



U.S. Office of Government Ethics
Program Review Division

Ethics Program Review

United States Nuclear Waste Technical
Review Board

Report No. 12-25
January 2012

Results in Brief

The United States Office of Government Ethics (OGE) conducted a review of the United States Nuclear Waste Technical Review Board's (the Board) ethics program in December 2012. The results of the review indicated that the Board's ethics program does not fully comply with applicable laws, regulations, and policies.

Highlights

- The Board performs an additional verification of special Government employee (SGE) hours with the General Services Administration (GSA) to accurately establish their financial disclosure filing status.

Concerns

- The Board's Executive Director and Alternate Designated Agency Ethics Official (ADAEO) did not file a new entrant financial disclosure for 18 months.
- One-third of financial disclosures contained incomplete information.
- The Board does not have the required written procedures for managing the financial disclosure program.
- Not all covered employees received annual ethics training in 2011 and no ethics training was provided in 2010.
- There is no current tracking system to identify employees who complete training.
- The 2011 semi-annual reports of payments accepted from non-Federal sources were not submitted to OGE by the statutory deadline.

Contents

Objectives, Scope, and Methodology.....	3
Program Administration.....	3
Financial Disclosure.....	3
Education & Training.....	4
Advice & Counsel.....	4
Enforcement.....	5
Special Government Employees.....	5
1353 Travel Acceptances.....	5
Agency Comments.....	5

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 the Board's ethics program, OGE examined a variety of documents provided by the Designated Agency Ethics Official (DAEO); other documents that the DAEO forwarded to OGE; the 2010 annual questionnaire; all of the Board's public and confidential financial disclosure reports; and a sample of advice and counsel provided to the Board's employees. In addition, members of OGE's Program Review Division met with the DAEO to obtain additional information about the strengths and weaknesses of the Board's ethics program, seek clarification on issues that arose through the documentation analysis, and verify data collected.

Program Administration

The Board's ethics program serves approximately 12 full-time and 11 special Government employees. The Director of Administration functions as the DAEO and the Board's Executive Director holds the ADAEO position. The DAEO is solely responsible for day-to-day ethics program operations. Additionally, the Board contracts with GSA for legal and ethics support services.

Given the small size of the agency, ethics matters accounted for only 1% of the DAEO's time in 2010 and a slightly greater amount of time in 2011. This limited involvement with Federal ethics laws and regulations may have contributed to several missing or incomplete basic program requirements in the financial disclosure and training areas. The DAEO also showed insufficient knowledge of current ethics rules including financial disclosure reporting requirements, retention requirements, and annual training requirements.

Financial Disclosure

OGE's review revealed some substantial weaknesses within the Board's financial disclosure program. Although the DAEO reviewed and certified the Board's financial disclosures in a timely manner, almost one-third of public and confidential financial disclosure filers failed to fully report their assets in accordance with statutory and regulatory requirements. The Board also had no written financial disclosure procedures pursuant to Section 402(d)(1) of the Ethics in Government Act of 1978, as amended, and failed to destroy reports after the six-year retention period in accordance with 5 CFR §§ 2634.603(g)(1) and 2634.604(a). During the course of the review, the DAEO indicated reports beyond the retention period would be destroyed.

The DAEO granted filing deadline extensions without having the specific reasons for the extensions set forth in writing by the employee. In one extreme case, the DAEO allowed the Executive Director/ADAEO to delay filing his initial financial disclosure for over one year – a report required within 30 days of assuming his position under 5 CFR § 2634.201(b).

Recommendations

- Establish written procedures governing the review, collection, evaluation, public availability (when applicable) of financial disclosures including procedures for addressing delinquent filers.
- Attend a financial disclosure training course offered by OGE prior to the May 2012 public filing deadline.

Suggestions

- Create a financial disclosure “tool kit” for ethics officials including OGE’s Public Financial Disclosure: A Reviewer’s Reference, OGE’s Guide to Reporting Selected Financial Instruments, and links to web-based financial disclosure training for filers.

Education & Training

The Board has not tracked annual ethics training since 2009. Additionally, the DAEO was not aware of the requirement to develop an annual training plan. Training provided in 2009 primarily addressed only the standards of conduct; reviewers observed no evidence the 2009 training reviewed the criminal conflict of interest statutes required by 5 CFR §2638.704(b). The Board did not provide ethics training in 2010 and failed to train all covered employees in 2011.

