



U.S. Office of Government Ethics
Program Review Division

Ethics Program Review

National Transportation Safety Board

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Results in Brief

The United States Office of Government Ethics (OGE) conducted a review of the ethics program at the National Transportation Safety Board (NTSB) in December 2011. OGE is pleased to see that NTSB has made sustained improvements within its ethics program since our last review in 2009.

During that review, OGE found NTSB to have many deficiencies that needed to be corrected. To help bring NTSB's ethics program into full compliance with regulatory requirements, OGE made several recommendations for improvement. While steps were taken by NTSB to improve the ethics program at that time, as part of our current examination OGE evaluated whether these improvements have been able to be sustained long-term. OGE discusses its findings throughout the body of this report.

In our current examination, OGE makes one new recommendation and one suggestion. OGE recommends that NTSB develop written procedures that outline the process for collecting, reviewing, and evaluating financial disclosure reports. As a good management practice, OGE suggests that NTSB consider establishing a formal memorandum of understanding with an investigative organization that can provide investigatory services to NTSB should the need ever arise.

Highlights

- NTSB continues to rate the ethics program staff on the performance of their ethics duties.
- NTSB continues to screen prospective employees for potential conflicts and brief them on the ethics responsibilities of government service.
- NTSB continues to keep employees aware of ethics laws and regulations through the use of discretionary training provided throughout the year to both filers and non-filers.

Concern

- NTSB did not have written procedures for administering its public and confidential financial disclosure system.

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

Program Administration

When OGE last reviewed NTSB's ethics program in 2009, the ethics program staff consisted of the Deputy General Counsel, who served as the agency's Designated Agency Ethics Official (DAEO), the General Counsel, who served as the agency's Alternate DAEO (ADAEO), an Assistant DAEO, and a Paralegal Specialist. During the last review, OGE recognized NTSB's efforts to begin a rudimentary form of succession planning to shift duties, such as reviewing financial disclosure forms, providing training, and providing counseling, from the DAEO to other ethics staff, as a model practice since succession planning, when properly implemented, can help ensure that an ethics program is consistently successful through transitions in ethics staff.

During our current examination, however, we found the ethics program in the midst of transition and change. The DAEO was not only preparing to retire from Government service at the end of December 2011 but was also being assisted in carrying out the day-to-day administration of the program by two Assistant General Counsels - one serving as the agency's ADAEO and the other as the Deputy Ethics Official. The General Counsel and the Paralegal Specialist had only recently joined the agency. Despite these recent changes however, as a result of NTSB's forward thinking regarding succession planning, OGE believes the ethics program is well prepared for this current transition.

On January 6, 2012, OGE received NTSB's formal written delegation, in accordance with 5 CFR § 2638.202(c), appointing the role of DAEO and ADAEO to the two Assistant General Counsels. Based on discussions held with the General Counsel during our fieldwork, the Paralegal

Specialist will continue to provide assistance to the program and the General Counsel along with the NTSB's Managing Director will provide the program with the necessary leadership support. As mentioned during the review, OGE's Desk Officer Team assigned to NTSB stands ready to provide expertise and advice to assist the new DAEO and ADAEO during this transition.

Agency-Specific Ethics Rules

During the last review, OGE identified portions of NTSB's regulation at 49 CFR part 805 entitled *Employee Responsibilities and Conduct* that had been superseded by the Standards. While OGE received assurances that this regulation was not being enforced, since it had been superseded by the Standards, our concerns were based on the fact that NTSB employees might not be aware of this distinction and could still rely on this regulation when considering their ethics responsibilities. As a result, a recommendation was made for NTSB to evaluate the regulation at 49 CFR part 805 to determine which portions had been superseded by the Standards and then repeal those portions that have been superseded.

On November 21, 2011, NTSB satisfied our recommendation by rescinding part 805 in its entirety upon publication of a notice within the Federal Register.

Supplemental Standards of Conduct Regulation

OGE also previously recommended that NTSB rescind its universal prohibition on employees acquiring or holding financial interests in a transportation enterprise and cease implementation of the prohibition in its counseling, ethics agreements, and financial disclosure reviews. OGE's concern was based on the fact that such a prohibition could only be implemented via a supplemental regulation or separate statutory authority, neither of which mechanism NTSB had.¹ NTSB addressed our recommendation by eliminating statements concerning the prohibition on owning transportation enterprises from the screening of potential employees.

NTSB has been working intermittently for over a decade to create a supplemental standards of conduct regulation in accordance with 5 CFR § 2635.105 that would, among other things, include a prohibition on holding financial interests in transportation enterprises and a requirement to obtain prior approval for outside employment. During current discussions with ethics officials regarding this matter, OGE was advised that NTSB was still interested in reviving efforts on the supplemental standards of conduct regulation. If NTSB decides to go forward with the process of developing a supplemental regulation, OGE stands ready to provide expertise and advice.

