



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

July 1, 2005

Karen L. Elias
Designated Agency Ethics Official
National Endowment for the Arts
1100 Pennsylvania Avenue, NW., Room 518
Washington, DC 20506

Dear Ms. ^{Karen} Elias:

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

HIGHLIGHTS

Since OGE's last report in 1999, NEA continues to have a generally strong and viable ethics program. We did find that the financial disclosure reports of members of one of NEA's advisory committees had been misplaced and members of another committee did not file reports. However, you addressed these problems prior to the end of the fieldwork. Also, we made a few suggestions concerning the processes for approving outside employment and travel payments from non-Federal sources, which you said that you have either implemented or will consider implementing.

PROGRAM STRUCTURE

The current staffing level appears to be appropriate considering the size of the agency and your ability to allocate the appropriate time and effort to the ethics program. The ethics program is administered within the Office of General Counsel. You have served as the Designated Agency Ethics Official (DAEO) since 1991, and perform all elements of the ethics program in addition to your other duties. The Alternate DAEO acts as your backup and one administrative employee occasionally assists you.

SUPPLEMENTAL REGULATION

With concurrence from our Office, NEA issued a supplement to the Standards of Ethical Conduct for Employees of the Executive Branch (Standards). Section 6501.102 requires employees to obtain prior written approval to engage in any outside employment involving a prohibited source. Employees are required to obtain written approval from their immediate supervisor as well as from you. Outside employment requests and approvals were included in our examination of written

advice described in the "Counseling and Advice" section below. Prior to our review, employee requests were often e-mailed to you, you responded to the requester, and you sent a copy of your response to the immediate supervisor. However, you informed us that since our review, employees are now required to receive prior approval from their supervisor before seeking your approval. We agree with this new process since it complies with § 6501.102 (as well as reflecting the fact that supervisors are generally in a better position to know whether the outside employment will interfere with the employee's official time or pose a conflict of interest).

SPECIAL GOVERNMENT EMPLOYEES

NEA has four advisory committees created under the Federal Advisory Committee Act (FACA)—the Arts Advisory Panel (AAP), the Federal Advisory Committee on International Exhibitions (FACIE), the National Council on the Arts (NCA), and the President's Committee on the Arts and Humanities (PCAH). We identified problems related to these committees, which NEA addressed prior to the end of our fieldwork.

FACA Committees	SGEs	Non-SGEs
Arts Advisory Panel	161	0
Federal Advisory Committee on International Exhibitions	3	0
National Council on the Arts	13	7
President's Committee on the Arts and the Humanities	26	13

In 1992 and 1994, OGE approved NEA's use of a substitute confidential financial disclosure (Alternative) report format, in lieu of the OGE Form 450, for the panel reviewers of AAP and FACIE and the SGE members of NCA, respectively.

Our examination of the collection and maintenance of the Alternative reports disclosed that most reports were filed prior to each meeting. Although a few reports were misplaced, they have since been located. We selected a sample of 177 Alternative reports filed by panelists for 25 of the 60 sub-panel meetings held by AAP during 2004-2005 and found that 5 reports could not be located. You informed us that, to avoid future misplacing of any Alternative reports, all Alternative reports would be maintained centrally under your control. We examined the one FACIE teleconference meeting that took place in 2004 and found that no reports were filed by FACIE's three members. You informed us that FACIE members would be required to file prior to the next meeting in 2005. We examined the Alternative reports filed by members of NCA for its March 2005 meeting and found that all 13 members had filed their reports prior to the meeting.

With regard to PCAH, you informed us that the SGEs were excluded from filing in 2004 because the duties of their positions made remote the possibility that they would be involved in a real or apparent conflict of interest. Nonetheless, you expressed your concern about providing a blanket exclusion determination since, for future meetings, the SGE members' duties might change. We

suggested that you analyze the agenda prior to each meeting and determine whether the SGE members are required to file, and you agreed to implement this suggestion.

In addition, our examination of the process for screening AAP sub-panelists and NCA members for potential conflicts of interest disclosed that the process appeared to be adequate. We examined a sample of two AAP panel meetings—one held in November 2004 and another held in January 2005. We compared the 23 outside affiliations listed by nine panelists on their Alternative reports with the 105 applications for Multidisciplinary grants and we compared the 28 outside affiliations listed by six panelists with 90 applications for Arts on Radio and Television grants. We found no conflicts. In addition, we examined the March 2005 NCA meeting, comparing the Alternative reports with the grant applications, which disclosed that 10 of the 13 SGE members disqualified themselves from discussing and voting on 42 of 2,025 applications. Again, we found no conflicts.

