



U.S. Office of Government Ethics  
Program Review Division

---

# Ethics Program Review

Federal Election Commission

Report No. 10-025  
November 2010

---

## Results in Brief

---

The United States Office of Government Ethics (OGE) conducted a review of the Federal Election Commission (The Commission) ethics program between October and November, 2010. The results of the review indicated that the Commission's ethics program generally appears to be effectively administered and in compliance with applicable laws, regulations, and policies.

### Highlights

- The Commission's ethics officials have shown consistent interest and enthusiasm toward seeking further improvements to the ethics program.
- Financial disclosure receipt, reviews, and certifications are tracked consistently using a detailed electronic spreadsheet that was produced in-house.
- A long-standing memorandum of understanding exists between the Commission's Designated Agency Ethics Official (DAEO) and Inspector General (IG) clearly delineates enforcement responsibilities and lines of communication.

### Concerns

- Written procedures for the administration of financial disclosure show some inaccuracies and out of date information.
- Succession planning for the loss of the primary, day-to-day ethics official is very limited.

---

## Contents

Objectives, Scope, and Methodology.....	3
Program Administration.....	3
<i>OGE Suggestions</i>	
Financial Disclosure.....	4
<i>OGE Recommendation</i>	
Education & Training.....	4
Advice & Counsel.....	5
Agency-Specific Ethics Rules.....	5
Ethics Agreements.....	5
Enforcement.....	6
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 the Commission's ethics program, OGE examined a variety of documents provided by ethics officials; other documents that the Commission forwarded to OGE, including the annual questionnaire; prior program review reports, and a sample of the Commission's public and confidential financial disclosure reports and advice and counsel provided to the Commission's employees.

In addition, members of OGE's Program Review Division met with the Alternate Designated Agency Ethics Official (ADAEO) and Deputy Ethics Official (DEO) to obtain additional information about the strengths and weaknesses of the Commission's ethics program, seek clarification on issues that arose through the documentation analysis, and verify data collected.

## Program Administration

The Commission's ethics program is administered within the Commission's Office of General Counsel (OGC). The General Counsel (GC) serves as the DAEO. The Associate General Counsel for General Law and Advice serves as the ADAEO. An attorney serving as the DEO is the primary, day-to-day administrator of the ethics program.

Because the DAEO also holds the position of GC, ethics officials have a voice in matters affecting the Commission. OGE believes this agency structure is advantageous in addressing ethics concerns that could affect the agency. However, OGE is concerned that significant day-to-day ethics program responsibility rests solely on the DEO. In the event of extended absences and for succession planning, OGE acknowledges the value of the Commission's move to develop standard operating procedures and familiarize additional attorneys with specific ethics functions.

### Suggestions

- Continue developing backup ethics attorneys within OGC.
- Document the additional responsibilities and continue to develop standard operating procedures to assist in performing those responsibilities.

## Financial Disclosure

At the time of OGE's review, Commission Directive 56 – the written procedures for the administration of the public and confidential financial disclosure systems – was inaccurate. The procedures incorrectly implied that the Commission designates public filing positions and that OGE's Director must review a particular public filing exception when not required. The procedures also contained incorrect filing dates for the OGE Form 450. See 5 CFR part 2634. During the review process, the Commission's ethics officials acknowledged the need for revision and began drafting updated procedures.

Forms were generally submitted by filers and certified by ethics officials in a timely manner. The Commission's procedures provide a process, if necessary, for addressing delinquent filers. In practice, the DEO brings most delinquent filers into compliance through frequent and informal reminders before more formal action is even warranted. Dates of receipt were tracked electronically, but not consistently annotated on the forms as required. The Commission's ethics staff therefore amended their intake process to ensure forms would be stamped or annotated with a date of receipt.

When questioned about specific financial disclosures during OGE's review, Commission's ethics officials displayed exemplary working knowledge of individual forms and circumstances. Also during the review, ethics officials identified and instituted a further refinement to their conflicts of interest analysis by expanding access to internal assignment tracking systems.

