

ETHICS PROGRAM INSPECTION REPORT

Agency: National Mediation Board

Report No.: 21-061

Date: January 19, 2021

Period Covered by Review: January 1, 2019 through December 31, 2019

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.	39
1.2	Number of Presidentially appointed, Senate-confirmed (PAS) public financial disclosure reports required to be filed.	3
1.3	Number of non-PAS public financial disclosure reports required to be filed.	1
1.4	Number of confidential financial disclosure reports required to be filed.	27
	ETHICS PROGRAM	
1.5	Title of Designated Agency Ethics Official (DAEO).	General Counsel
1.6	Grade level of DAEO.	SES
1.7	Title of Alternate DAEO (ADAEO).	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.	SES
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>(1.2) The National Mediation Board (NMB) is headed by a three-member board nominated by the President and confirmed by the U.S. Senate. The members self-designate a Chairman, typically on a yearly basis. Although appointed for three-year terms, members may serve until replaced. At the time of OGE’s inspection, NMB had all three board members serving.</p> <p>(1.3) The General Counsel/DAEO position is NMB’s only non-PAS public financial disclosure filer. The DAEO’s report is initially reviewed by the agency’s ADAEO and is then forwarded to OGE for final review and certification.</p>	

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			
	<p>(2.1- 2.2) At the time of inspection, the current ADAEO was serving as the acting DAEO due to the former General Counsel/DAEO's recent retirement from government service in October 2020. The Board Chairman completed a designation letter designating the current ADAEO as the acting DAEO. The current ADAEO is aware that once a new General Counsel/DAEO position is hired an up-to-date designation letter needs to be forwarded to OGE.</p>			

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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 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).	100%			
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).	100%			
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).	100%			
COMMENTS					
<p>(3.4) During the period covered by this inspection, NMB did not collect any late filing fees nor have a need to waive the late fee since all public reports were timely filed.</p> <p>(3.7) – (3.8) The requirement for human resources officials to notify the DAEO of appointments to or terminations from positions that require incumbents to file public financial disclosure reports is intended to ensure the DAEO can timely advise employees of relevant filing requirements. NMB only has four positions whose incumbents are required to file public financial disclosure reports, three of which are PAS officials. The DAEO (who is also one of the agency's four public filers) would be aware of all pending appointments and terminations. Therefore, formal notification from human resources officials is not necessary to ensure public filers receive timely notification of filing requirements. However, human resource officials does provide the Ethics Office with the notices of terminations as part of its regular out-processing procedures. During the period covered by this inspection, there were no appointments to, terminations from, these positions. (The DAEO terminated in October 2020 which was outside the scope of this inspection)</p>					

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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 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"/>	
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).	100%			
4.8	Percentage of sampled confidential annual reports filed timely. <i>See</i> 5 C.F.R. § 2634.903(a).	100%			
4.9	Percentage of sampled reports reviewed within 60 days of receipt. <i>See</i> 5 C.F.R. § 2634.605(a).	100%			
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).	100%			
COMMENTS					
<p>(4.3) OGE was advised that hard copy confidential financial disclosure reports are kept in a locked file cabinet where only ethics officials have access to the key. Reports that are filed electronically are kept on a section of the legal department's internal computer drive that only ethics officials and a paralegal have access to.</p> <p>(4.4) OGE was not able to assess whether NMB was in compliance with this requirement. The relevant records are stored in NMB's office space and cannot be accessed remotely. Consistent with guidance from the Office of Management and Budget, all OGE staff and most of the NMB's staff are working remotely during the COVID-19 pandemic. NMB and OGE staff would need to physically enter NMB's office space to allow OGE to make its assessment. OGE's policy during the COVID-19 pandemic is that OGE personnel will not enter an agency's facilities and prohibits OGE from asking an agency to send staff to agency offices or otherwise violate social-distancing or other mitigation policies to assess compliance. OGE will assess NMB's compliance with this requirement when circumstances permit.</p> <p>(4.5) NMB does not have an OGE-approved alternative confidential financial disclosure system.</p> <p>(4.6): During the period covered by inspection, NMB had 4 positions whose incumbents were required to file a new entrant confidential financial disclosure report. Due to the relatively small number of employees that are hired at NMB each year, ethics officials are aware of appointments to positions whose incumbents are required to file confidential financial disclosure reports. Therefore, formal notification from human resources is not necessary to ensure that confidential filers are timely notified of their filing requirement. However, OGE was advised that prior to the posting of any new job vacancy announcement, human resource officials does submit a proposed position description to ethics officials for review regarding financial disclosure report filing status for that position. The agency is notified of agency new hires (by email) prior to their start date.</p> <p>(4.7) OGE examined the four new entrant confidential financial disclosure reports that were required to be filed during the period of this inspection. All four filers indicated they entered their respective positions within 30 days of their entering into their covered position.</p> <p>(4.8) OGE examined the 18 annual confidential financial disclosure reports that were required to be filed during the period covered by this inspection. All 18 were filed timely.</p>					

