

ETHICS PROGRAM INSPECTION REPORT

Agency: Advisory Council on Historic Preservation (ACHP)

Report No.: 22-421

Date: July 11, 2022

Period Covered by Review: January 1, 2021, through February 24, 2022

**UNITED STATES OFFICE OF
GOVERNMENT ETHICS**Preventing Conflicts of Interest
in the Executive Branch

1.0	AGENCY DATA	
	EMPLOYEES	
1.1	Number of full-time agency employees.	40
1.2	Number of Presidentially appointed, Senate-confirmed (PAS) public financial disclosure reports required to be filed.	1
1.3	Number of non-PAS public financial disclosure reports required to be filed.	2
1.4	Number of confidential financial disclosure reports required to be filed.	1
	ETHICS PROGRAM	
1.5	Title of Designated Agency Ethics Official (DAEO).	General Counsel
1.6	Grade level of DAEO.	15
1.7	Title of Alternate DAEO (ADAEO).	Deputy General Counsel
1.8	Grade level of ADAEO.	14
1.9	Title of the primary, day-to-day ethics program administrator.	General Counsel
1.10	Grade level of the primary, day-to-day ethics program administrator.	15
1.11	Current number of full-time ethics officials.	0
1.12	Current number of part-time ethics officials.	2
1.13	Number of reporting levels between the DAEO and the agency head.	1
	COMMENTS	
	None.	

2.0	LEADERSHIP			
	COMPLIANCE REQUIREMENTS	Yes	No	N/A
2.1	OGE has received an up-to-date designation from the agency head naming the DAEO. <i>See</i> 5 C.F.R. § 2638.107(a).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.2	OGE has received an up-to-date designation from the agency head naming the ADAEO. <i>See</i> 5 C.F.R. § 2638.107(a).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	COMMENTS			
	None.			

3.0	PUBLIC FINANCIAL DISCLOSURE (OGE Form 278e, OGE Form 278-T)			
	COMPLIANCE REQUIREMENTS	Yes	No	N/A
	The agency has written policies and procedures in place governing: <i>See</i> 5 U.S.C. app. IV, § 402(d)(1).			
3.1	• Collection of public financial disclosure reports.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.2	• Review/evaluation of public financial disclosure reports.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.3	• Public availability of public financial disclosure reports.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.4	The agency can demonstrate that late filing fees are collected or, where appropriate, waivers are issued when public filers do not timely file financial disclosure reports.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3.5	Public financial disclosure reports are securely maintained. <i>See</i> OGE/GOVT-1.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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3.6	Public financial disclosure reports are retained in accordance with the retention requirements. <i>See</i> 5 C.F.R. § 2634.603(g)(1).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.7	There is reasonable assurance that the lead human resources official or designee promptly (no later than 15 days after appointment) notifies the DAEO of all appointments to positions that require incumbents to file public financial disclosure reports. <i>See</i> 5 C.F.R. § 2638.105(a)(1).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.8	There is reasonable assurance that the lead human resources official or designee promptly (no later than 15 days after termination) notified the DAEO of terminations of employees in positions that require incumbents to file public financial disclosure reports. <i>See</i> 5 C.F.R. § 2638.105(a)(2).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DATA ANALYSIS		%		
3.9	Percentage of sampled non-PAS new entrant reports filed timely. <i>See</i> 5 C.F.R. § 2634.201(b).	None required to be filed.		
3.10	Percentage of sampled non-PAS annual reports filed timely. <i>See</i> 5 C.F.R. § 2634.201(a).	100%		
3.11	Percentage of sampled non-PAS termination reports filed timely. <i>See</i> 5 C.F.R. § 2634.201(e).	0%		
3.12	Percentage of sampled non-PAS public financial disclosure reports reviewed within 60 days of receipt. <i>See</i> 5 C.F.R. § 2634.605(a).	100%		
3.13	Percentage of sampled non-PAS public financial disclosure reports certified within 60 days of receipt. <i>See</i> 5 C.F.R. § 2634.605(a).	100%		
3.14	Percentage of sampled PAS annual reports filed timely. <i>See</i> 5 C.F.R. § 2634.201(a).	None required to be filed.		
3.15	Percentage of sampled PAS termination reports filed timely. <i>See</i> 5 C.F.R. § 2634.201(e).	0%		
3.16	Percentage of sampled PAS annual and termination reports reviewed within 60 days of receipt. <i>See</i> 5 C.F.R. § 2634.605(a).	See Reviewer Note		
3.17	Percentage of sampled PAS annual and termination reports certified within 60 days of receipt. <i>See</i> 5 C.F.R. § 2634.605(a).	See Reviewer Note		
COMMENTS				
3.0, 3.4, 3.9-3.17: ACHP has three positions whose incumbents are required to file public financial disclosure reports. These include ACHP's Chairman, Executive Officer, and DAEO. Through an oversight, the DAEO did not instruct two public filers (one a non-PAS and one a PAS employee) that they were required to submit termination reports within 30 days of leaving their positions. Therefore, neither official filed a termination report within 30 days of departing the agency. The DAEO has collected a termination report from the non-PAS employee and waived the late filing fee for this person. The DAEO continues efforts to obtain a termination report from the PAS official. 3.6: Due to COVID related restrictions on entering the office, ACHP has not been able to return to the office to destroy any reports now older than six years. OGE believes there is reasonable assurance that reports will be destroyed, as appropriate, once pandemic-related restrictions have subsided.				