### Recommendation

- Continue to update written procedures to ensure compliance with applicable ethics laws and regulations and to accurately reflect the day-to-day operations of the financial disclosure program.

## Education & Training

During its examination of the Commission's annual training materials, OGE found that 18 U.S.C. § 207 was addressed in the annual training material for all employees, but had inadvertently been omitted from the one-on-one training material for senior personnel. OGE notes that departing senior personnel receive an 18 U.S.C. § 207 briefing and only one senior employee was affected by this oversight.

Additionally, a review of the 14 General Principles and contact information for the DAEO and ADAEO were not included in the annual training material for all employees. See 5 CFR parts 2638.704 and 2638.705. The annual training plan was also unclear on the training of confidential financial disclosure filers. The DEO concurred, agreed to correct these deficiencies, and provided an updated annual training plan.

The Commission reported that all required employees received initial ethics orientation and annual ethics training in 2009. To keep conflicts prevention at the forefront, ethics officials are developing agency-wide semi-annual reminders encouraging employees to consult with them if work assignments could conflict with their financial interests. OGE strongly supports this preemptive measure to protect the Commission and its employees from potential conflicts of interest.

### **Advice & Counsel**

The Commission's advice and counsel process is clearly defined within the agency, with the DEO handling most ethics-related questions. Complicated or novel situations are elevated to the ADAEO prior to issuance of ethics guidance. Additionally, issues of particular complexity or sensitivity are elevated to the DAEO level for further review. Written advice and counsel samples reviewed by OGE were consistently accurate.

Advice and counseling records are typically maintained in the email of the DEO. OGE applauds this level of accountability and documentation of ethics advice. For transparency purposes, the email records are also accessible to the ADAEO and to OGC attorneys temporarily assigned to ethics duties in the absence of the DEO.

However, the email system is not easily indexed by subject. The DEO acknowledges the difficulty in finding particular guidance issued by the ethics officials, which could present challenges to the consistency of advice provided. As a result, in the first half of 2011 the Commission plans to move to a database/email system capable of robust advice and counsel management.

### **Agency-Specific Ethics Rules**

The Commission is pursuing the publication of supplemental standards of conduct. During the publication process, the agency continued to follow a superseded regulation requiring approval for outside activities. The Commission has since published a proposed rule in the Federal Register and expects the final rule to be promulgated in the near future.

The Commission will no longer follow its superseded regulation and instead will remain compliant with OGE regulations. The DAEO has issued an internal memorandum to ethics officials clarifying the current status of the regulation in this area.

### **Ethics Agreements**

There were no ethics agreements entered into during the last two calendar years. However, the most recent documentation of ethics agreement compliance was late in 2008. At the time, the

primary day-to-day ethics official's position had just been filled--a position which the Commission had been unable to fill for about eighteen months.

Currently, ethics agreement compliance is managed by the DEO who has held the position since July of 2008. The DEO has brought the Commission into compliance with ethics agreement documentation requirements.

### **Enforcement**

The Commission reported no disciplinary actions based on wholly or in part upon violations of the standards of conduct provisions (5 CFR part 2635) or the criminal conflict of interest statutes, 18 U.S.C §§ 203, 205, 207, 208, and 209. The Commission made no referrals to the Department of Justice of potential violations of the criminal conflict of interest statutes.

OGE commends the Commission on the long-standing memorandum of understanding between the DAEO and the IG. This document clearly delineates lines of responsibility on criminal and administrative ethics matters.

### **1353 Travel Acceptances**

The Commission submitted to OGE in a timely manner the required semi-annual reports of payments accepted from non-Federal sources. The DEO reviews each travel request for conflicts of interest. A clear system exists to identify and communicate with those employees who might file a report under 31 U.S.C. § 1353. Additionally, the DEO is developing an automated form for travel request filing to further improve the process.

### **Agency Comments**

The Commission provided verbal comments which were integrated into this report.