¹ A prohibition with regard to financial interests in transportation enterprises previously existed in 49 CFR part 805.

Financial Disclosure

OGE is pleased to see in its current examination that the recommendations made during our last review of NTSB's financial disclosure system have resulted in sustained improvements to the financial disclosure program.

During the last review, OGE recommended the Ethics Office destroy public and confidential financial disclosure reports after a 6-year period. OGE also recommended that the Ethics Office develop a process to ensure that new entrant confidential reports are filed no later than 30 days after an employee assumes a covered position or office. Regarding the latter, OGE was pleased to learn during its current examination that, based upon a renewed partnership with NTSB's Human Resources Division (HR), the Ethics Office is notified of all potential hires in advance of final selection, and is provided with the potential hire's application package, including her or his application, résumé, and a position description. By obtaining this information in advance, the Ethics Office is now able to determine whether a potential hire would be required to file a financial disclosure report, and, if so, whether it would be a public or confidential report. Whether or not the potential hire will be a financial report filer, a pre-employment ethics interview is arranged by the Ethics Office to discuss, among other ethics issues, potential financial conflicts of interest or covered relationships that the individual may have.

The potential hire is advised if the position for which she or he is being considered requires the filing of a financial report, and, if so, whether it will be public or confidential. Should issues arise from the interview that would require an ethics agreement, the Ethics Office prepares an explanatory memorandum to the agency's Managing Director (MD) (or to the agency's Chairman, in the case of direct reports to her/him), attaching a proposed memorandum for the MD (or the Chairman, as the case may be) to provide to the potential hire explaining why an ethics agreement would be required, as well as the proposed ethics agreement for signature and return to the NTSB prior to employment. In addition, the Ethics Office is now included on the "Hire Team" notification list, which alerts it that the hiring process has been completed for, and of the arrival date of, all new hires. With regard to the management of personnel actions, HR uses a team structure that includes a Hire Team (for new employees), a Reassignment Team (for details, transfers, promotions, and similar actions); and a Separation Team (for retirements and other separations). Then, on a new hire's first day of duty, she or he is notified of the requirement to complete initial ethics orientation within 30 days, and, if applicable, of the requirement to file a financial disclosure report, also within 30 days. Contact information for the Ethics Office staff is provided, as is a copy of the Standards of Conduct.

OGE notes that beyond the need to comply with the regulatory requirement that new entrant reports are to be filed within 30 days, ensuring the timeliness of new entrant financial disclosure reports is important because it ensures that ethics officials can quickly determine whether conflicts of interest exist and, if so, take prompt and effective remedial action to resolve any issues. OGE views the steps taken by NTSB to improve this area of its ethics program to be a model practice. This practice not only informs prospective employees of practical ethics issues before they begin work at the agency, but also raises awareness of the ethics program and promotes an ethical culture within the agency.

OGE's Current Examination

OGE's examination of all public and confidential reports filed in 2011 found reports to accord with statutory and regulatory requirements, as our examination found each report we examined to have been generally filed, reviewed, and certified timely. It appeared that reports were being reviewed for conflicts as evidenced by the annotations or other documentation associated with the review and OGE found the Ethics Office adhering to the regulatory requirement to destroy financial disclosure reports filed more than 6 years ago.

However, despite the system's overall effectiveness, OGE is making one recommendation for overall improvement—NTSB must develop written procedures that outline the process for collecting, reviewing, and evaluating financial disclosure reports. Beyond being required, written procedures are important in establishing consistency and efficiency in ensuring that ethics officials follow the same step-by-step procedures for administering their portion of the financial disclosure system. When properly used and updated, written procedures provide ethics officials with the opportunity to plan for system improvement.

In view of the current transition in staffing, OGE also encourages the Ethics Office to develop written procedures that reflect the current practices for administering other elements of NTSB's ethics program as well. OGE considers this to be a model agency practice and a valuable resource to both employees and ethics officials.

OGE Recommendation

- Develop written procedures for administering both the public and confidential financial disclosure systems in accordance with the requirements of the Ethics Act.

Education & Training

As with the financial disclosure system, OGE is pleased to see that the recommendations made during our last review of NTSB's education and training program have also resulted in sustained improvements to the program. During the last review, OGE recommended that the Ethics Office change its process to ensure that future annual training plans are completed by the beginning of each calendar year, provide at least one hour of initial ethics orientation (IEO) to new employees when they enter on duty, and include the name, title, office address, and phone number of the DAEO in any IEO. OGE found NTSB meeting these and all other ethics education and training requirements found at subpart G of 5 CFR part 2638 during our current examination.

