



**United States Office  
Of Government Ethics**

Report Number 09-027

## **Highlights**

### **Model Practices**

- BBG provides in-person training to new employees.
- BBG provides one-on-one initial and annual ethics training to PAS employees.
- BBG conducts post-employment seminars for retiring employees.

### **OGE Recommends**

- BBG remove language from the MOA, BBG's website, and BBG memoranda that states employees are required to seek prior approval for outside employment and activities.
- BBG outline the complete process of collecting financial disclosure reports in its written procedures as required.
- BBG destroy reports older than 6 years in accordance with 5 U.S.C. §105(d).
- BBG continue efforts to determine whether the three confidential disclosure reports were misplaced, misfiled, or were never filed.
- BBG retain the supporting OGE Form 450 when a 450-A is filed as required by regulation.
- BBG require the five filers without supporting OGE Form 450s to file an OGE Form 450 in the next reporting period.

If you have comments or would like to discuss this report, please contact Trish Zemple, Associate Director, Program Review Division, at 202-482-9286.

## **Ethics Program Review**

# **Broadcasting Board of Governors**

December 2009 Report

## **Executive Summary**

The United States Office of Government Ethics (OGE) has completed its review of the ethics program at the Broadcasting Board of Governors (BBG). The purpose of a review is to identify and report on the strengths and weaknesses of a 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 found that BBG has incorporated three model practices into its ethics program, specifically in the area of training. OGE also found that BBG has many weaknesses that need to be corrected. To ensure that corrective action is taken, OGE has made specific recommendations.

After receiving the draft report, BBG began taking corrective action to address the identified weaknesses. However, OGE notes that additional corrective action is necessary. Therefore, BBG's DAEO is to formally advise OGE within 60 days of the specific actions BBG has taken or plans to take to address OGE's recommendations. OGE will follow up with BBG 6 months from the date of this report's issuance. OGE stands ready to assist BBG in implementing the recommendations as well as other program initiatives that BBG may choose to undertake.

If you have comments or would like to discuss this report, please contact Trish Zemple, Associate Director, Program Review Division, at 202-482-9286.



**United States Office  
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**Ethics Program Review**  
**Broadcasting Board of Governors**

December 2009 Report

**Introduction**

**OGE MISSION**

The United States Office of Government Ethics (OGE) provides leadership for the purpose of promoting an ethical workforce, preventing conflicts of interest, and supporting good governance.

**PURPOSE OF A REVIEW**

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.

**REVIEW AUTHORITY AND SCOPE**

OGE has the authority to evaluate the effectiveness of executive agency ethics programs. *See* Title IV of the Ethics in Government Act of 1978, as amended (the Ethics in Government Act), and 5 CFR part 2638. OGE's review of the Broadcasting Board of Governors (BBG) focused on the elements listed below:

- Program structure
- Financial disclosure systems
- Ethics agreements
- Ethics training
- Ethics counseling
- Enforcement
- Acceptance of travel payments from non-Federal sources

OGE's review focused on the ethics program at BBG's headquarters. The on-site fieldwork was conducted in April 2009.

## **Ethics Program Review: Broadcasting Board of Governors**

### **Program Elements**

This report consists of descriptions, analyses, and conclusions regarding each program element reviewed.

#### **PROGRAM STRUCTURE**

The Broadcasting Board of Governors is unique in both its mission and structure. The agency head is a part-time board of directors consisting of eight PAS/SGE members and the Secretary of State who serves *ex officio*. The agency's mission to broadcast accurate and balanced news and information to overseas audiences is carried out by both domestic and foreign-based journalists and technical staff.

BBG's ethics program is administered within the Office of the General Counsel. At the time the on-site fieldwork was conducted, the Acting General Counsel served as the Designated Agency Ethics Official (DAEO). (The review team subsequently learned that a Deputy General Counsel was hired and assumed the duties of the DAEO.) A Legal Analyst serves as the Alternate DAEO (ADAEO) and has been responsible for the day-to-day administration of the ethics program for the past 6 years, in addition to managing the BBG's Freedom of Information Act (FOIA) program. An Attorney-Advisor serves as the Deputy ADAEO whose ancillary responsibility is to provide guidance on issues involving conflicts of interest or violations of the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct). A Paralegal Specialist/Administrative Assistant provides administrative support to the ADAEO.

