

ETHICS PROGRAM INSPECTION REPORT

Agency: American Battle Monuments Commission (ABMC)

Report No.: 22-181

Date: February 2, 2022

Period Covered by Review: January 1, 2020 through December 31, 2020

**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.	72
1.2	Number of Presidentially appointed, Senate-confirmed (PAS) public financial disclosure reports required to be filed.	0
1.3	Number of non-PAS public financial disclosure reports required to be filed.	4
1.4	Number of confidential financial disclosure reports required to be filed.	See Comment Below
	ETHICS PROGRAM	
1.5	Title of Designated Agency Ethics Official (DAEO).	General Counsel
1.6	Grade level of DAEO.	GS-15
1.7	Title of Alternate DAEO (ADAEO).	Chief of Human Resources & Administration
1.8	Grade level of ADAEO.	GS-15
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.	GS-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	
	<p>(1.1) Headquartered in Arlington, Virginia, ABMC is an agency of the executive branch of the federal government that honors the service of overseas U.S. Armed Forces by maintaining and promoting America's overseas commemorative cemeteries and memorials. ABMC administers, operates and maintains 26 permanent American burial grounds and 32 separate memorials, monuments and markers, on foreign soil. It also maintains four memorials in the United States.</p> <p>The majority of ABMC's full-time agency employees are located overseas in 10 countries and at an overseas operations office located in Paris, France. The agency also employs foreign nationals referred to as locally employed staff in the foreign countries where they are located. These positions are primarily blue-collar (gardeners, masons, mechanics, etc.), interpretive guides, or administrative and technical support and are not open to U.S. citizens or dual-U.S. nationals. At the time of OGE's inspection, ABMC reported having 444 locally employed staff. Foreign nationals working for the Commission are considered employees subject to the Standards of Ethical Conduct for Employees of the Executive Branch (the Standards), if permissible by labor agreements, international treaties, agreements, and host country laws.</p> <p>(1.2) ABMC does not have any PAS positions. ABMC is composed of 11 Commissioners who are appointed by the President. These Commissioners are appointed for an indefinite term and serve without compensation. Commissioners are responsible for establishing the strategic direction for the agency. (see, SPECIAL GOVERNMENT EMPLOYEES section at 10.0 below)</p> <p>In addition to the Commissioners, the Secretary of ABMC, who heads the agency is also appointed by the President. At the time of OGE's inspection, the Secretary position was vacant. The Deputy Secretary was serving as the Acting Secretary.</p> <p>(1.3) The Secretary, Deputy Secretary, the Chief Operations Officer, and the General Counsel (who also serves as ABMC's DAEO) are ABMC's only public financial disclosure report filers. The DAEO's report is initially reviewed by the agency's ADAEO and is then forwarded to OGE for final review and certification.</p> <p>(1.4) According to ABMC's response to OGE's request for materials, the agency indicated that they had three confidential filing positions during the period covered by OGE's inspection. Of the three, one was the Director of Contracting and the other two were Contract Specialists. However, during the course of OGE's inspection, the DAEO indicated that the agency did not have any confidential filers during the period. (See, CONFIDENTIAL FINANCIAL DISCLOSURE SECTION at 4.0 below.)</p>	

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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 type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3.3	• Public availability of public financial disclosure reports.	<input type="checkbox"/>	<input checked="" 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 type="checkbox"/>	<input checked="" 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"/>
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).	N/A		
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).	N/A		
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).	N/A		
3.15	Percentage of sampled PAS termination reports filed timely. <i>See</i> 5 C.F.R. § 2634.201(e).	N/A		
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).	N/A		
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).	N/A		

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COMMENTS

(3.2 and 3.3) While OGE found written procedures in place governing the administration of ABMC's public financial disclosure system, OGE noticed that these procedures did not address the review/evaluation of public financial disclosure reports nor their public availability. Therefore, OGE recommends that ABMC ethics officials update these procedures to address both issues. OGE also suggests these procedures be updated to indicate that the ADAEO position is responsible for reviewing and certifying the DAEO's report prior to it being forwarded to OGE for final review and certification. While OGE found this to be the standard practice, this is important to include in the procedures for purposes of succession planning.

(3.9 and 3.11) ABMC did not have any non-PAS new entrant or termination public financial disclosure filers during the period covered by the inspection.

