



United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

August 29, 2005

Michael P. McDonald
Acting Designated Agency Ethics Official
National Endowment for the Humanities
Room 529
1100 Pennsylvania Avenue, NW.
Washington, DC 20506

Dear Mr. McDonald:

The Office of Government Ethics (OGE) has completed a review of the National Endowment for the Humanities' (NEH) ethics program. The review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended (the Ethics Act). Our objective was to determine the program's compliance with applicable laws and regulations. We also evaluated NEH's systems and procedures for ensuring that ethics violations do not occur. The review was conducted from May through July 2005. The following summarizes our findings and recommendations.

HIGHLIGHTS

Improvements are needed to bring NEH's ethics program into compliance. In particular, we found inadequate resources allocated for the administration of the ethics program. In addition, we found a lack of prior written approval for outside activities with prohibited sources, which is required by NEH's supplemental regulation. Also, we identified deficiencies in the financial disclosure systems and in the ethics training.

PROGRAM STRUCTURE

The number of personnel assigned to administer the ethics program appears inadequate. You are currently serving as NEH's Acting Designated Agency Ethics Official (DAEO) and Acting General Counsel, replacing the former DAEO and General Counsel who resigned from NEH in May 2005. NEH's current ethics program staff consists of you, one administrative officer, and one paralegal, all performing ethics duties in addition to other NEH duties. Due to increased responsibilities, you informed us that you have been unable to devote sufficient time to the ethics program. Although you received approval to add a part-time counselor to perform some of your ethics program duties, you believe that the staffing level remains inadequate given the ethical issues that arise throughout the year, especially in regards to special Government employees (SGE). We recommend that NEH make available adequate resources to enable NEH to administer its program in a positive and effective manner in accordance with 5 C.F.R. § 2638.202(a).

SUPPLEMENTAL REGULATION

NEH's Supplemental Standards of Ethical Conduct for Employees (supplemental regulation) at 5 C.F.R. § 6601.102(a) requires an employee, other than an SGE, to obtain written approval from his or her immediate supervisor and you, as the DAEO, before engaging in any outside employment with a prohibited source.

There is room for improvement in the application of the supplemental regulation. We examined two recent requests for approval of outside activities found in your advice file. Two different forms were used: an outside activities form and a teaching, speaking, and writing activities form. We recommend that both forms include sections for the supervisor's dated approval and the DAEO's dated approval in order to ensure that an employee obtains written approval from his or her immediate supervisor and you before engaging in any outside employment with a prohibited source, as required by NEH's supplemental regulation.

We also examined a sample of 50 of 74 confidential financial disclosure reports and all 16 public financial disclosure reports from covered employees, other than SGEs, and found that 4 employees each listed 1 outside activity with a prohibited source. You informed us that three employees' outside activities were previously approved and one employee's outside activity was approved by the end of our fieldwork. We examined written agreements made by three of the four employees to disqualify themselves from matters relating to their outside teaching activities. You informed us that the other employee had a written agreement, as well.

SPECIAL GOVERNMENT EMPLOYEES

NEH has two committees created under the Federal Advisory Committee Act. Members of the National Council on the Humanities (Council) are considered SGEs and are required to file confidential financial disclosure reports. Members of the Humanities Panel (Panel) are also SGEs and are required to file, prior to each Panel meeting, an alternative form called a "Conflict of Interest Statement," approved by OGE on October 14, 1992 pursuant to 5 C.F.R. § 2634.905(c).

Our examination of the process for screening Council members for potential conflicts of interest disclosed that the process appeared to be inadequate. We examined the February 2005 Council meeting to determine whether the members who attended were screened for potential conflicts of interests. All 14 attendees, consisting of the NEH Chairman and 13 SGEs, completed written disqualification statements which disqualified them from participating, discussing, advising, or voting on specific grant applications that posed potential conflicts of interest for the Council members. However, most of the SGEs' statements were based on outdated information listed on their financial disclosure reports, precluding you from counseling these SGEs in a timely manner concerning potential conflicts of interest. We found that of the 13 SGE members who attended the February meeting, only 3 members filed the OGE Form 450 after September 2004; the remaining 10 filed last in 2003. We recommend that you enforce the requirement to file follow-on new entrant

reports annually before any advice is rendered or before the first meeting of the year in accordance with 5 C.F.R. § 2634.903(b)(1) and (3).