#### **Matters from the Previous Review**

OGE conducted an ethics program review at BBG in 2005. In the report of the 2005 review, OGE addressed BBG's requirement that employees must seek prior approval for engaging in certain outside employment and activities as required by Section 520 of Part V-A of BBG's Manual of Operations and Administration (MOA). OGE advised BBG that this requirement could only be enforced through a supplemental regulation and that one had not been issued pursuant to 5 CFR § 2635.105. OGE also advised BBG that the two authorities cited in the MOA, which formed the major basis for BBG's guidance on outside employment and activities, were no longer valid. BBG ethics officials agreed to remove the invalid authorities and replace them with a reference to Volume 3, Subchapter 4123 of the Foreign Affairs Manual (FAM), which restricts employment and outside activities while abroad. Additionally, ethics officials agreed to issue interim guidance to employees to notify them that prior approval is not required, except for those employees subject to the FAM. OGE did not make a formal recommendation because BBG agreed to take these steps.

During the current review, the review team noted that the language in the MOA that required prior approval for outside employment and activities had not been removed. Additionally, BBG's website and memoranda contain language that suggests employees must seek prior approval for outside employment and activities. The ADAEO stated that the agency has been making efforts to amend its MOA. The ADAEO also stated that although the website and memoranda imply prior approval for outside activities and employment is needed, she

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informs employees that this is a suggestion and not a requirement. Because corrective action has not been taken, OGE is now recommending that BBG remove the language from the MOA, BBG's website, and BBG memoranda that states employees are required to seek prior approval for outside employment and activities.

### **FINANCIAL DISCLOSURE SYSTEMS**

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 that they are able to carry out their duties without compromising the public trust by publicly disclosing their personal financial interests (SF 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 Form 450). 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. The financial disclosure reports also assist agencies in administering their ethics programs and providing counseling to employees. *See* 5 CFR § 2634.104(b).

#### General Comments

OGE reviewed all 14 public financial disclosure reports and about 15 percent of the confidential financial disclosure reports filed by BBG employees in 2008. Based on that review, OGE determined that the ADAEO appears to have a good process for reviewing forms for conflicts of interest. However, OGE also found that the DAEO needs to improve other parts of the financial disclosure program. Specifically, the DAEO needs to expand the written procedures for the administration of the public and confidential financial disclosure systems, tighten the report control procedures, follow the report retention requirements, and ensure that reports are complete.

#### Written Procedures

Agencies are required to establish written procedures for collecting, reviewing, evaluating and making publicly available financial disclosure reports filed by employees. (Section 402(d)(1) of the Ethics in Government Act). Written procedures ensure consistency and accountability in the collection, review, and certification of financial disclosure reports. BBG has written procedures for the administration of its public and confidential financial disclosure systems. However, the review team noted that the written procedures only included steps to be taken once the financial disclosure reports were received by the ethics official. The written procedures did not outline the collection process before the reports were delivered to the ethics office. OGE recommends that BBG outline the complete process of collecting financial disclosure reports in its written procedures as required which may assist the DAEO in ensuring reports are filed timely.

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### Report Control and Retention

During the on-site fieldwork, three of the confidential reports requested were not found in the filers' folders. The ADAEO was unable to produce the requested reports and could not provide an explanation as to why the reports could not be located. The review team was unable to ascertain whether the reports were missing, misfiled, or never filed. The security of confidential financial disclosure reports is of great concern to OGE because of the sensitive personal information contained in the reports. Therefore, OGE recommends that ethics officials continue efforts to determine whether the three confidential reports were misplaced, misfiled, or never filed. OGE also suggests BBG go through all filers' folders to ensure that other reports are not missing.

BBG allows confidential financial disclosure filers to use OGE Optional Form 450-A (450-A). The review team noted that five 450-As were not supported by OGE Form 450s in the filers' folders as required by 5 CFR § 2634.905(b)(2). OGE recommends that BBG retain the supporting OGE Form 450 when a 450-A is filed. Additionally, OGE recommends that the five filers without supporting OGE Form 450s file an OGE Form 450 in the next reporting period.