(3.14 through 3.17) As noted above, ABMC does not have any PAS positions.

4.0 CONFIDENTIAL FINANCIAL DISCLOSURE**COMPLIANCE REQUIREMENTS****Yes****No****N/A**

The agency has written policies and procedures in place governing: *See* 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 type="checkbox"/>	<input checked="" 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 type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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 checked="" type="checkbox"/>	<input type="checkbox"/>
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. <i>See</i> 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. <i>See</i> 5 C.F.R. § 2634.903(b).	See Comment Below
4.8	Percentage of sampled confidential annual reports filed timely. <i>See</i> 5 C.F.R. § 2634.903(a).	See Comment Below
4.9	Percentage of sampled reports reviewed within 60 days of receipt. <i>See</i> 5 C.F.R. § 2634.605(a).	See Comment Below
4.10	Percentage of sampled confidential financial disclosure reports certified within 60 days of receipt. <i>See</i> 5 C.F.R. §§ 2634.605(a) and 2634.909(a).	See Comment Below

COMMENTS

(4.1) While OGE found written procedures in place governing the administration of ABMC's confidential financial disclosure system, as with the public system, OGE noticed that the procedures did not specifically address the review/evaluation of confidential financial disclosure reports. Although OGE confirmed that the DAEO is responsible for the review/evaluation of all financial disclosure reports, OGE recommends that these procedures be updated to specifically note this. This update should include mentioning that the ADAEO would be responsible for the review and certification of all financial disclosure reports in the absence of the DAEO.

Additionally, OGE noticed that the written procedures for administering the confidential financial disclosure system indicated the following, "Annual reports are to be filed not later than 30 days after assuming the position, and thereafter annually by February 15 of each year, unless

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the filer receives an extension from the DAEO not to exceed 90 days, as prescribed in 5 CFR § 2634.903.” OGE informed the DAEO that the word “Annual” must be changed to “New Entrant”.

(4.5) ABMC does not have an OGE-approved alternate confidential financial disclosure form. However, based on ABMC’s written procedures, it appears the agency is using an alternate disclosure system without OGE approval. According to ABMC’s written procedures, ABMC has determined that requiring other employees (outside of the Director of Contracting and any other employee with a contracting warrant over \$25,000) to submit a confidential disclosure report would not be the most effective means of identifying conflicts of interest. Therefore, in lieu of the confidential report, contracting officers will before awarding a contract or authorizing a procurement valued in excess of \$250,000, require employees who participate in the source selection panel or otherwise make recommendations for such award to submit a Conflict of Interest Certification form to certify that no conflict of interest exists.

Agencies are encouraged to consider whether an alternative procedure would allow the agency to more effectively identify potential conflicts of interest. However, prior written approval from OGE is needed for an agency to use an alternative confidential financial procedure in lieu of filing the OGE Form 450. Should an employee be suspected of participating in a matter/contract in which they have a personal financial interest, the fact that the instrument designed to prevent such participation is not approved by OGE could complicate any attempt to hold the employee accountable.

OGE recommends that ABMC cease using the agency’s Conflict of Interest Certification form without first obtaining OGE’s written approval. This also means removing this requirement from the agency’s written procedures should OGE not approve the request. Alternative forms, if approved by OGE in writing, may only be used in lieu of requiring the filer to complete an OGE Form 450. OGE stands ready to assist ABMC should the agency want to pursue an alternative disclosure system.

(4.7 – 4.10) As previously mentioned, according to ABMC’s response to OGE’s request for materials, the agency indicated that they had three confidential filing positions during the period covered by the inspection. Of the three, one was the Director of Contracting and the other two were Contract Specialist positions. However, during the course of OGE’s inspection, the DAEO indicated that the agency did not have any confidential filing positions.

The DAEO indicated that when he arrived at ABMC in 2015, the agency was not to his knowledge actively assigning any confidential financial disclosure reports. He indicated that the topic has come up from time to time in discussions with the OGE desk officer assigned to ABMC, and during the 2018 program inspection that concluded in March 2020. After the conclusion of that inspection, ABMC updated its Ethics Policy, including designation of positions whose incumbents should be required to file confidential reports. Per these procedures, the Director of Contracting and any other employee with a contracting warrant over \$25,000 is required to file a confidential financial disclosure report.

