



U.S. Office of Government Ethics
Program Review Division

Ethics Program Review

National Science Foundation

Report No. 11-010
March 2011

Results in Brief

The United States Office of Government Ethics (OGE) conducted a review of the National Science Foundation's (NSF) ethics program between December 2010 and January 2011. The results of the review indicated that the NSF's ethics program generally appears to be effectively administered and in compliance with applicable laws, regulations, and policies.

Highlights

- NSF has independently developed and implemented a very effective electronic ethics management system.
- Written ethics guidance displayed consistency and used precise statutory and regulatory language.

Concerns

- NSF did not appear to consult on 18 U.S.C. § 208 waivers in accordance with DAEOgram DO-10-005.

Contents

Objectives, Scope, and Methodology.....	3
Program Administration.....	3
Financial Disclosure.....	3
Education & Training.....	4
Advice & Counsel.....	4
Agency-Specific Ethics Rules.....	5
Ethics Agreements.....	5
<i>OGE Recommendation</i>	
Enforcement.....	5
Special Government Employees.....	5
<i>OGE Suggestion</i>	
1353 Travel Acceptances.....	6
Agency Comments.....	6

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

Program Administration

The Ethics Program (EP) is primarily housed in NSF's Office of the General Counsel (OGC). Day-to-day ethics functions are handled by the EP officials (DAEO, ADAEO and ES). Conflicts Officials (CO), located within each of NSF's offices and divisions, are designated and trained by the EP officials to assist in providing conflicts analysis and advice for their regular NSF officials, as well as for the 16,000 special government employees (SGE) employed by NSF. Although the EP is modestly staffed for an agency of this size, its structure allows for agile response to ethics issues. Additionally, the EP has effectively leveraged technology to increase the functionality of the financial disclosure, advice and counsel, and training elements of its ethics program.

Released in January 2010, NSF's Financial Disclosure eFiling system (eFile) provides a highly effective mechanism to assist in completing, collecting, reviewing and certifying the agency's public and confidential financial disclosure reports. The system also tracks completion of ethics training, documents advice and counsel, provides automated financial disclosure filing reminders, and can be adapted to changing agency needs. Developed in-house by NSF, the eFile system is impressively efficient and robust.

Financial Disclosure

NSF's eFile system is the centerpiece of the agency's financial disclosure program, providing real-time filing, review, and certification status of every public and confidential financial disclosure filer. Of the 130 financial disclosures reviewed by OGE, the majority were filed and certified in a timely manner.

Technical errors on reports, where noted, were generally minor or could be dealt with on a case-by-case basis (i.e. extraneous information that should be redacted prior to public release). The conflicts analysis process appeared thorough and, in areas of high conflicts risk, included EP officials personally screening financial disclosures against upcoming agency proceedings and further screening by means of an electronic database.

Education & Training

NSF's EP provides a variety of ethics training options to agency personnel including targeted, in-person, and computer-based training. The EP uses multiple training techniques and delivery vehicles to make ethics training more engaging for employees. NSF's eFile system provides the training status of all covered personnel, allowing for easy identification and communication with employees that still require training at year's end. OGE commends EP officials on making training very accessible to employees by presenting approximately 40 in-person training sessions in 2010. However, a review of training material provided to OGE showed that some additional written material should have been included in 2010's annual training. For the affected employees EP officials responded rapidly, providing the supplemental training material prior to the training deadline.

NSF employs approximately 16,000 SGEs for a few days each year as advisory committee members, panelists, site visitors and Committee of Visitors members. The training provided to these SGEs included the most critical material for conflicts-prevention at NSF, but inadvertently omitted some secondary elements required by 5 CFR 2638.705(b). NSF made the necessary updates to immediately correct the situation so that new and returning SGEs could be fully trained prior to serving the agency.

Advice & Counsel

Ethics advice and counsel is provided by the DAEO, ADAEO, and ES. NSF's COs are authorized to make written determinations on the impartiality standard at 5 CFR 2635.502. Ethics guidance is provided to employees primarily through email, and OGE commends NSF for sharing ethics correspondence for review among all EP officials.

