



U.S. Office of Government Ethics
Program Review Division

Ethics Program Review

Armed Services Board of Contract Appeals

Report No. 12-49
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Results in Brief

The United States Office of Government Ethics (OGE) conducted a review of the Armed Services Board of Contract Appeals (ASBCA) ethics program in February 2011. OGE continues to find ASBCA's ethics program in compliance with applicable statutes and regulations.

Highlights

- OGE found the Disqualification Statements completed by employees who file financial disclosure reports to be an appropriate precaution to help clarify even further which non-Federal entities represent a conflict of interest to any given employee.
- ASBCA requires non-filers to receive annual ethics training.

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

Program Administration

ASBCA is an independent agency whose primary function is to hear and decide on post-award contract disputes between government contractors and the Department of Defense (DOD); the National Aeronautics and Space Administration; the Central Intelligence Agency, as appropriate; and other entities with whom the agency has entered into agreements to provide services. Headquartered in Falls Church, VA, ASBCA has 43 full-time employees, the majority of whom are attorneys designated as Administrative Judges. Appointed from among them are a Chairman and two Vice Chairmen who are responsible for providing agency leadership.

The ethics program at ASBCA is administered by the Chief Counsel, who serves as the agency's DAEO, and by the Executive Director who serves as the ADAEO. Together they share responsibility for the day-to-day administration of the program as a collateral duty.

At the time of fieldwork, OGE learned that the DAEO was preparing to retire from Government service by the end of 2012. As discussed during the review, OGE considers succession planning to be a model practice. When properly implemented, it can help ensure that an ethics program is consistently successful through transitions in ethics staff. As ASBCA prepares to shift duties, such as certifying financial disclosure forms, providing training, and rendering counseling, from the DAEO to the ADAEO and/or other ethics staff, OGE's Desk Officer Team assigned to ASBCA stands ready to provide expertise and advice to assist the agency during this upcoming transition.

Agency Leadership Support

In connection with this review, OGE met with the Chairman to discuss the scope of the review and the critical role that agency leadership plays in implementing an effective ethics program, in accordance with 5 CFR § 2638.202(a). OGE considers leadership involvement in an agency ethics program to be a model practice and was pleased with the Chairman's commitment to and support of the ethics program by: 1) meeting with the OGE review team during the course of the agency's onsite ethics program review; 2) communicating constantly with the ethics staff on pertinent ethical issues and 3) demonstrating the importance of the agency's ethics training program by supporting that non-filers be annually trained to help highlight ethical vulnerabilities specific to the agency.

Financial Disclosure Systems

ASBCA's financial disclosure program for both public and confidential filers is centrally administered by the DAEO and ADAEO. ASBCA has 24 public financial disclosure filers and five confidential filers. Both programs are administered using the procedures and guidelines contained in 5 CFR part 2634 as implemented by Chapter 7 of DOD's Joint Ethics Regulation (JER). Because of the high visibility of the filers accompanied by the JER's comprehensive procedures, OGE reviewers were assured that any additional process was unnecessary.

For the 2011 annual filing cycle, ASBCA implemented the Department of Army's Financial Disclosure Management System mandating electronic filing for the first time for both public and confidential filers. Filers were instructed to prepare, digitally sign and submit their reports electronically to ethics officials for review and certification.

To evaluate the effectiveness of the financial disclosure program, OGE examined all 29 financial disclosure reports required to be filed in 2011. Based on our examination, each report was timely filed and reviewed appropriately for conflicts. We also found the Disqualification Statements completed by employees who file disclosure reports to be an appropriate precaution, given the nature of the filers' duties. This document serves to clarify even further which non-Federal entities represent a conflict of interest to any given employee. OGE considers this to be a model practice.

Education & Training

OGE found ASBCA's education and training program to exceed the minimal training requirements found at subpart G of 5 CFR part 2638.