That updated policy took effect in February 2021. Prior to that time, the DAEO indicated that members of the contracting department had only occasionally, and informally, submitted confidential reports, which the DAEO believes is what ABMC’s written response on the number of confidential filers referred to.

OGE examined the report filed by the Director of Contracting and found that it had not been certified. The DAEO initially reported that two Contract Specialists were also confidential filers. However, it was later determined that one was a locally employed staff member (foreign national) not hired under the GS schedule. Therefore, they were not actually required to file a confidential report. However, the agency has since begun requiring this person to submit a confidential report pursuant to a new agency policy instituted in 2021. The other Contract Specialist joined ABMC in August 2020 from another Federal agency and was not required to file a report.

OGE makes the following recommendations: ABMC must definitively identify all positions whose incumbents are required to file confidential reports in accordance with the criteria at 5 C.F.R. § 2634.904(a). ABMC must ensure all confidential reports are filed, reviewed, and certified timely.

OGE also recommends that the DAEO certify the 2020 confidential report filed by the Director of Contracting.

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5.1	• A statement regarding the agency's commitment to government ethics.	<input checked="" type="checkbox"/>	<input 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 checked="" type="checkbox"/>	<input 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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.4	• Where applicable, notice of the time frame for completing initial ethics training.	<input checked="" type="checkbox"/>	<input 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 type="checkbox"/>	<input checked="" 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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

COMMENTS

(5.5) A statement regarding financial disclosure requirements was not necessary for the written offer letters OGE examined since none of the prospective employees were required to file a financial disclosure report.

(5.6 and 5.7) At the time of OGE's inspection, ABMC had not established written procedures for issuing notices to prospective employees.

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</i> 5 C.F.R. § 2638.306(d).	<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</i> 5 C.F.R. § 2638.306(d).	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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</i> 5 C.F.R. § 2638.306(b).	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

COMMENTS

(6.1 – 6.4 and 6.7) At the time of OGE's inspection, notices had not been provided to new supervisors as required by 5 C.F.R. § 2638.306.

(6.5) ABMC has not established written procedures for supervisory ethics notices as required by 5 C.F.R. § 2638.306(d).

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None of ABMC's employees began their initial appointment to a supervisory position during the period covered by the inspection. Therefore, no notices were required to be provided. However, AMBC must be prepared to issue the notices when necessary. OGE makes the appropriate recommendations below.

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</i> 5 C.F.R. § 2638.304(e)(1).	<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</i> 5 C.F.R. § 2638.304(e)(2).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7.3	The agency has established written procedures for initial ethics training. <i>See</i> 5 C.F.R. § 2638.304(f).	<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</i> 5 C.F.R. § 2638.304(f).	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	DATA ANALYSIS	%		
7.5	Percentage of new employees who received initial ethics training. <i>See</i> 5 C.F.R. § 2638.304.	100%		
7.6	Percentage of new employees who received initial ethics training within three months of appointment. <i>See</i> 5 C.F.R. § 2638.304(b).	100%		
	COMMENTS			
	(7.4) According to the DAEO, the agency’s written procedures are not reviewed each year. ABMC’s current procedures were amended on February 4, 2021 and are scheduled to sunset on February 4, 2024. While OGE is making no formal recommendation at this time, OGE reminds the DAEO that he must review the agency’s written procedures on an annual basis. The annual review is an opportunity to consider whether OGE guidance, changes to the agency’s structure or mission, or any other factors warrant changing the procedures for providing initial ethics training.			