Written advice and counsel samples provided to OGE were consistently accurate. Advice and counsel was highlighted by following a consistent format when making impartiality determinations and by the use of specific statutory and regulatory language to further clarify other select pieces of guidance.

Agency-Specific Ethics Rules

During the on-site portion of the review, OGE was pleased to note that NSF was in the process of amending its Rules of Practice to remove one obsolete ethics reference. Publication of the new rule took place prior to the completion of OGE's review.

Ethics Agreements

NSF had one ethics agreement in-process during the on-site portion of the program review. This agreement was fully complied with in accordance with 5 CFR 2634.804 by the completion of the review.

Waivers of 18 U.S.C. § 208(b)(1) are drafted as necessary by the EP; however, among the waivers issued in 2009 and 2010 by NSF, OGE found no evidence that it had been consulted by the EP "when practicable" as required by 5 CFR 2640.303 and further defined in DAEOgram DO-10-005.

Recommendation

- Consult on waivers issued by NSF in accordance with DAEOgram DO-10-005.

Enforcement

NSF has one alleged conflict of interest violation currently being investigated by its Office of Inspector General (OIG). This situation was, at the time of this report, recently discussed with OGE.

Special Government Employees

Approximately 16,000 SGEs serve within NSF as advisory committee members, panelists, site visitors and Committee of Visitors members. Because ethics training and conflicts analysis by full-time EP officials is not logistically viable for this many SGEs, COs within each division have been trained to evaluate potential conflicts of interest associated with SGE assignments. COs may provide guidance on the impartiality standard at 5 CFR 2635.502 and additional conflicts concerns are typically elevated to EP officials for further review.

COs interviewed by OGE generally displayed consistent understanding of their conflict prevention roles and executed their duties in mostly similar manners. Between COs from different divisions, OGE did note slight variations in the conflicts analysis process and in conflicts-prevention briefings. OGE suggests EP officials further examine this aspect of the ethics program to ensure process and products are meeting agency needs.

Suggestion

- Examine the SGE conflicts-prevention process to ensure sufficient training and conflicts analysis are in place.

1353 Travel Acceptances

The required semi-annual reports of payments accepted from non-Federal sources were submitted to OGE in a timely manner. In 2011, NSF plans to incorporate 1353 travel reporting into the eFile system.

Agency Comments

The following comments were provided by NSF via email on January 25, 2011:

“The National Science Foundation appreciates the time and effort spent by the Office of Government Ethics (OGE) in evaluating our ethics program. We would like to make a few minor suggestions to the draft report in light of our review of the final draft submitted to us on Friday, January 21, 2011.

1. OGE correctly notes on page 3 that the Conflicts Officials (CO) provide conflicts advice to the special Government employees at NSF. In addition, COs also provide such advice to regular NSF officials. Accordingly, we ask that under the Program Administration section, for example, the first two sentences would read:

The Ethics Program (EP) is primarily housed in NSF's Office of the General Counsel (OGC). Day-to-day ethics functions are handled by the EP Officials (DAEO, ADAEO and ES). Conflicts Officials (CO), located within each of NSF's offices and divisions, are designated and trained by the EP Officials to assist in providing conflicts analysis and advice for their regular NSF officials, as well as for the 16,000 special Government employees (SGE) employed by NSF.

2. NSF gratefully acknowledges OGE's conclusion on page 4 in its Education and Training section that the training provided to SGEs included the most critical material for conflicts-prevention. OGE further concludes that NSF inadvertently omitted some secondary elements required by 5 CFR 2638.705(b). NSF agrees that in the future, SGEs will have additional information, for example, on gifts between employees and post-employment provisions, to reflect technical compliance with the training provisions.

3. In the Ethics Agreement section on page 5, OGE recommends that NSF consult OGE on waivers it issues in accordance with DAEOgram DO-10-005. It is NSF's understanding that the

waiver consultation process required by OGE may be satisfied in a number of different ways – ranging from submission of a draft waiver for review and comment by attorneys in the OGE's Office of General Counsel & Legal Policy to notifying the OGE Desk Officer of common grounds for a waiver (e.g., stock holdings). NSF will follow up with its OGE desk officer, consistent with this recommendation and NSF's previous understandings with OGE.”