Initial Ethics Orientation

Within the first week a new employee begins work at ASBCA, the DAEO ensures that OGE's initial ethics orientation (IEO) requirement is met. A binder of ethics material which satisfy the content requirements of 5 CFR § 2638.703(a) is provided to new employees and as required, a minimum of one hour of official duty time is provided to study the material. Since the number of new employees is generally small from year-to-year, ethics officials also individually meet with each new employee to help answer any questions. In 2011, eight new employees received IEO training.

Annual Ethics Training

ASBCA provides training annually to all its employees. To satisfy the annual training requirement in 2011, employees viewed the 2011 annual ethics training presentation developed by Department of Defense Office of General Counsel's Standards of Conduct Office (DOD SOCO). This training covered the content requirements of 5 CFR § 2638.704 (b). Employees were required upon conclusion of training to verify annual ethics training by signing the certificate of completion and returning it to with the ASBCA ethics officials. OGE reviewed the certificates and confirmed that all employees were trained in 2011.

Advice & Counsel

Pursuant to 5 CFR § 2638.203(b)(7) and (8), both the DAEO and ADAEO are responsible for providing ASBCA employees with advice and counseling on all ethics-related matters, including post-employment. Ethics officials communicate frequently throughout the day as they approach all counseling and ethics-related situations. Employees are encouraged to contact ethics officials via all forms of communication, including e-mail, telephone, and in-person. However, most

inquiries are made and counseling generally rendered in-person and memorialized when appropriate.

OGE examined a sample of the e-mail counseling dispensed to ASBCA employees on issues relating to widely-attended gatherings, and the appropriate use of official titles and disclaimers on written publications. OGE found the counseling rendered to be accurate and rendered in a timely fashion.

Enforcement

ASBCA does not have its own Inspector General nor does the agency utilize the services of an outside investigative organization to help ensure that certain program elements described at 5 CFR § 2638.203(b)(11) and (12) are carried out. Instead, the role of investigating misconduct is the responsibility of ASBCA ethics officials.¹ In the event ASBCA is required to make a criminal referral to the Department of Justice or to investigate an alleged ethics violation prior to considering appropriate disciplinary or corrective action against an employee, the DAEO or the ADAEO would be responsible for doing so.

According to ethics officials, referrals of alleged violations of the conflict of interest laws have not been made to the Department of Justice nor have disciplinary actions been taken for violations of the standards of conduct during the time period associated with this review.

Suggestion

- While OGE regulations do not require agencies that do not have its own Inspector General to utilize the services of an outside investigative organization, OGE suggest that ASBCA consider doing so. OGE considers this to be a model agency practice and could be done by means of a memorandum of understanding with an investigative organization to provide investigatory services to ASBCA for potential ethics violations. OGE's Desk Officer Team would be happy to work with the DAEO regarding this endeavor.

1353 Travel Acceptances

ASBCA permits its employees to accept payments from non-Federal sources for travel, subsistence, and related expenses incurred on official travel under the authority of the General Services Administration (GSA) regulation at 41 CFR chapter 304, implementing 31 U.S.C. § 1353. Ethics officials are responsible for reporting semiannually to OGE payments of more than \$250 per event.

In ASBCA's last two semiannual travel reports covering the periods from October 1, 2010 – March 31, 2011 and April 1, 2011 – September 30, 2011, there were four and two payments, respectively. During our examination of the October 1, 2010 - March 31, 2011 semiannual

¹ OGE was advised that since DOD is a party litigant before the ASBCA, the DOD Inspector General's office does not have an oversight relationship with the agency.

report, however, we noticed there were two instances of travel acceptances totaling less than \$250 included on the report. Accordingly, we reminded the DAEO that semiannual reports forwarded to OGE must only include travel payments totaling more than \$250 per event. As these reports are available for public inspection, they should contain no more information than what is required. OGE was assured that only payments meeting the required reporting threshold will hereafter be included on future ASBCA semiannual travel reports.

Agency Comments

The ASBCA appreciates the assistance of the Department of Defense and the Office of Government Ethics in support of our continuing efforts to maintain the special trust placed in our administrative judges and inherent in the adjudicative process.