PUBLIC SYSTEM

NEA's public financial disclosure system appears to be well managed and maintained. NEA's comprehensive written Financial Disclosure Review Policy details the public financial disclosure report filing, review, and retention requirements. We examined all 14 public reports required to be filed since January 2004 with the exception of your report and the Chairman's report, which were filed, reviewed, and transmitted to OGE in a timely manner. Our examination of 11 incumbent, 2 new entrant, and 1 termination reports disclosed that the reports generally were filed in a timely manner; however, one new entrant filer who filed late paid the \$200 late filing fee in accordance with 5 C.F.R. § 2634.704. Our examination of the review process disclosed that the reports were both timely and thoroughly reviewed. We were impressed with the thoroughness of the review as indicated by your annotations in the comment section of the reports. Finally, we found that of the three filers who reported outside employment, two received prior approval and one did not require approval.

CONFIDENTIAL SYSTEM

NEA's confidential system for covered employees who are not SGEs appears to be well managed and maintained. NEA's comprehensive written Financial Disclosure Review Policy details the confidential financial disclosure report filing, review, and retention requirements. We examined all 45 OGE Form 450s required to be filed in 2004, including five new entrant reports. We found that of the 45 reports, a new entrant report was filed late; nonetheless, it appears that the new employee notification process appears to be sufficient, since the other new entrant reports were timely filed and you immediately followed up to collect the late report. Our examination of the review process disclosed that the reports were both timely and thoroughly reviewed. Again, we were impressed with the thoroughness of ethics officials' review of the reports. Finally, we found that although two filers reported outside employment, neither required prior approval.

EDUCATION AND TRAINING

You generally provide initial ethics orientation to new full-time employees in person. The orientation covers the Standards, the supplemental regulation, frequently asked questions, and access to OGE information. New employees also receive a condensed version of the Standards, and in the future they will also be receiving a copy of NEA's supplemental regulation. You provide written or verbal initial ethics orientation materials to SGEs prior to outset of their service. In addition, you also provide all employees with an in-person exit briefing that covers post-employment issues as part of the employee out-processing.

You determined that all NEA employees are required to receive annual ethics training, pursuant to 5 C.F.R. § 2638.705(a)(6). You have made this determination because the work at NEA often requires teamwork. Public filers receive one hour of verbal training either in-person or electronically. Moreover, you assure that the Chairman receives one-on-one confidential advice as needed. All other full-time employees complete a one-hour ethics quiz on the Intranet. You are available by telephone, email, and in-person to answer questions from all employees. Employees notify you when they complete their training, which you track using an all-employee list. Our examination of this list indicated that all employees received ethics training for 2004. You also provide written ethics training materials to SGEs prior to each meeting. Varying the topic, you plan to provide similar training for 2005. We commend you for keeping all employees interested in the ethical issues that may occur during their tenure at NEA.

COUNSELING AND ADVICE

You informed us that most ethics advice is provided through e-mail. However, oral advice is provided in more routine cases. We examined a sample of 51 written determinations during 2004 and 2005 up to the beginning of our fieldwork. The advice appeared to be comprehensive and in compliance with the ethics laws and regulations. Topics covered in the sample included gifts from outside sources, gifts between employees, conflicting financial interests, travel payments, outside writing and speaking, post employment, widely attended gatherings, and prior approval of outside activities.

ETHICS AGREEMENTS

There were no ethics agreements made within the last year.

ACCEPTANCE OF TRAVEL PAYMENTS

NEA has comprehensive written procedures to accept travel payments from non-Federal sources under 31 U.S.C. § 1353. As part of that process, employees forward invitation letters to you for conflicts analyses, after which you may approve their travel authorizations.

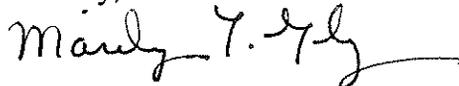
We examined the seven payments listed on NEA's semiannual report to OGE of payments of more than \$250 per event for the period ending September 30, 2004, which was timely forwarded to OGE. We found that the types of travel consisted of attendance at assemblies, commencements, conferences, and lectures. Although you informed us that you performed conflicts analyses for all of the payments approved by supervisors, we could only find three of seven approvals for which there was any indication of an analysis having been performed. We suggested that a single form be used to simplify and unify the process and ensure that the analyses are documented. Moreover, we provided you with another agency's form as an example, and you agreed to consider adopting it or a similar form for NEA's use.

ENFORCEMENT

Both the DAEO and Inspector General (IG) indicated that an effective working relationship and good communications exist between the respective offices overall and, in particular, on matters concerning violations of the Standards or the criminal conflict of interest laws. There have been no alleged violations of the laws or any ethics regulations during 2004 and 2005 up to the end of our fieldwork.

In closing, we wish to thank you for your efforts on behalf of the ethics program. A copy of this report is also being sent to NEA's Inspector General. Please contact Jean Hoff at 202-482-9246, if we may be of further assistance.

Sincerely,



Marilyn L. Glynn
Acting Director