Agencies are required to destroy financial disclosure reports 6 years after receipt of the report unless the report is needed in an ongoing investigation in accordance with 5 U.S.C. §105(d). OGE found that both confidential and public financial disclosure reports were being kept longer than 6 years. The ADAEO stated that the reports kept longer than 6 years were not a part of an ongoing investigation. Therefore, OGE recommends that BBG destroy all financial disclosure reports older than 6 years in accordance with 5 U.S.C. §105(d).

### Quality of Review

Written comments on reports and review sheets as well as conversations with ethics officials indicated that the financial disclosure reports were reviewed. According to the ADAEO, she uses her knowledge of the filer's position to perform a conflict of interest analysis. The ADAEO also uses BBG's Prism database, which contains information regarding current BBG contractors, to identify any prohibited holdings. However, OGE identified technical deficiencies on 20 of the 64 reports sampled. The technical deficiencies included incomplete entries (i.e., failure to list the underlying holdings of assets) and missing dates of appointment and report receipt. To ensure that the reports are technically complete, OGE suggests that the ADAEO make full use of the financial disclosure review guides that are found on OGE's website and that have been provided to the ADAEO under separate cover.

OGE's program review guidelines require that all or a judgmental sample of public financial disclosure reports be reviewed during the on-site fieldwork to evaluate the filing, review, and certification of public reports. Because of the small number of public reports, OGE examined all 14 public reports required to be filed by BBG employees in 2008. On the other hand, because of the large number of confidential filers at BBG, OGE examined 50 of the 306 confidential financial disclosure reports required to be filed by BBG employees in 2008. The following two tables provide a summary of OGE's examination of the public and confidential financial disclosure reports sampled as part of this review.

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Table 1  
Public Financial Disclosure Reports

<b>Report Type</b>	<b>Number in Sample</b>	<b>Filed Late</b>	<b>Reviewed Late</b>	<b>Delayed Certification</b>
Incumbent	12	2	0	0
New Entrant	2	1	0	0
<b>Total in Category</b>	<b>14</b>	<b>3</b>	<b>0</b>	<b>0</b>

Table 2  
Confidential Financial Disclosure Reports

<b>Report Type</b>	<b>Number in Sample</b>	<b>Filed Late*</b>	<b>Reviewed Late</b>	<b>Delayed Certification</b>
Incumbent	40	8	0	1
New Entrant	10	3	0	0
<b>Total in Category</b>	<b>50</b>	<b>11</b>	<b>0</b>	<b>1</b>

\*As noted above, three annual reports could not be located.

### ETHICS AGREEMENTS

If potential or actual conflicts of interest exist, public and confidential financial disclosure filers may be required to enter into ethics agreements. Generally, employees entering into ethics agreements are required to comply with those agreements within 3 months of Senate confirmation. See subpart H of 5 CFR part 2634. Four Presidentially-appointed, Senate-confirmed (PAS) BBG employees entered into written ethics agreements. OGE found that necessary actions had been taken by the PAS employees to ensure timely compliance with the ethics agreements.

### ETHICS TRAINING

An ethics training program is essential to raising awareness among employees about ethics laws and rules and informing them that an agency ethics official is available 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. OGE found that BBG is meeting all the requirements for both initial and annual ethics training. In fact, BBG has incorporated several model practices into its training program. One particularly noteworthy practice is the mandatory retirement seminars for all employees who have scheduled retirement dates. The only suggestion for improvement is that BBG develop its written annual ethics training plan by the beginning of each calendar year.

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### Training Plans

BBG provided documentation detailing plans for 2008 annual ethics training. BBG identified four modules for 2009 annual ethics training but did not have a written training plan for 2009 as required by 5 CFR § 2638.706. OGE suggests BBG develop written annual ethics training plans by the beginning of each calendar year in accordance with 5 CFR § 2638.706.