4.0	CONFIDENTIAL FINANCIAL DISCLOSURE			
	COMPLIANCE REQUIREMENTS	Yes	No	N/A
	The agency has written policies and procedures in place governing: <i>See</i> 5 U.S.C app. IV, § 402(d)(1).			
4.1	• Collection of confidential financial disclosure reports.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.2	• Review/evaluation of confidential financial disclosure reports.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.3	Confidential financial disclosure reports are securely maintained. <i>See</i> OGE/GOVT-2.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.4	Confidential financial disclosure reports are retained in accordance with the retention requirements. <i>See</i> 5 C.F.R. § 2634.604.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.5	The agency's OGE-approved alternative confidential financial disclosure system complies with plans approved by OGE. <i>See</i> 5 C.F.R. § 2634.905(a).	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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4.6	There is reasonable assurance that the lead human resources official or designee promptly (no later than 15 days after appointment) notifies the DAEO of all appointments to positions that require incumbents to file confidential financial disclosure reports. See 5 C.F.R. § 2638.105(a)(1).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DATA ANALYSIS		%		
4.7	Percentage of sampled confidential new entrant reports filed timely. See 5 C.F.R. § 2634.903(b).	None required to be filed		
4.8	Percentage of sampled confidential annual reports filed timely. See 5 C.F.R. § 2634.903(a).	0%		
4.9	Percentage of sampled reports reviewed within 60 days of receipt. See 5 C.F.R. § 2634.605(a).	100%		
4.10	Percentage of sampled confidential financial disclosure reports certified within 60 days of receipt. See 5 C.F.R. §§ 2634.605(a) and 2634.909(a).	100%		
COMMENTS				
<p>4.0: ACHP has only one position whose incumbent is required to file a confidential financial disclosure report, the Director of Office of Federal Agency Programs.</p> <p>4.4: Due to COVID related restrictions on entering the office, ACHP has not been able to return to the office to destroy any reports now older than six years. OGE believes there is reasonable assurance that reports will be destroyed, as appropriate, once pandemic-related restrictions have subsided.</p> <p>4.5: ACHP does not have an OGE-approved alternative financial disclosure system.</p> <p>4.8: OGE examined the one annual confidential report required to be filed in 2021 and found that it had been filed 91 days after the applicable due date. Ethics officials attributed the late filing to disruptions caused by the sudden departure of the Chairman and subsequent distractions as the agency was coping with the loss of leadership. OGE stresses that it is important that reports are filed timely. Timely filing allows ethics officials to identify potential conflicts of interest and take appropriate action.</p>				