Recommendations

- Develop a training plan in accordance with 5 CFR § 2638.706 and update it annually.
- Provide annual ethics training in accordance with 5 CFR § 2638.704-705.
- Track employees who complete required initial and annual training.

Advice & Counsel

The DAEO serves as the primary provider of advice for all ethics-related questions. Issued advice is maintained in employee financial disclosure files. The DAEO contacts the GSA legal liaison when a new or complex ethics question or issue arises. OGE reviewed a sample of the Board’s written advice and counsel. Reviewers noted one potential ethics conflict where the Board failed to document its justification for acting contrary to GSA’s legal advice.

Suggestions

- Ensure ethics counsel for novel or complex situations includes the final disposition of advice rendered.

Enforcement

During the period covered by the review, the Board reported no disciplinary actions based wholly or in part upon violations of the standards of conduct provisions, the criminal conflict of interest statutes, and made no referrals to the Department of Justice (DOJ) of potential violations of the criminal conflict of interest statutes. The Board does not have a dedicated Office of the Inspector General (OIG) and will consult with GSA should OIG services be necessary.

Special Government Employees

The Board has 11 Special Government Employees (SGEs) who are appointed by the President. The Board's SGEs consistently filed their financial disclosures in a timely manner. The DAEO reviewed and certified all SGE financial disclosures within the required period. OGE's primary concern is the Board's technically incomplete financial disclosure reports, which leave the Board vulnerable to undetected conflicts of interest.

OGE reviewers noted the Board's Chairman authored a book which inappropriately featured his official government title on the book's jacket. The DAEO was unaware of this situation and indicated the Chairman would be advised on the proper and improper use of his government position. OGE believes that addressing the deficiencies in the training program will help employees become more familiar with federal ethics rules and prevent similar situations in the future.

1353 Travel Acceptances

The Board failed to submit both 2011 semi-annual reports of payments accepted from non-Federal sources by the statutory deadline. The most recent report was provided to OGE upon request of the reviewers.

Agency Comments

Comments provided by the Board are attached in their entirety.



UNITED STATES
NUCLEAR WASTE TECHNICAL REVIEW BOARD

2300 Clarendon Boulevard, Suite 1300
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January 19, 2012

Rashmi Bartlett
Associate Director
U.S. Office of Government Ethics
1201 New York Avenue, N.W., Suite 500
Washington, D.C. 20005-3917

Dear Associate Director Bartlett:

In December 2011, members of the Office of Government Ethics (OGE) Program Review Division, Daniel Skalla and Kingsley Simons, conducted a review of the Nuclear Waste Technical Review Board's (Board) ethics program. On January 12, 2012, they provided the Board with a draft copy of their Ethics Program Review, which the following comments are based upon.

The Board is an independent micro-agency in the executive branch. The Board is composed of 11 President appointed Board members who serve part-time, as Special Government employees and they are supported by 13 full-time employees.

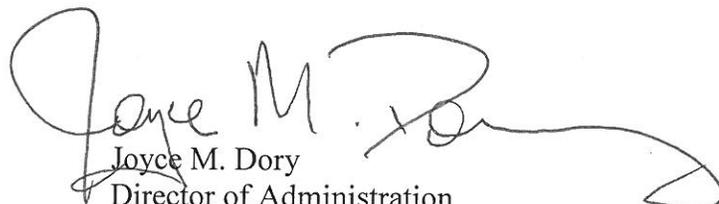
As stated, in the Ethics Program Review, I spend approximately 1% or less of my time on matters related to ethics. I will comply with the recommendations as stated in the review. In addition, I will within 60 days or by March 19, 2012 provide a status report on the recommendations recited below.

- Establish written procedures governing the review, collection, evaluation, public availability (when applicable) of financial disclosures including procedures for addressing delinquent filers.
- Attend a financial disclosure training course offered by OGE prior to the May 2012 public filing deadline.
- Develop a training plan in accordance with 5 CFR § 2638.706 and update it annually.
- Provide annual ethics training in accordance with 5 CFR § 2638.704-705.
- Track employees who complete required initial and annual training.

I appreciate the time and the Ethic Program Review provided by Mr. Skalla and Mr. Simons to the Executive Director, Nigel Mote, who serves as the Alternate Designated Agency Ethics Officer (ADAEO) and to me.

If you have questions or concerns, please contact me.

Sincerely,


Joyce M. Dory
Director of Administration
Designated Agency Ethics Officer