### Training Content, Coverage, and Delivery

OGE reviewed the training provided to new employees and to incumbent employees. In 2008, the ADAEO conducted IEO for non-PAS employees during biweekly new employee orientations. The IEO consisted of a discussion of various topics that included misuse of government resources, outside employment and activities, gifts, and conflicting financial interests. For the annual training, BBG provided employees with interactive computer-based training. The four modules selected for annual training were *Gifts From Outside Sources*, *Political Activities*, *Using Government Property*, and *Teaching, Speaking, Writing*. OGE determined that attendees of IEO and annual ethics training were provided with the required information. In addition, OGE reviewed the system by which BBG ensures that employees who are required to receive training do, in fact, receive that training. The ethics office has established a system whereby once employees have completed the training, they are required to electronically sign a certificate. This certificate is then automatically sent to the ethics email address. Based on a review of this process, OGE determined that all employees who were required to receive either IEO or annual ethics training did receive the training. Tables 3 and 4 provide a summary of the results of OGE's review of the required training elements.

Table 3  
Initial Ethics Orientation

<b>Content</b>	<b>Required</b>	<b>Provided</b>
The Standards of Conduct	Yes	Yes
Contact information for the DAEO and other ethics officials	Yes	Yes
14 Principles of Ethical Conduct	No	Yes
One hour to review	Yes	Yes
Within 90 days of start date	Yes	Yes

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Table 4  
Annual Ethics Training

<b>Content</b>	<b>Required</b>	<b>Provided</b>
The Standards of Conduct	Yes	Yes
The Federal Conflict of Interest Statutes	Yes	Yes
14 Principles of Ethical Conduct	Yes	Yes
Agency supplemental regulations		
Contact information for the DAEO and other ethics officials	Yes	Yes
One hour of official time	Yes	Yes

### Model Practices

PAS employees receive one-on-one IEO and annual ethics training from the DAEO. In addition, BBG exceeds the minimum requirement by providing an in-person IEO to all new employees every 2 weeks, instead of every 90 days. The ADAEO informed the review team that BBG conducts retirement seminars twice a year. These seminars are mandatory for all employees who have scheduled retirement dates. During the seminar, employees are informed that ethics officials continue to be available to render advice after an employee retires. Ethics officials also discuss employees' post-employment plans and provide them with a copy of the Standards of Conduct. OGE encourages BBG to continue these model practices.

### ETHICS COUNSELING

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.

OGE's program review guidelines require that all or a judgmental sample of ethics counseling be reviewed during the on-site fieldwork. Because of the volume of written ethics counseling, OGE reviewed a sample of 48 pieces of memorialized counseling rendered by BBG's ethics officials. The counseling included guidance on outside activities, gifts, official capacity activities, program management, and misuse of position. OGE found the counseling to be complete, accurate, and consistent with applicable statutes and regulations.

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### **ENFORCEMENT**

The DAEO is to ensure that (1) information developed by internal audit and review staff, the Office of the Inspector General (OIG), or other audit groups is reviewed to determine whether such information discloses a need for revising agency supplemental regulations or for taking prompt corrective action to remedy actual or potential conflict of interest situations and (2) the services of the agency's OIG are utilized when appropriate, including the referral of matters to and acceptance of matters from that Office. *See* 5 CFR § 2638.203(b)(11) and (12).

BBG's OIG is responsible for making referrals to the Department of Justice (DOJ) and conducting investigations of alleged ethics violations. The ADAEO stated that the OIG is responsible for notifying OGE of any referrals to DOJ. The ADAEO also stated that she believes that BBG's ethics officials have an effective working relationship with OIG's Special Agent assigned to BBG.

There were no potential violations of the criminal conflict of interest statutes referred to the DOJ in 2008. There was one disciplinary action taken based on a violation of the Standards of Conduct during that time.

### **ACCEPTANCE OF TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES**

An employee may accept payment of travel expenses from non-Federal sources on behalf of the employee's agency for official travel to a meeting or similar function when specifically authorized to do so by the agency. Agencies must submit semiannual reports to OGE of travel payments from non-Federal sources in excess of \$250. *See* 31 U.S.C. § 1353.

All of the semiannual reports BBG submitted to OGE covering the period from October 1, 2007 through September 30, 2008 were submitted in a timely manner.