5.0	NOTICES TO PROSPECTIVE EMPLOYEES			
	COMPLIANCE REQUIREMENTS	Yes	No	N/A
	Written offers of employment for positions covered by the Standards of Conduct provide: <i>See</i> 5 C.F.R. § 2638.303.			
5.1	• A statement regarding the agency's commitment to government ethics.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5.2	• Notice that the individual will be subject to the Standards of Conduct and the criminal conflict of interest statutes as an employee.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5.3	• Contact information for an appropriate agency ethics office or an explanation of how to obtain additional information on applicable ethics requirements.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5.4	• Where applicable, notice of the time frame for completing initial ethics training.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5.5	• Where applicable, a statement regarding financial disclosure requirements and an explanation that new entrant reports must be filed within 30 days of appointment.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5.6	The agency has established written procedures for issuing the notice to prospective employees. <i>See</i> 5 C.F.R. § 2638.303(c).	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5.7	The agency's written procedures are reviewed by the DAEO each year. <i>See</i> 5 C.F.R. § 2638.303(c).	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5.8	The agency can demonstrate that there is an effective process for ensuring all covered employees receive the required information with their written offer of employment. <i>See</i> 5 C.F.R. § 2638.303.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
COMMENTS				
5.1-5.6: ACHP had no process for issuing notices to prospective employees prior to OGE's inspection. The inspection team advised ACHP concerning the relevant requirements. ACHP subsequently drafted appropriate written procedures and notice templates. OGE notes that written procedures are important because they would provide guidance in how to administer the ethics program in the event an agency's experienced ethics officials are unavailable.				

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5.7: The DAEO could not conduct an annual review, because ACHP did not have written procedures in place prior to OGE's inspection. However, the DAEO is now aware of the requirement.

5.8: ACHP did not provide notices to prospective employees prior to OGE's inspection.

6.0 NOTICES TO NEW SUPERVISORS**COMPLIANCE REQUIREMENTS****Yes****No****N/A**The agency must provide each employee upon initial appointment to a supervisory position with: *See 5 C.F.R. § 2638.306.*

6.1	• Contact information for the agency's ethics office.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6.2	• The text of 5 C.F.R. § 2638.103.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6.3	• A copy of, a hyperlink to, or the address of a Web site containing the Principles of Ethical Conduct.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6.4	• Other information the DAEO deems necessary.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6.5	The agency has established written procedures for supervisory ethics notices. <i>See 5 C.F.R. § 2638.306(d).</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6.6	The agency's written procedures are reviewed by the DAEO each year. <i>See 5 C.F.R. § 2638.306(d).</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6.7	The agency can demonstrate that there is an effective process for ensuring that new supervisors receive the required information within one year of appointment. <i>See 5 C.F.R. § 2638.306(b).</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

COMMENTS

6.1-6.5: ACHP had no process for issuing notices to new supervisors prior to OGE's inspection. The inspection team advised ACHP concerning the relevant requirements. ACHP subsequently drafted appropriate written procedures and notice templates. OGE notes that written procedures are important because they would provide guidance in how to administer the ethics program in the event an agency's experienced ethics officials are unavailable.

6.7: The DAEO could not conduct an annual review, because ACHP did not have written procedures in place prior to OGE's inspection. However, the DAEO is now aware of the requirement.

6.8: ACHP did not provide notices to new supervisors prior to OGE's inspection.

7.0 INITIAL ETHICS TRAINING**COMPLIANCE REQUIREMENTS****Yes****No****N/A**

Each new employee of the agency subject to the Standards of Conduct must complete initial ethics training. *See 5 C.F.R. § 2638.304.*

7.1	The training presentation(s) addressed concepts related to conflicts of interest, impartiality, misuse of position and gifts. <i>See 5 C.F.R. § 2638.304(e)(1).</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7.2	The agency provided new employees with either the following written materials or written instruction for accessing them: The summary of the Standards of Conduct distributed by the Office of Government Ethics or an equivalent summary prepared by the agency; provisions of any supplemental agency regulation that the DAEO determines to be relevant or a summary of those provisions; such other written materials as the DAEO determines should be included; instructions for contacting the agency's ethics officials. <i>See 5 C.F.R. § 2638.304(e)(2).</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7.3	The agency has established written procedures for initial ethics training. <i>See 5 C.F.R. § 2638.304(f).</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7.4	The agency's written procedures are reviewed by the DAEO each year. <i>See 5 C.F.R. § 2638.304(f).</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DATA ANALYSIS**%**

7.5	Percentage of new employees who received initial ethics training. <i>See 5 C.F.R. § 2638.304.</i>	100%
7.6	Percentage of new employees who received initial ethics training within three months of appointment. <i>See 5 C.F.R. § 2638.304(b).</i>	100%

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None.

