



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

Ed P

November 23, 2005

The Honorable Jan Tuck  
Chair  
Architectural and Transportation Barriers  
Compliance Board  
Suite 1000  
1331 F Street, NW.  
Washington, DC 20004-1111

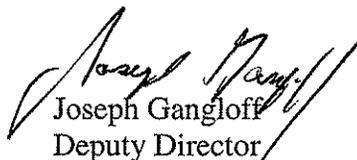
Dear Ms. Tuck:

The Office of Government Ethics (OGE) has completed a review of the ethics program at the Architectural and Transportation Barriers Compliance Board (the Access Board). The review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended. Our objective was to determine the ethics program's compliance with applicable statutes and regulations. We also evaluated the Access Board's systems and procedures for ensuring that ethics violations do not occur.

The Access Board's ethics program generally complies with the applicable statutes and regulations. Indeed, certain aspects of the education and training element of the program exceed the minimum regulatory requirements.

At this time, OGE has no formal recommendations for improving the ethics program. I have enclosed a copy of the report for your information. Please call me at 202-482-9220, if you wish to discuss this report.

Sincerely,

  
Joseph Gangloff  
Deputy Director  
Office of Agency Programs

Enclosure



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

November 23, 2005

James Raggio  
Designated Agency Ethics Official  
Office of the General Counsel  
Architectural and Transportation Barriers  
Compliance Board  
Suite 1000  
1331 F Street, NW.  
Washington, DC 20004-1111

Dear Mr. Raggio:

The Office of Government Ethics (OGE) has completed its review of the ethics program at the Architectural and Transportation Barriers Compliance Board (the Access Board). This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended. Our objective was to determine the ethics program's compliance with applicable statutes and regulations. We also evaluated the Access Board's systems and procedures for ensuring that ethics violations do not occur. The review was conducted in September 2005. The following is a summary of our findings and conclusions.

## HIGHLIGHTS

The Access Board's ethics program generally complies with the applicable statutes and regulations. Indeed, certain aspects of the education and training element of the program exceed the minimum regulatory requirements.

## BACKGROUND

The Access Board, an independent Federal agency, develops guidelines and standards on design that is accessible to persons with disabilities. The Access Board is headed by a board which consists of 12 ex officio Federal members from various departments and agencies and 13 members of the public who serve as special Government employees (SGE).<sup>1</sup> The public members are appointed by the President, without Senate confirmation, to serve for four-year terms. All members may vote on matters before the board.

Additionally, each of the 12 departments and agencies from which the ex officio Federal members come are represented by a Federal liaison. The 12 liaisons represent the ex officio

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<sup>1</sup> At the time of our review, there were two vacancies in the ex officio Federal positions for the Departments of Defense and Justice. Additionally, the United States Postal Service ex officio position will be vacant due to the upcoming retirement of the current occupant.

Federal members in the day-to-day work of the Access Board. They do not vote on matters at board meetings. Therefore, the Access Board determined that the liaisons are not required to submit financial disclosure reports.

## PROGRAM STRUCTURE

The number of personnel assigned to administer the ethics program appears adequate. The ethics staff includes you, as the Designated Agency Ethics Official (DAEO), and the Alternate DAEO (ADAEO). In addition to being the DAEO, you serve as the General Counsel; the ADAEO serves as the Deputy General Counsel.<sup>2</sup>

## FINANCIAL DISCLOSURE SYSTEMS

The financial disclosure systems generally comply with the provisions of 5 C.F.R. part 2634. A master list of financial disclosure report filers is used to track the filing and review dates for each filer's report. A list of contractors and pending rules is used in reviewing reports to assess whether any conflicts of interest exist.<sup>3</sup>

### Public Financial Disclosure

We examined all three public financial disclosure reports required to be filed in 2005; all were submitted by incumbent filers. The reports were filed and reviewed in a timely manner.<sup>4</sup> We note that your 2005 incumbent public report was forwarded to OGE in a timely manner for final review and certification.<sup>5</sup> While minor technical errors were found, we did not uncover any substantive deficiencies.

Prior to our review, the Access Board had ceased to request copies of the 12 ex officio Federal members' public reports. We are pleased that the Access Board has agreed to resume its annual request for copies of the reports filed by the ex officio Federal members. Indeed, in October 2005, the Access Board submitted formal requests to OGE and two parent agencies for

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<sup>2</sup> The ADAEO will leave the employ of the Access Board in January 2006. Her replacement will become the new ADAEO.

<sup>3</sup> However, the Access Board does not employ contracting officers. The Department of the Treasury's Bureau of the Public Debt handles contracting duties for the Access Board.

