential conflicts of interest, including financial ties and impartiality concerns.
- When a peer reviewer is assigned proposals to review, the peer review program staff provides the reviewer with a *Reviewer Handbook* which includes a copy of the formal conflict of interest statement that must be submitted during each review and contact information for IMLS program staff.
- Evaluation of grant applications is performed online. After logging in to the online system, a peer reviewer is asked to review the conflict of interest statement a second time before continuing the evaluation process.
- After reviewing grant applications by title and institution, a peer reviewer must electronically submit the conflict of interest statement to indicate he or she has no conflicts with those applications. The peer reviewer cannot proceed with the review process without submitting the conflict of interest statement. The online system will automatically prevent the reviewer from evaluating any grant applications if a conflict is indicated or the conflicts statement is not submitted.

- If the peer reviewer is part of a subsequent review group that meets in-person at IMLS, the IMLS program staff provides a final, verbal reading of the conflict of interest statement prior to the group meeting.

OGE reviewed the *Reviewer Handbook* and conflict of interest statement and confirmed the OGE-approved alternative disclosure procedure was being followed. OGE also reviewed IMLS' handling of several peer reviewers' potential conflicts of interest, including identification of the conflict, communication between IMLS staff and the peer reviewers, and the subsequent mitigation process. IMLS' alternative financial disclosure procedure appears effective in identifying and resolving potential conflicts of interest.

Peer reviewers receive ethics training through the online peer review system. The online system will not allow peer reviewers to conduct reviews without first reviewing relevant ethics material. Additionally, the "Review Online" section of the IMLS peer reviewers' resources webpage includes direct links to federal ethics information provided by OGE. OGE reviewed the training provided to peer reviewers and determined it met the applicable criteria.

1353 Travel Acceptances

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

Although IMLS typically uses appropriated funds to pay for employee travel, the agency has a process in place for ethics officials to review and approve travel payments from non-Federal sources. The IMLS Travel Management Directive identifies the necessary steps for an employee to obtain approval. Information on the prospective travel is collected by questionnaire from employees. Ethics officials review each travel payment request using internally developed, written guidelines. The semiannual report of payments is then submitted to OGE by the ethics office. IMLS submitted both 2011 reports to OGE by the statutory deadlines.

Agency Comments

Comments provided by IMLS are attached in their entirety.



Connecting People to Information and Ideas

December 14, 2012

Dan Skalla
Lead Management Analyst, Program Review Division
U.S. Office of Government Ethics
1201 New York Avenue, NW, Suite 500
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Re: Institute of Museum and Library Services -- Ethics Program Review

Dear Mr. Skalla:

Thank you for the opportunity to review the draft of your report on the Institute of Museum and Library Services (IMLS) ethics program. We are pleased that you found IMLS's ethics program to be effectively administered and in compliance with applicable laws, regulations, and policies. We also appreciate your recognition, as model practices, of both our leadership's concrete actions to demonstrate commitment to ethics and promote an ethical culture, and our training content and delivery methods.

The success of our program depends upon the shared commitment of the agency's leadership, responsive ethics officials, and dedicated staff, who all recognize their special responsibilities as Federal employees to engage in ethical conduct and uphold the integrity of our agency's programs. IMLS has also greatly benefitted from your expertise and thorough review. We will continue to develop our ethics program and build on the strengths observed by the Office of Government Ethics in both this and our prior program reviews.

Sincerely yours,

Nancy E. Weiss
General Counsel and Designated Agency Ethics Official

cc: Susan H. Hildreth, Director