8.0 ANNUAL ETHICS TRAINING**COMPLIANCE REQUIREMENTS****Yes****No****N/A**Each calendar year, public filers, confidential filers, and certain other employees must complete ethics training which meets specified requirements. *See* 5 C.F.R. §§ 2638.307 and 2638.308.

8.1	The training presentation(s) addressed concepts related to financial conflicts of interest, impartiality, misuse of position and gifts. <i>See</i> 5 C.F.R. §§ 2638.307(e)(1) and 2638.308(f)(1).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8.2	The agency provided employees with either the following written materials or written instruction for accessing them: The summary of the Standards of Conduct distributed by the Office of Government Ethics or an equivalent summary prepared by the agency; provisions of any supplemental agency regulation that the DAEO determines to be relevant or a summary of those provisions; such other written materials as the DAEO determines should be included; instructions for contacting the agency's ethics officials. <i>See</i> 5 C.F.R. § 2638.304(e)(2).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8.3	The agency's annual ethics training complies with the formatting requirements for public filers, confidential filers, and certain other employees. <i>See</i> 5 C.F.R. §§ 2638.307(d) and 2638.308(e).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8.4	The agency's program for annual ethics training complies with the tracking requirements for public filers, confidential filers, and certain other employees. <i>See</i> 5 C.F.R. §§ 2638.307(f) and 2638.308(g).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8.5	The agency can demonstrate it has an effective process for ensuring covered public filers, other than those whose pay is set at Level I or Level II of the Executive Schedule, complete live annual ethics training at least once every two years. <i>See</i> 5 C.F.R. § 2638.308(e)(2).	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

DATA ANALYSIS**Training Format****Live****Interactive**Percentage of public filers who completed annual ethics training before the end of the calendar year. *See* 5 C.F.R. § 2638.308(a).

8.6	• Executive Schedule Level I and Level II. <i>See</i> 5 C.F.R. § 2638.308(e)(1).	N/A	N/A
8.7	• Other PAS and Equivalent. <i>See</i> 5 C.F.R. § 2638.308(e)(2).	N/A	N/A
8.8	• SES and Equivalent. <i>See</i> 5 C.F.R. § 2638.308(e)(3).	N/A	N/A
Percentage of confidential filers and certain other employees who completed annual ethics training before the end of the calendar year. <i>See</i> 5 C.F.R. § 2638.307(a)(d).			
8.9	• Employees required to file an annual confidential financial disclosure report. <i>See</i> 5 C.F.R. § 2638.307(a)(1).	0	100%
8.10	• Employees appointed by the President. <i>See</i> 5 C.F.R. § 2638.307(a)(2).	0%	0%
8.11	• Employees of the Executive Office of the President. <i>See</i> 5 C.F.R. § 2638.307(a)(2).	N/A	N/A
8.12	• Contracting officers described in 41 U.S.C. § 2101. <i>See</i> 5 C.F.R. § 2638.307(a)(3).	N/A	N/A
8.13	• Other employees designated by the head of the agency. <i>See</i> 5 C.F.R. § 2638.307(a)(4).	N/A	N/A

COMMENTS

8.4: Only one out of the four financial disclosure filers at ACHP required annual ethics training in 2021. This is because two filers terminated in early 2021, while the DAEO is presumed to have met the annual training requirement through the routine performance of duties.

8.5, 8.6: ACHP has no Schedule I or II positions.

8.7: ACHP does not currently have any Presidentially appointed, Senate-confirmed officials.

8.8: ACHP does not currently have any public filers, other than the DAEO, who are required to receive annual ethics training.

8.10: The council members appointed by the President did not receive annual ethics training in 2021.

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8.11, 8.12, 8.13: ACHP has none of these positions

9.0 ETHICS ADVICE AND COUNSELING**COMPLIANCE REQUIREMENT****Yes****No****N/A**9.1 Based on a sample collected by OGE, guidance provided by agency ethics officials to employees appears to be consistent with applicable laws and regulations. *See* 5 C.F.R. § 2638.104(c)(4).☒☐☐**COMMENTS**

None.