Initial Ethics Orientation and Annual Ethics Training for Regular Employees

According to ethics officials, initial ethics orientations at NTSB now occur through a two-step process: 1) pre-employment ethics interviews with potential hires and 2) on-boarding process with new employees. As previously mentioned, as part of NTSB's hiring process, potential hires are interviewed by the Ethics Office in advance of final selection. Prior to the interview, potential hires are sent a one-page summary of the 14 Principles of Ethical Conduct, a link to the

OGE publication, A Brief Wrap on Ethics, and points of contact information for ethics officials, which is discussed briefly during the interview. Following the employee's acceptance of the position, OGE's initial ethics orientation requirement is satisfied when new employees are required to view the Standards along with a web-based training module delivered over NTSB's Intranet, usually on their first day on employment. Developed by the Environmental Protection Agency and adapted by the Ethics Office for use at NTSB, this interactive training module covers the content requirements of §2638.703. OGE confirmed that 76 new employees received IEO in 2011.

To meet the annual training requirement for 2011, OGE was pleased to see that NTSB's training objectives were to provide a mixture of both in-person and written ethics training, covering a range of ethics issues, targeted to different audiences (both covered and non-covered employees). Although training was not yet completed for 2011 at the time of fieldwork, since NTSB conducts annual training in the months of November and December, OGE did confirm that all financial disclosure filers received annual training in 2010.

Initial Ethics Orientation and Annual Ethics Training for Board Members

Personal briefings are provided by the Ethics Office to the five NTSB Board members, who are the agency's only Presidentially appointed, Senate-confirmed appointees (PAS). The PAS officials receive training when they first come on board and annually, covering their responsibilities under the Standards, the conflict of interest statutes, and applicable executive orders including the Ethics Pledge. Training on seeking employment and post-employment issues are also emphasized with Board members and their policy advisors.

Additional Outreach Efforts

In addition to conducting the requisite initial ethics orientation and annual ethics training, OGE was also impressed with how NTSB keeps employees aware of ethics-related issues through a variety of methods including posting ethics-related articles in the General Counsel's monthly newsletter, conducting ethics training for supervisors, and providing useful ethics information on the ethics section of NTSB's Intranet page.

Model Practice

- NTSB keeps employees knowledgeable of the ethics laws and regulations through a variety of methods including articles in the General Counsel's newsletter, supervisory ethics training, and an ethics section on the NTSB Intranet.

Advice & Counsel

OGE's current examination of the advice and counseling services found NTSB in compliance with 5 CFR § 2638.203(b)(7) and (8) by developing and conducting a counseling program for employees concerning all ethics matters, including post employment, wherein records are kept, where appropriate, on advice rendered. OGE found the advice to be consistent, timely, and given in a practical, easy-to-comprehend format.

Enforcement

NTSB does not have a statutorily appointed Inspector General (IG) or an office dedicated to this function. However, NTSB does have a statutory relationship with the Department of Transportation's IG, who provides review of the financial management, property management, and business operations of the NTSB, and with the Government Accountability Office (GAO), which evaluates and audits NTSB programs, operations, and activities – particularly focused on information management and security; resource management; workforce development; procurement and contracting practices; agency management practices and how the NTSB addresses management challenges in investigating accidents.

While statutory relationships are maintained with the DOT IG and GAO, neither is directly responsible for providing investigatory services to NTSB for potential ethics violations. Should the need to investigate an alleged ethics violation occur, NTSB advised OGE that it would likely negotiate an interagency agreement with another IG from another agency to conduct the investigation. However, NTSB does not have a formal arrangement in place. Although OGE regulations do not require agencies that do not have their own IG to utilize the services of another agency's investigative organization, OGE encourages the agency leadership to consider doing so.

NTSB did not have any ethics-related disciplinary actions or criminal conflict of interest referrals to the Department of Justice (Justice) during the time period covered by the OGE's review. If a referral to Justice had been made, OGE was advised that the DAEO would be responsible for concurrently notifying OGE of the referral in accordance with 5 CFR § 2638.603.

Suggestion

- Consider establishing a formal memorandum of understanding with an investigative organization to provide investigatory services to NTSB for potential ethics violations.

1353 Travel Acceptances

NTSB allows its employees to accept payments on behalf of the agency from non-Federal sources for travel, subsistence, and related expenses incurred on official travel under 31 U.S.C. § 1353. OGE's current examination of the acceptances reported on the NTSB's last three semiannual travel reports submitted to OGE covering the periods from April 1, 2010 through September 10, 2011 identified 39 payments that were accepted during this timeframe. OGE found each semiannual report to have been submitted in a timely manner.

Agency Comments

A draft of this report was provided to the Ethics Office for review and comment. The DAEO offered technical corrections and provided clarification to NTSB's new entrant identification process included in the draft report. OGE incorporated these technical comments throughout this report.