Our examination of the process for screening Panel members for potential conflicts of interest disclosed that the process appeared to be adequate. We examined the August 10, 2004 Panel meeting and found that all five panelists completed the Conflict of Interest Statement. Our examination of the meeting minutes disclosed that one panelist disqualified himself from reviewing an application in which he had an interest by leaving the room.

FINANCIAL DISCLOSURE SYSTEMS

NEH's financial disclosure systems need improvement. NEH has outdated written procedures detailing the public and confidential financial disclosure report filing, review, and retention requirements. We recommend that you establish current written procedures relating to how the agency is to collect, review, evaluate, and, if applicable, make publicly available, financial disclosure statements, in accordance with section 402(d)(1) of the Ethics Act.

Public Financial Disclosure

NEH's public system needs improvement. To evaluate the effectiveness of the public system, we examined all 16 public reports required to be filed in 2004 by non-Presidentially-appointed, Senate-confirmed (non-PAS) filers, consisting of 14 incumbent, 1 new entrant, and 1 termination report. Our examination of the reports disclosed that, although two filers were granted extensions and one filer was granted a waiver of the late filing fee due to extraordinary circumstances, the reports were filed in a timely manner. Our examination of the review process disclosed that 14 of the 16 reports were not reviewed and certified until May 1, 2005; you informed us that the former DAEO was responsible for certifying the public reports prior to his departure. Additionally, your report, which was not yet certified, would be certified by the Deputy Chairman. Only one report was reviewed and certified in a timely manner. Our examination of the former DAEO's report and the one PAS report required to be filed in 2004 disclosed that they were filed in a timely manner; however, neither report was certified prior to transmission to OGE, raising a question as to whether they had been reviewed by NEH (OGE requested that NEH certify the two reports and it did so). The lack of timely reviews of the reports precludes you from counseling filers in a timely manner concerning potential conflicts of interest. We recommend that you ensure that all public reports are reviewed and certified timely in accordance with 5 C.F.R. § 2634.605.

Confidential Financial Disclosure

NEH's confidential system also needs improvement. You were unable to locate 6 of the 74 annual reports required to be filed in 2004 by covered employees who were not SGEs. You informed us that four reports were misfiled, one report was filed after our fieldwork, and one report was never filed. We examined a sample of 50 of the 68 available reports and found that 4 of the 50,

all annual reports, were filed late. Although one OGE Form 450 filer submitted an OGE Optional Form 450-A, you informed us that you could not collect the OGE Form 450 as the filer had terminated. We also found that the reports were reviewed and certified in a timely manner. Although we found one filer who listed assets that could pose potential conflicts, you informed us that the filer disqualifies himself from particular matters involving those assets. There was no written record of the disqualification, as a written record was not required by NEH's supplemental regulation or otherwise required. We recommend that you collect the missing report and ensure that all confidential financial reports are filed in a timely manner in accordance with 5 C.F.R. § 2634.909(c).

EDUCATION AND TRAINING

Initial ethics orientation materials were out of date. NEH's superseded residual standards of conduct regulation was included with the initial ethics orientation materials provided to new employees. When we brought this to your attention, you replaced the residual standards with NEH's supplemental regulation to bring the materials up to date.

We were unable to determine whether all covered employees completed their annual ethics training. You informed us that annual ethics training was provided to employees via an e-mail instructing them to take an ethics quiz located on the Intranet and informing them that you were available to answer questions. The topic of the quiz was the Standards of Ethical Conduct for Employees of the Executive Branch (Standards). However, you informed us that you did not keep a copy of the e-mail; you did not determine whether the employees opened the mail; and you did not require employees to certify completion of the quiz. Nonetheless, we examined a copy of an e-mail encouraging all employees to attend an in-house Hatch Act Training seminar conducted on April 2, 2004 by an attorney with the U.S. Office of Special Counsel. We recommend that you develop a method of tracking training to ensure that all covered employees complete their annual ethics training as required by 5 C.F.R. §§ 2638.704 and 2638.705.

Finally, you did not develop a written plan for annual ethics training which was required to be completed by the beginning of the calendar year. However, you advised us that you plan to develop another quiz and a new topic. We recommend that you immediately develop a written ethics training plan and ensure that one is developed by the beginning of each calendar year as required by 5 C.F.R. § 2638.706.

COUNSELING AND ADVICE

To evaluate the quality of advice provided to NEH employees, we examined a sample of 20 pieces of advice. Topics covered in the sample included gifts from outside sources, misuse of position, post-employment, outside activities, and seeking other employment. We found the advice appeared to be comprehensive and in compliance with the ethics laws and regulations. You informed us that you try to provide ethics advice by e-mail, so as to have a written record of advice

rendered. However, some advice is given orally. Post-employment advice is provided to departing employees in a briefing.