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 5 C.F.R. §§ 2638.307(e)(1) and 2638.308(f)(1).</i>	<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 5 C.F.R. § 2638.304(e)(2).</i>	<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 5 C.F.R. §§ 2638.307(d) and 2638.308(e).</i>	<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 5 C.F.R. §§ 2638.307(f) and 2638.308(g).</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	DATA ANALYSIS	Training Format		
		Live	Interactive	
	Percentage of public filers who completed annual ethics training before the end of the calendar year. <i>See</i> 5 C.F.R. § 2638.308(a).			
8.6	<ul style="list-style-type: none">Executive Schedule Level I and Level II. <i>See</i> 5 C.F.R. § 2638.308(e)(1).	N/A	N/A	
8.7	<ul style="list-style-type: none">Other PAS and Equivalent. <i>See</i> 5 C.F.R. § 2638.308(e)(2).	N/A	N/A	
8.8	<ul style="list-style-type: none">SES and Equivalent. <i>See</i> 5 C.F.R. § 2638.308(e)(3).	N/A	100%	
	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	<ul style="list-style-type: none">Employees required to file an annual confidential financial disclosure report. <i>See</i> 5 C.F.R. § 2638.307(a)(1).	N/A	See Comment Below	
8.10	<ul style="list-style-type: none">Employees appointed by the President. <i>See</i> 5 C.F.R. § 2638.307(a)(2).	See Comment Below	See Comment Below	
8.11	<ul style="list-style-type: none">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	<ul style="list-style-type: none">Contracting officers described in 41 U.S.C. § 2101. <i>See</i> 5 C.F.R. § 2638.307(a)(3).	N/A	Not separately tracked	
8.13	<ul style="list-style-type: none">Other employees designated by the head of the agency. <i>See</i> 5 C.F.R. § 2638.307(a)(4).	N/A	98%	
	COMMENTS			
	<p>(8.6) ABMC does not have any Executive Level I or II positions/employees.</p> <p>(8.9) OGE confirmed through ABMC’s automated annual ethics training records that the Director of Contracting, who did file a confidential report during the period covered by the inspection, received the required annual ethics training.</p> <p>(8.10) See, SPECIAL GOVERNMENT EMPLOYEES section at 10.0 below</p> <p>(8.11) ABMC does not have any employees in this category</p> <p>(8.12) ABMC employees in this category were accounted for in a different category.</p> <p>(8.13) ABMC required all its employees to receive annual ethics training during the period covered by the inspection, which OGE considers to be a model agency practice.</p>			

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. <i>See</i> 5 C.F.R. § 2638.104(c)(4).	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
COMMENTS				
(9.1) ABMC ethics officials were not asked by employees to provide ethics advice during the period under review.				

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10.1	Number of SGEs	11
	DATA ANALYSIS	%
10.2	Percentage of sampled confidential new entrant reports filed timely. <i>See</i> 5 C.F.R. § 2634.903(b).	See Comment Below
10.3	Percentage of sampled reports reviewed within 60 days of receipt but not later than the SGE's first meeting. <i>See</i> 5 C.F.R. § 2634.605(a).	See Comment Below
10.4	Percentage of sampled reports certified within 60 days of receipt. <i>See</i> 5 C.F.R. § 2634.605(a).	See Comment Below

Ethics Training

	COMPLIANCE REQUIREMENTS	Yes	No	N/A
	Required ethics training must be provided to each SGE. <i>See</i> 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. <i>See</i> 5 C.F.R. § 2638.304(e)(1).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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. <i>See</i> 5 C.F.R. § 2638.304(e)(2).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	DATA ANALYSIS	%		
10.7	Percentage of SGEs who received initial ethics training. <i>See</i> 5 C.F.R. § 2638.304.	See Comment Below		
10.8	Percentage of SGEs who received initial ethics training timely. <i>See</i> 5 C.F.R. § 2638.304(b)(2).	See Comment Below		
10.9	Percentage of SGEs who received annual ethics training. <i>See</i> 5 C.F.R. § 2638.307(d)(2).	See Comment Below		

COMMENTS

(10.1) As previously noted, ABMC consists of a board of Commissioners comprised of up to 11 members appointed by the President. They serve for an indefinite term and without compensation. Commissioners are responsible for establishing the strategic direction of the agency and function as board of directors.

(10.2 – 10.4) During a previous OGE review of ABMC's ethics program conducted in 2004, ethics officials determined that Commissioners were special Government employees (SGEs), and although ethics officials believed the potential for a Commissioner to have a conflict of interest was remote, the Commissioners have been required to file confidential financial disclosure reports out of an abundance of caution. By the time of OGE's next review in 2013, however, the DAEO had determined that Commissioners were excluded from the confidential reporting requirements under 5 C.F.R. § 2634.904(b), based on the fact that the duties of the Commissioner position made remote the possibility that a Commissioner would be involved in a real or apparent conflict of interest. Although OGE suggested during that review, that ABMC document in writing the determination that Commissioners are not required to file financial disclosure reports, OGE did not find this determination documented in agency files during this current examination. The current DAEO, who joined the agency and assumed DAEO duties in March 2015, was not aware whether that determination was in fact reduced to writing by the former DAEO but concurs in the determination and is prepared to make a written determination. Therefore, OGE formally recommends that ABMC document in writing the DAEO's determination that Commissioners should not be required to file financial disclosure reports.

