

Ethics Program Review Surface Transportation Board

September 2009 Report

Executive Summary

The United States Office of Government Ethics (OGE) has completed its review of the ethics program at the Surface Transportation Board (STB). 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 identified one model practice that STB has implemented: STB requires all employees, as part of out-processing, to receive a briefing from the STB ethics office prior to leaving Government service.

OGE made two suggestions to enhance STB's ethics program during its on-site fieldwork. The suggestions were: that STB revise its financial disclosure written procedures to reflect current changes in dates and that STB ensure the proper date of receipt by the ethics office on financial disclosure forms.

This report has been sent to STB's Designated Agency Ethics Official (DAEO) and the Department of Transportation's Inspector General.



United States Office
Of Government Ethics

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Highlights

Model Practice

- STB requires all employees, as part of out-processing, to receive a briefing from the STB ethics office prior to leaving Government service.

OGE Suggests

- That STB revise its financial disclosure written procedures to reflect current changes in dates.
- That STB ensure the proper date of receipt by the ethics office on financial disclosure forms.

If you have comments or would like to discuss this report, please contact Dale Christopher, Associate Director, Program Review Division, at 202-482-9224.



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Introduction

OGE MISSION

The 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 Surface Transportation Board (STB), focused on the elements listed below.

- Program structure
- Financial disclosure systems
- Outside employment
- Advisory committees
- Ethics training
- Ethics counseling
- Enforcement of ethics laws and regulations
- Travel payments from non-Federal sources

On-site fieldwork for OGE's review of STB was conducted in June 2009.

Program Elements

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

PROGRAM STRUCTURE

At STB, the ethics function resides organizationally within the Office of General Counsel and is overseen by an Attorney Advisor, who serves as the Designated Agency Ethics Official (DAEO). The Deputy General Counsel serves as the Alternate DAEO and offers to the ethics program years of experience and institutional knowledge of STB.

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 disclosing publicly 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 in providing counseling to employees. *See* 5 CFR § 2634.104(b).

Written Procedures

Written procedures ensure consistency in the collection, review, and certification of financial disclosure reports. Moreover, written procedures are essential for a comprehensive succession plan and effective internal controls. During its review, OGE noted the thorough written procedures STB had in place for both the public and confidential financial disclosure systems. However, OGE suggested that the DAEO revise one section of the written procedures to reflect current changes in dates.

Public Financial Disclosure System (SF 278)

To evaluate the public system at STB, OGE examined the 12 public financial disclosure reports that were required to be filed in 2008. The following is a summary of OGE's examination.

Ethics Program Review: STB

Type of Report

- 11 annual reports
- 1 termination report

12 total

Filing Timeliness

- All 12 reports were filed timely.

Review Timeliness

- All 12 reports were reviewed timely.

Certification Timeliness

- All 12 reports were certified timely.

Quality of Review

All 12 reports appeared to have been thoroughly reviewed for compliance with reporting requirements.

Comments on Review

Six of the SF 278 financial disclosure reports received in 2008 had automated “Time and Date Received” stamps on them that were at odds with the dates the forms were signed by the filers. Specifically, the “received” dates were in February all the signatures were dated in May.

The DAEO informed the OGE review team that she did not notice that the “received” dates were incorrect and that no reports would have been stamped prior to the date they actually were received. It is the DAEO’s practice to stamp reports as soon as a report reaches her, regardless of when it is placed in her office.

During OGE’s on-site fieldwork, the DAEO ran comparison of the “received” dates and the signatures dates and found a one-to-one comparison that supports her assertion that the automated received dates were erroneous. The errors can be attributed to the date stamp machines in use at STB that were not correctly reset to reflect the true month and date.

The DAEO assured the OGE review team that in the future she will be sure to check the date stamp machine prior to use.

Ethics Program Review: STB

Confidential Financial Disclosure System (OGE Form 450)

To evaluate the confidential system for regular employees at STB, OGE examined all 28 confidential financial disclosure reports that were required to be filed in 2009. The following is a summary of OGE's examination.

Type of Report

- 25 annual reports
- 3 new entrant reports

28 total

Filing Timeliness

- 27 reports were filed timely.
- 1 report was not filed timely.

28 total

Review Timeliness

- All 28 reports were reviewed timely.

Certification Timeliness

- All 28 reports were certified timely.

Quality of Review

All 28 reports appeared to have been thoroughly reviewed for compliance with reporting requirements.

OUTSIDE EMPLOYMENT

Since January 1, 1996, STB has applied the requirements of the regulation at 5 CFR part 5001 of the Interstate Commerce Commission (ICC) to the employees at STB. The ICC is the predecessor agency to STB.

The agency supplemental standards of conduct regulation prohibits financial interests in for-hire transportation companies and prior to engaging in outside employment, with or without compensation, requires STB employees to obtain written approval from his or her supervisor as well as the DAEO.

To obtain approval for outside employment, a STB employee must first fill out the "Application for Authorization of Outside Employment." The form requires the employee to

Ethics Program Review: STB

provide the address and phone number of the employer, the kind of business, the duration of the work, the hours and days of work, and a brief description of the work to be performed. STB employees that engage in outside employment must renew the outside employment request annually.

OGE examined all of the outside employment positions reported on the financial disclosure reports that required prior approval under ICC's supplemental standards of conduct regulation. OGE found appropriate forms for each outside employment position and found evidence that the employees had received prior approval before engaging in the outside employment.

ADVISORY COMMITTEES

STB has three advisory committees: two committees that are subject to that Federal Advisory Committee Act (FACA) and one committee that serves solely as an advisory body, and therefore, is not subject to the provisions of FACA.