<sup>4</sup> All public reports lacked the date of agency receipt. In accordance with 5 C.F.R. § 2634.605(a), the date of receipt must be noted on the reports. Therefore, we based the timeliness of filing and review on the dates of the filers' and reviewing officials' signatures.

<sup>5</sup> The Access Board does not employ Presidential appointees confirmed by the Senate; therefore, your DAEO report is the only public report the Access Board is required to forward to OGE every year.

copies of the public reports filed by 10 ex officio Federal members;<sup>6</sup> the Access Board received the reports. Based on the actions taken to handle this issue, we do not believe a recommendation is necessary.

### Confidential Financial Disclosure

We examined a sample of 13 of the 14 confidential reports required to be filed from January 2004 through August 2005;<sup>7</sup> one annual report (filed by a regular employee) and 12 new entrant reports (filed by public board member SGEs) were examined.<sup>8</sup> All reports in our sample were filed and reviewed in a timely manner. We noted that annotations on the reports, which denoted follow-up with filers, indicated that the Access Board performed a thorough review of the reports. While minor technical errors were found, we did not uncover any substantive deficiencies.

### ETHICS AGREEMENTS

No employees entered into written ethics agreements.

A combined total of two 18 U.S.C. § 208(b)(1) waivers were issued to two public board members in 2003 and 2005. The Access Board coordinated with its OGE Desk Officer prior to issuing the waivers. As required, OGE received copies of the waivers. However, OGE's copies, which were submitted via e-mail to the appropriate Desk Officer, lacked the signature and date from the issuing official. As a result of our review, OGE's files have been updated with complete copies of the waivers issued in 2003 and 2005. We are pleased that the Access Board has agreed to submit copies of future final waivers which include the signature and date from the issuing official.

No other remedial actions, such as divestiture, were taken by financial disclosure report filers.

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<sup>6</sup> When the vacant ex officio Federal positions are filled by the parent agencies, the Access Board will need to obtain copies of the new members' financial disclosure reports prior to their participation in their first board meeting and on an annual basis thereafter.

<sup>7</sup> We excluded from our sample the new entrant report filed by a new board member in September, which was in the process of being reviewed.

<sup>8</sup> Incumbent public board members file follow-on new entrant reports in December, while new board members file new entrant reports within 30 days of beginning their service with the Access Board.

## TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

We examined all 33 travel payments of more than \$250 per event reported to OGE for the period covering April 1, 2004 through March 31, 2005.<sup>9</sup> The acceptances generally appeared to comply with 31 U.S.C. § 1353 and 41 C.F.R. chapter 304.

The Access Board requires the traveler's unit head to sign-off on a travel payment approval form prior to routing the sponsoring organization's reimbursement letter to you. You perform a conflict of interest analysis and sign-off on the approval form, after which the form is routed to the Executive Director for final approval.

Two issues arose during our examination of the travel payments. First, we could not locate one approval form in the files. You speculated that the form was likely misfiled. After examining a list used to track the payments, we found that you had indeed signed-off on the payment in question.

Second, we noticed that the conflict of interest analysis on one payment was performed by the Executive Director. Both you and the ADAEO were out of the office at the same time. In the absence of both ethics officials, the Executive Director performs the conflict of interest analysis and signs-off on the payment in the ethics official's place, after which he again signs-off to provide final approval.

## SPECIAL GOVERNMENT EMPLOYEES

The 13 public board members serve as SGEs. They were designated as SGEs based on the frequency and duration of board meetings and travel days. The board members usually meet every other month for three days at a time and travel for one day per meeting; therefore, they generally work 24 days per year. Some board members also attend meetings held by a Federal advisory committee which meets four times per year for two days at a time. Even taking these committee meetings into account, the number of days worked is well under the limitation set out at 18 U.S.C. § 202(a), which defines an SGE, in part, as an employee who is appointed to work for no more than 130 days during any period of 365 consecutive days.

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<sup>9</sup> Because the Access Board mainly receives travel payments via reimbursement, rather than through in-kind payments, the semiannual reports submitted to OGE may list payments which appear to fall outside of the reporting periods. However, the Access Board correctly waits to report the payments until reimbursement is received from the sponsoring organizations.

## FEDERAL ADVISORY COMMITTEES

The Access Board is responsible for providing support to two committees established under the Federal Advisory Committee Act.<sup>10</sup> The Access Board solicited nominations of organizations to the committees via Federal Register notices; the organizations selected their own representatives to the committees. The notices specifically state that members serve as representatives of their organizations, not as individuals. Furthermore, the notices state that members will not be compensated for their service, will not be considered SGEs, and will not be required to file confidential financial disclosure reports. Based upon our examination of the notices and charters, we believe the Access Board properly designated committee members as representatives, not SGEs.