ETHICS PROGRAM INSPECTION REPORT

Agency: American Battle Monuments Commission (ABMC)

Report No.: 22-181

Date: February 2, 2022

Period Covered by Review: January 1, 2020 through December 31, 2020

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(10.5 - 10.6) According to written materials provided to OGE, Commissioners each receive an on-boarding packet that includes OGE's "Conflict of Interest and the Special Government Employee: A Summary of Ethical Requirements Applicable to SGEs," document as well as a supplemental summary of ethical requirements prepared by the agency's DAEO. The DAEO also provides live ethics training, based on the DAEO's summary, to Commissioners when they are first appointed, and individually as other Commissioners are subsequently appointed. The Secretary and two SES employees also attend the live training.

(10.7-10.9) At the time of OGE's examination, OGE could not confirm dates of completion via training records of SGEs who completed initial or annual ethics training.

RECOMMENDATIONS

#	Element	RECOMMENDATION	Compliance Due
1	3.2-3.3	<p><u>RECOMMENDATION:</u> Update ABMC's written procedures for administering the public financial disclosure system to address who is responsible for the review and certification of public reports and the process for making these reports publically available.</p> <p>Additionally, OGE recommends these procedures specifically indicate that the ADAEO is responsible for reviewing and certifying the DAEO's report prior to it being forwarded to OGE for final review and certification.</p> <p><u>AGENCY RESPONSE:</u> ABMC accepts this recommendation</p>	March 2022
2	4.1	<p><u>RECOMMENDATION:</u> Update ABMC's written procedures for administering the confidential financial disclosure system to address who is responsible for the review and certification of confidential reports.</p> <p>Additionally, OGE recommends that these procedures be updated to reflect the following: "New Entrant reports are to be filed not later than 30 days after assuming the position, and thereafter annually by February 15 of each year, unless the filer receives an extension from the DAEO not to exceed 90 days, in accordance with 5 CFR § 2634.903."</p> <p><u>AGENCY RESPONSE:</u> ABMC accepts this recommendation</p>	March 2022
3	4.5	<p><u>RECOMMENDATION:</u> Cease using the agency's Conflict of Interest Certification form until OGE grants written approval for administering such a system. This also means removing this requirement from the agency's written procedures should OGE not approve the request. OGE stands ready to assist ABMC should the agency want to pursue approval of an alternative financial disclosure system.</p> <p><u>AGENCY RESPONSE:</u> ABMC accepts this recommendation</p>	On The Date of Report Issuance

ETHICS PROGRAM INSPECTION REPORT

Agency: American Battle Monuments Commission (ABMC)

Report No.: 22-18I

Date: February 2, 2022

Period Covered by Review: January 1, 2020 through December 31, 2020

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4	4.7-4.10	<p><u>RECOMMENDATION:</u> Ensure that all confidential financial disclosure report filers who will be required to file reports in 2022 do so and that all reports are reviewed and certified timely. Also, ensure that the 2020 confidential report filed by the Director of Contracting is certified.</p> <p><u>AGENCY RESPONSE:</u> ABMC accepts this recommendation</p>	April 2022
5	5.6-5.7	<p><u>RECOMMENDATION:</u> Establish written procedures for issuing notices to prospective employees and ensure that the DAEO reviews these written procedures each year as required by 5 C.F.R. § 2638.303(c).</p> <p><u>AGENCY RESPONSE:</u> ABMC accepts this recommendation</p>	March 2022
6	6.5-6.7	<p><u>RECOMMENDATION:</u> Establish written procedures and the appropriate notice for issuing notices to new supervisors and ensure that new supervisors receive the required information as required by 5 C.F.R. § 2638.306.</p> <p><u>AGENCY RESPONSE:</u> ABMC accepts this recommendation</p>	March 2022
7	10.2-10.4	<p><u>RECOMMENDATION:</u> Document in writing the DAEO's determination that Commissioner's should not be required to file financial disclosure reports.</p> <p><u>AGENCY RESPONSE:</u> ABMC accepts this recommendation</p>	March 2022