ETHICS AGREEMENTS

The Chairman and Council members have written recusal agreements to disqualify themselves from matters that pose a potential conflict of interest. The Chairman has a screening arrangement designed to ensure that matters involving entities in his recusal agreement are not brought to his attention. As discussed in the SGE section, the 13 SGE Council members who met in February 2005 had written disqualification statements which preclude them from participating, discussing, advising, or voting on matters involving those entities. Prior to each Council meeting, a list of Council members' affiliations is compiled and used to ensure that Council members do not participate in matters that would pose potential conflicts of interest.

TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

Travel payments under 31 U.S.C. § 1353 appeared to be properly accepted, despite a lack of documentation of the process for accepting the payments. Although we were unable to find a record of a conflicts analysis for the five travel payments accepted for the period covering October 1, 2003 through March 31, 2004, you informed us that travel payments were analyzed for conflicts by employees who have since left the agency. You informed us that the process for accepting travel payments consists of the invitation being forwarded to the Office of General Counsel, a conflicts analysis being done, and approval or disapproval by the DAEO. We found that the types of meetings consisted of workshops, a conference, and an Intergovernmental Personnel Act assignment. In the future, you plan to document the process.

However, NEH has not been consistent in forwarding semiannual reports to OGE in a timely manner. OGE received a negative semiannual report for the period covering April 1, 2004 through September 30, 2004 on December 14, 2004. The report should have been received at OGE by November 30. The negative semiannual report for the period covering October 1, 2004 through March 31, 2005 was received in a timely manner on May 27, 2005.

ENFORCEMENT

Ethics and Office of Inspector General officials stated that an effective working relationship and good communications exist between the respective offices. No alleged violations of the Standards or the criminal conflict of interest statutes by NEH employees have occurred within the last year. However, officials in both offices assured us that prompt and effective action would be taken in the event of any alleged violations and that OGE would be concurrently notified of the referral to the Department of Justice for prosecution of alleged violations of the conflict of interest statutes.

RECOMMENDATIONS

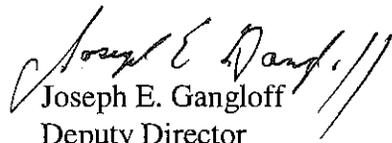
To bring NEH's ethics program into general compliance with ethics laws and regulations, we recommend that the agency:

1. Make available adequate resources to enable NEH to administer its program in a positive and effective manner in accordance with 5 C.F.R. § 2638.202(a).
2. Include sections for the supervisor's dated approval and the DAEO's dated approval on the outside activity request forms in order to ensure that an employee obtains written approval from his or her immediate supervisor and you before engaging in any outside employment with a prohibited source, as required by NEH's supplemental regulation.
3. Enforce the requirement for Council members to file follow-on new entrant confidential reports annually before any advice is rendered or before the first Council meeting of the year in accordance with 5 C.F.R. § 2634.903(b)(1) and (3).
4. Establish current written procedures relating to how the agency is to collect, review, evaluate, and, if applicable, make publicly available, financial disclosure statements in accordance with section 402(d)(1) of the Ethics Act.
5. Ensure that all public reports are reviewed and certified timely in accordance with 5 C.F.R. § 2634.605.
6. Collect the missing confidential financial disclosure report and ensure that all confidential financial reports are filed in a timely manner in accordance with 5 C.F.R. § 2634.909(c).
7. Develop a method of tracking training to ensure that all covered employees complete their annual ethics training as required by 5 C.F.R. §§ 2638.704 and 2638.705.
8. Immediately develop a written ethics training plan for the current year and ensure that one is developed by the beginning of each calendar year as required by 5 C.F.R. § 2638.706.

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In closing, we wish to thank you and your staff for your efforts on behalf of the ethics program. Please advise me within 60 days of the specific actions planned or taken concerning the recommendations in our report. A follow-up review will be scheduled within six months from the date of this report. In view of the corrective action authority vested with the Director of OGE under subsection 402(b)(9) of the Ethics Act, as implemented in subpart D of 5 C.F.R. part 2638, it is important that you take actions to implement our recommendations in a timely manner. A copy of this report is also being sent to NEH's Inspector General. Please contact Gina Noe Todorovich at 202-482-9316, if we may be of further assistance.

Sincerely,


Joseph E. Gangloff
Deputy Director
Office of Agency Programs

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