## ENFORCEMENT

The Access Board does not have an inspector general's office. The Office of General Counsel would investigate alleged ethics violations. No apparent violations of the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) took place and no alleged criminal conflict of interest violations were referred to the Department of Justice (DOJ) from January 2004 through August 2005. In the event of a referral, the ethics officials would be responsible for making the referral to DOJ and providing concurrent notification to OGE of the referral and its disposition.

## ADVICE AND COUNSELING

Advice is rendered verbally, either in-person or over the phone, approximately five or six times per year. Gifts (e.g., the \$20 gift rule) and not using public office for private gain (e.g., not using one's status as a board member to gain business in a private capacity) are popular topics of inquiry.

## EDUCATION AND TRAINING

The education and training program complies with the provisions of 5 C.F.R. part 2638. Moreover, certain aspects of the Access Board's education and training program exceed the regulatory requirements.

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<sup>10</sup> The charter for the Public Rights-of-Way Access Advisory Committee states that "[t]he Committee shall advise the Access Board on issues related to developing accessibility guidelines and technical assistance materials for public rights-of-way." The charter for the Courthouse Access Advisory Committee states that "[t]he Committee shall advise the Access Board on issues related to the accessibility of courthouses, particularly courtrooms...."

### Initial Ethics Orientation Program

The initial ethics orientation (IEO) program complies with the provisions of 5 C.F.R. § 2638.703.

New public board members are provided with both a written and an in-person IEO. A memorandum provides instructions on how to access the 14 Principles of Ethical Conduct (14 Principles), the Standards, and a summary of ethics laws applicable to public board members. The memorandum also provides the ethics officials' contact information. The 14 Principles and the summary of ethics laws applicable to public board members are contained in the Board Member Manual.<sup>11</sup> A copy of the Standards is provided at the orientation for new board members and a link to access them on OGE's Web site is provided in the memorandum. New public board members certify their receipt of the written materials. At the in-person new board member orientation, information on financial disclosure and ethics laws is provided. We note that the Access Board exceeded the minimum regulatory requirement by providing both written and in-person IEO to new public board members.

At the time of our review, no new regular employees had been hired in the past five years. However, three new regular employees may be hired in 2006. They would receive, at a minimum, written IEO materials comprised of the 14 Principles, the Standards, and ethics officials' contact information. The new employees would be required to certify receipt of their IEO materials.

### Annual Ethics Training Program

The Access Board's annual ethics training (AET) program complies with the provisions of 5 C.F.R. §§ 2638.704 and 2638.705.

In 2004, public board members received written AET. They received the 14 Principles, a summary of ethics laws applicable to public board members, and your contact information via a memorandum sent out in November. With the possible exception of the ADAEO, regular covered employees completed at least one of OGE's computer-based training modules to satisfy the AET requirement; no evidence was presented to us to confirm the ADAEO's completion of a computer-based training module. However, the ADAEO still satisfied the AET requirement through her attendance at the additional ethics training session which was held at a staff meeting.

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<sup>11</sup> The Board Member Manual was first issued by the Access Board in May 2005. The intent was to provide basic information about the Access Board to new board members and a reference to current board members. We commend the Access Board for underscoring the importance of ethics by including ethics information in the Manual.

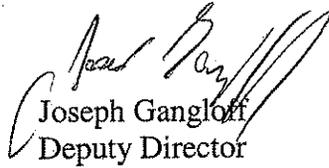
Additional Ethics Training

Every year, ethics issues are discussed at a staff meeting attended by all regular employees, including those who are not financial disclosure report filers. You stated that, in 2005, all employees were trained on the 14 Principles, the Standards, and the criminal conflict of interest statutes. Additionally, they watched OGE's "Get Advice or Pay the Price" video. The video generated requests from employees for more information. Employees were e-mailed links to OGE's Web site where they could access the 2004 Conflict of Interest Prosecution Survey and brochures on gifts and conflicts of interest. We commend the Access Board for exceeding the regulatory requirement by training non-covered employees and for providing additional training opportunities to regular covered employees.

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In closing, I wish to thank the Access Board officials who were involved in this review for their cooperation on behalf of the ethics program. At this time, OGE has no formal recommendations for improving the ethics program. A copy of this report is being forwarded to the Chair of the Access Board via transmittal letter. Please contact Traci M. Quan at 202-482-9271, if we may be of further assistance.

Sincerely,

  
Joseph Gangloff  
Deputy Director  
Office of Agency Programs