The Railroad-Shipper Transportation Advisory Council is a FACA committee that provides advice on regulatory, policy, and legislative matters to the STB Chairman, the Secretary of Transportation, and the House Transportation and Infrastructure Committee. The National Grain Car Council is a FACA committee that allows the members to discuss openly the issues affecting the grain transportation industry. The Rail Energy Transportation Advisory Committee provides advice and guidance to STB and serves as a forum for discussion on emerging issues regarding the transportation by rail of energy resources.

In a memorandum, the Alternate DAEO noted that none of the members of the advisory committees were SGEs. Rather, all non-voting members are regular Federal employees, while all voting members serve as representatives. The OGE review team determined that STB appropriately designated the committee members as representatives.

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 for all employees and annual ethics training for covered employees.

OGE found established processes in place at STB to ensure that initial ethics orientation and annual training requirements are met, in accordance with the education-related provisions of subpart G of 5 CFR part 2638.

Initial Ethics Orientation

Within 90 days from the time an employee begins work for an agency, the agency must provide the employee an initial ethics orientation. An initial ethics orientation must include:

Ethics Program Review: STB

- the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) and any agency supplemental standards;
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials; and
- at least one hour of official duty time to review the items described above. *See* 5 CFR § 2638.703.

As part of in-processing, a new STB employee must sign an acknowledgement form confirming their receipt of the “Orientation Materials for New Employees” packet which is provided by STB’s Human Resources Office. This packet contains the Standards, the agency supplemental standards, as well as the names and contact information of the ethics staff. The new employee must also sign another form after reviewing the packet materials. Both forms are sent to the STB DAEO to track completion of training.

A new STB Presidentially-appointed, Senate-confirmed (PAS) employee, the employee receives the same “Orientation Materials for New Employees” packet and is asked to make time for the DAEO and Alternate DAEO to provide an in-person briefing.

The OGE review team found that STB provides initial ethics orientation to all new employees, as required.

Annual Ethics Training

Public financial disclosure filers are required to receive verbal annual ethics training. *See* 5 CFR § 2638.704(a). Verbal training includes training prepared by a qualified instructor and presented by telecommunications, computer, audiotape, or videotape. *See* 5 CFR § 2638.704(c)(2). Other covered employees (e.g., confidential filers) are required to receive verbal ethics training at least once every three years and may receive written training in the intervening years. *See* 5 CFR § 2638.705(c). The content requirements for both public filers and other covered employees are the same. Agencies are encouraged to vary the content of annual training from year to year but the training must include, at least, a review of:

- the 14 Principles of Ethical Conduct,
- the Standards,
- any agency supplemental standards,
- the Federal conflict of interest statutes, and
- the names, titles, office addresses, and phone numbers of the DAEO and Alternate DAEO. *See* 5 CFR § 2638.704(b).

In addition to reviewing the materials listed above, STB uses examples from current events and noteworthy ethics failures during their training courses. All STB employees required to receive annual ethics training in 2008 did so.

As a STB employee leaves Government service, a required part of out-processing is a briefing with the DAEO and the receipt of an ethics packet that includes OGE post-employment

Ethics Program Review: STB

pamphlets and the post-employment regulations. OGE considers including the ethics office in out-processing to be a model practice.

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 assessment of an ethics counseling program focuses on five factors: (1) accuracy, (2) timeliness, (3) transparency, (4) accountability, and (5) consistency. To determine whether an agency's counseling program successfully addresses these factors, OGE reviews and assesses the program's processes and written procedures. Further, OGE reviews selected samples of advice to assess whether processes and written procedures are effective.

The counseling examined during OGE's review primarily consisted of emails provided by the DAEO. Generally, the counseling was in the areas of widely-attended gatherings, gifts, outside activities, outside positions, and post-employment issues. OGE found the counseling to be accurate and timely.

ENFORCEMENT

The DAEO is required to ensure that (1) information developed by internal audit and review staff, the Office of the Inspector General, or other audit groups is reviewed to determine whether such information discloses a need for revising agency standards of conduct or for taking prompt corrective action to remedy actual or potential conflict of interest situations and (2) the services of the agency's Office of the Inspector General 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).

STB does not have an Office of the Inspector General. The Department of Transportation Inspector General serves as the liaison for STB to both the Department of Justice as well as OGE in the instance of an ethics-related violation. There were no violations of Standards or criminal conflict of interest violations during the period covered by the OGE review. OGE found STB to be aware of the requirements contained in 5 CFR § 2638.203(b)(11) and (12).

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 of travel payments from non-Federal sources in excess of \$250 to OGE. *See* 31 U.S.C. § 1353.

STB maintains extensive written procedures for accepting travel payments. It is STB's general policy that only Federal Government funds may be used for payment of travel expenses

Ethics Program Review: STB

incurred by STB employees during official Government travel. The exception is in extraordinary circumstances where attendance at a meeting or a similar event by a STB employee is determined to be sufficiently important to the mission of the agency and when adequate Federal funds are not available to pay for some or all of the travel expenses. STB's Chairman as well as the DAEO may grant this exception of the general policy.

There were no acceptances of travel payments from non-Federal sources by STB employees during the semiannual periods covering April 1, 2007 through September 30, 2008.

Summary

OGE's review identified one model practice that STB has implemented: STB requires all employees, as part of out-processing, to receive a briefing from the STB ethics office prior to leaving Government service. While no formal recommendations were made during the on-site fieldwork, OGE made the following suggestions:

- that STB revise its financial disclosure written procedures to reflect current changes in dates and
- that STB ensure the proper date of receipt by the ethics office on financial disclosure forms.

If you have comments or would like to discuss the report, please contact Dale Christopher, Associate Director, Program Review Division, at 202-482-9224.