### **Summary**

After a review of the essential elements, OGE found strengths and weaknesses in BBG's ethics program. OGE's review identified the following model practices:

- in-person training of new employees,
- one-on-one initial and annual ethics training of PAS employees, and
- post-employment seminars for retiring employees.

## **Ethics Program Review: Broadcasting Board of Governors**

OGE also identified several areas of weakness in the performance and management of BBG's ethics program. To correct these weaknesses, OGE is making numerous recommendations and several suggestions.

### **Recommendations**

To enhance BBG's ethics program, OGE recommends that BBG

1. Remove language from the MOA, BBG's website, and BBG memoranda that states employees are required to seek prior approval for outside employment and activities.
2. Outline the complete process of collecting financial disclosure reports in its written procedures as required.
3. Destroy all financial disclosure reports older than 6 years in accordance with 5 U.S.C. §105(d).
4. Continue efforts to determine whether the three confidential disclosure reports were misplaced, misfiled, or were never filed.
5. Retain the supporting OGE Form 450 when a 450-A is filed as required by regulation.
6. Require the five filers without supporting OGE Form 450s to file an OGE Form 450 in the next reporting period.

### **Suggestions**

To help strengthen the performance and management of BBG's ethics program OGE suggests that BBG

1. Make full use of the financial disclosure review guides that are found on OGE's website.
2. Go through all filers' folders to ensure that other confidential reports are not missing.
3. Develop written annual ethics training plans by the beginning of each calendar year in accordance with 5 CFR § 2638.706.

### **Agency Comments**

In November 2009, OGE released a draft of this report to BBG for comment. BBG's response addressed steps the ethics office has taken to enhance the ethics program as recommended by OGE. Specifically, the response addressed OGE's suggestions and recommendations for improvement in BBG's training program and the financial disclosure

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written procedures, as well as report control and retention. However, OGE notes that additional corrective action is necessary. OGE's response to BBG's comments on the draft report follow:

In the response, the ADAEO stated that she is taking corrective action to remove language from the MOA, BBG's website, and BBG memoranda that states employees are required to seek prior approval for outside employment and activities. Because this is a longstanding issue, OGE is still recommending that BBG remove language that states employees are required to seek prior approval for outside employment and activities.

The ADAEO stated that the financial disclosure written procedures have been updated to include the complete process of collecting financial disclosure reports and that a copy was provided to OGE. However, OGE has not received a copy of the updated written procedures. Therefore, OGE is still recommending that BBG outline the complete process of collecting financial disclosure reports in its written procedures.

The ADAEO stated that she has destroyed all reports older than 6 years as required. OGE will still need to determine that this is a consistent practice when conducting its follow-up review of BBG's ethics program.

The ADAEO explained that two of the three missing confidential reports were misfiled and have been located. She indicated that the third missing report was never received because the employee left the agency before filing the confidential report. Although the ADAEO was able to find the missing reports, OGE is still suggesting that BBG go through all filers' folders to ensure that other confidential reports are not missing.

The ADAEO stated that a copy of the 2009 annual training plan was included in the binder provided to the review team during the on-sight fieldwork. However, a thorough review of the binder revealed a document that only identifies four modules selected for annual training in 2009. The document does not include all of the necessary elements of an annual training plan that are required by regulation. Therefore, OGE is still suggesting that BBG develop written annual ethics training plans by the beginning of each calendar year.

The ADAEO explained that the database used to track OGE Form 450s and Optional Form 450As malfunctioned in 2007. OGE did not incorporate this information into the report because the review team reviewed confidential reports from the 2009 filing cycle.

In addition to the comments already received by OGE, BBG's DAEO is to formally advise OGE within 60 days of the specific actions BBG has taken or plans to take to address OGE's recommendations. OGE stands ready to assist BBG in implementing these recommendations, as well as other program initiatives that BBG may choose to undertake. OGE will follow-up with BBG's DAEO within 6 months from the date of this report's issuance on the status of OGE's recommendations.

If you have any comments or would like to discuss the report, please contact Trish Zemple, Associate Director, Program Review Division, at 202-482-9286.