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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 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 checked="" type="checkbox"/>	<input 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 checked="" type="checkbox"/>	<input 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 checked="" type="checkbox"/>	<input 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							
(5.1 – 5.5) NMB's human resource services are administered by the Department of the Interior, including the provision of offer letters to prospective employees. NMB had four new employees enter on duty during the period covered by this 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: <i>See</i> 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 checked="" type="checkbox"/>	<input 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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6.4	• Other information the DAEO deems necessary.				<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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 checked="" type="checkbox"/>	<input 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 checked="" type="checkbox"/>	<input 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</i> 5 C.F.R. § 2638.306(b).				<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
COMMENTS							
(6.1) As previously noted, NMB's human resource services are administered by the Department of Interior (Interior), including the provision of notices sent to new NMB supervisors. OGE did not find a specific ethics point of contact on the two notices that were sent to new supervisors during the period covered by this inspection. However, prior to the conclusion of OGE's review, the acting ADAEO followed up with Interior, to confirm that they were working to update NMB's letter template to include NMB ethics officials as the specific ethics points of contact. As a result, OGE is making no formal recommendation for improvement.							

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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. <i>See 5 C.F.R. § 2638.304.</i>			
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%		
	COMMENTS			
	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. <i>See 5 C.F.R. §§ 2638.307 and 2638.308.</i>			
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"/>
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 5 C.F.R. § 2638.308(e)(2).</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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	DATA ANALYSIS	Training Format	
		Live	Interactive
	Percentage of public filers who completed annual ethics training before the end of the calendar year. <i>See 5 C.F.R. § 2638.308(a).</i>		
8.6	• Executive Schedule Level I and Level II. <i>See 5 C.F.R. § 2638.308(e)(1).</i>	N/A	N/A
8.7	• Other PAS and Equivalent. <i>See 5 C.F.R. § 2638.308(e)(2).</i>	100%	N/A
8.8	• SES and Equivalent. <i>See 5 C.F.R. § 2638.308(e)(3).</i>	100%	N/A
	Percentage of confidential filers and certain other employees who completed annual ethics training before the end of the calendar year. <i>See 5 C.F.R. § 2638.307(a)(d).</i>		
8.9	• Employees required to file an annual confidential financial disclosure report. <i>See 5 C.F.R. § 2638.307(a)(1).</i>	100%	N/A
8.10	• Employees appointed by the President. <i>See 5 C.F.R. § 2638.307(a)(2).</i>	N/A	N/A
8.11	• Employees of the Executive Office of the President. <i>See 5 C.F.R. § 2638.307(a)(2).</i>	N/A	N/A
8.12	• Contracting officers described in 41 U.S.C. § 2101. <i>See 5 C.F.R. § 2638.307(a)(3).</i>	N/A	N/A
8.13	• Other employees designated by the head of the agency. <i>See 5 C.F.R. § 2638.307(a)(4).</i>	100%	N/A
	COMMENTS		
	<p>(8.6) NMB does not have any Executive Schedule Level I or Level II employees.</p> <p>(8.7) (8.8) & (8.9) In-person annual ethics training was provided to all covered employees during the period covered by this inspection.</p> <p>(8.10) (8.11) & (8.12) NMB did not have any employees required to receive annual ethics training in these categories during the period covered by this inspection.</p> <p><u>Model Practice Identified</u></p> <p>(8.13) NMB ethics officials provided annual ethics training to all employees, not just those required by regulation to receive it.</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 5 C.F.R. § 2638.104(c)(4).</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	COMMENTS			
	None			

10.0	Special Government Employees (SGE)	
Confidential Financial Disclosure		
10.1	Number of SGEs serving on Advisory Committees and Boards.	N/A
	DATA ANALYSIS	%
10.2	Percentage of sampled confidential new entrant reports filed timely. See 5 C.F.R. § 2634.903(b).	N/A
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).	N/A

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10.4	Percentage of sampled reports certified within 60 days of receipt. <i>See</i> 5 C.F.R. § 2634.605(a).	N/A		
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 type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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 type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	DATA ANALYSIS	%		
10.7	Percentage of SGEs who received initial ethics training. <i>See</i> 5 C.F.R. § 2638.304.	N/A		
10.8	Percentage of SGEs who received initial ethics training timely. <i>See</i> 5 C.F.R. § 2638.304(b)(2).	N/A		
10.9	Percentage of SGEs who received annual ethics training. <i>See</i> 5 C.F.R. § 2638.307(d)(2).	N/A		
	COMMENTS			
	(10.1 – 10.9) NMB did not have any special Government employees during the period covered by this inspection.			