10.0 SPECIAL GOVERNMENT EMPLOYEES (SGE)**Confidential Financial Disclosure**

10.1 Number of SGEs.

9

DATA ANALYSIS**%**10.2 Percentage of sampled confidential new entrant reports filed timely. *See* 5 C.F.R. § 2634.903(b).

89%

10.3 Percentage of sampled reports reviewed within 60 days of receipt but not later than the SGE's first meeting. *See* 5 C.F.R. § 2634.605(a).

100%

10.4 Percentage of sampled reports certified within 60 days of receipt. *See* 5 C.F.R. § 2634.605(a).

100%

Ethics Training**COMPLIANCE REQUIREMENTS****Yes****No****N/A**Required ethics training must be provided to each SGE. *See* 5 C.F.R. §§ 2638.304 and 2638.307.10.5 The training presentation(s) addressed concepts related to conflicts of interest, impartiality, misuse of position and gifts. *See* 5 C.F.R. § 2638.304(e)(1).☐☒☐10.6 The agency provided employees with either the following written materials or written instruction for accessing them: The summary of the Standards of Conduct distributed by the Office of Government Ethics or an equivalent summary prepared by the agency; provisions of any supplemental agency regulation that the DAEO determines to be relevant or a summary of those provisions; such other written materials as the DAEO determines should be included; instructions for contacting the agency's ethics officials. *See* 5 C.F.R. § 2638.304(e)(2).☐☒☐**DATA ANALYSIS****%**10.7 Percentage of SGEs who received initial ethics training. *See* 5 C.F.R. § 2638.304.

N/A

10.8 Percentage of SGEs who received initial ethics training timely. *See* 5 C.F.R. § 2638.304(b)(2).

N/A

10.9 Percentage of SGEs who received annual ethics training. *See* 5 C.F.R. § 2638.307(d)(2).

0%

COMMENTS10.5, 10.6: None of the required material was provided to SGEs.
10.7-10.9: ACHP did not provide ethics training to SGEs in 2021.

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ISSUES IDENTIFIED AND RESOLVED DURING THE INSPECTION

Element	ISSUE
5.6	<p><u>ISSUE:</u> ACHP did not have written procedures for providing notices to prospective employees when OGE started its inspection. ACHP developed written procedures that meet applicable requirements.</p> <p><u>AGENCY RESPONSE:</u> Agreed.</p>
6.5	<p><u>ISSUE:</u> ACHP did not have written procedures for providing notices to new supervisors when OGE started its inspection. ACHP developed written procedures that meet applicable requirements.</p> <p><u>AGENCY RESPONSE:</u> Agreed.</p>

RECOMMENDATIONS

#	Element	RECOMMENDATION	Compliance Due
1	3.15, 3.4	<p><u>RECOMMENDATION:</u> Make all reasonable efforts to collect a termination report from the former Chairman. If unable to collect the termination report, refer the Chairman to the Department of Justice for failure to file the report. Either assess or waive the applicable late filing fee.</p> <p><u>AGENCY RESPONSE:</u> Agreed. DAEO will make one more final effort to collect.</p>	
2	8.10	<p><u>RECOMMENDATION:</u> Provide annual ethics training to all council members appointed by the President.</p> <p><u>AGENCY RESPONSE:</u> Agreed. As in previous years, DAEO is preparing such training and will be providing it to the appointees before the end of the summer.</p>	
3	10.5 - 10.6	<p><u>RECOMMENDATION:</u> Provide ethics training in accordance with applicable requirements.</p> <p><u>AGENCY RESPONSE:</u> See above on recommendation # 2.</p>	
4	10.9	<p><u>RECOMMENDATION:</u> Ensure that all special government employees serving on the board receive sufficient ethics training in a timely manner as required.</p> <p><u>AGENCY RESPONSE:</u> See above on recommendation # 2.</p>	

GENERAL AGENCY COMMENTS

3.0: Part of the reason behind the mentioned oversight is that the agency had not had a termination requiring a report in over 20 years.

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