

**ETHICS PROGRAM INSPECTION REPORT**

Agency: U.S. Merit Systems Protection Board (MSPB)

Report No.: 17-251

Date: May 16, 2017

Period Covered by Review: January 1 –December 31, 2016

UNITED STATES OFFICE OF  
**GOVERNMENT ETHICS**

  
Preventing Conflicts of Interest  
in the Executive Branch

1.0 AGENCY DATA		
<b>EMPLOYEES</b> (as reported in the most recent Annual Ethics Program Questionnaire)		
1.1	Number of full-time agency employees	217
1.2	Number of agency special Government employees	0
1.3	Number of Presidentially appointed, Senate-confirmed (PAS) public financial disclosure reports required to be filed	2
1.4	Number of non-PAS public financial disclosure reports required to be filed	18
1.5	Number of confidential financial disclosure reports required to be filed	5
<b>ETHICS PROGRAM</b>		
1.6	Title of Designated Agency Ethics Official (DAEO)	General Counsel
1.7	Grade level of DAEO	SES
1.8	Title of Alternate DAEO (ADAEO)	General Attorney
1.9	Grade level of ADAEO	GS-14
1.10	Title of the primary, day-to-day ethics program administrator	General Attorney
1.11	Grade level of the primary, day-to-day ethics program administrator	GS-14
1.12	Current number of full-time ethics officials	0
1.13	Current number of part-time ethics officials	2
1.14	Average full-time equivalent (FTE) value of a part-time ethics official(s) (For example, if part-time ethics officials at the agency generally devote 10 hours per week to ethics work, the average FTE value is 25%.)	50%
1.15	Number of reporting levels between the DAEO and the agency head	2
<b>COMMENTS</b>		
None		

2.0 LEADERSHIP					
COMPLIANCE REQUIREMENT			Yes	No	N/A
2.1	OGE has received an up-to-date designation from the agency head naming the DAEO. <i>See 5 C.F.R. § 2638.202(c).</i>	<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 5 C.F.R. § 2638.202(c).</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>COMMENTS</b>					
(2.2) Both the ADAEO and his supervisor, the Deputy General Counsel, were hired in January 2017 to serve in their respective current positions, approximately two months before the start of the inspection.					

3.0 ETHICS AGREEMENTS					
COMPLIANCE REQUIREMENT			Yes	No	N/A
3.1	During the period under review, all PAS officials complied with their ethics agreements. <i>See 5 C.F.R. § 2634.804.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
3.2	During the period under review, all PAS officials complied with their ethics agreements in a timely fashion. <i>See 5 C.F.R. § 2634.804.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	

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3.3	During the period under review, the agency notified OGE of ethics agreement compliance in a timely fashion. <i>See</i> DO-09-015.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3.4	For all officials currently in PAS positions, the agency maintains documentation of actions taken to comply with ethics agreements. <i>See</i> 5 C.F.R. § 2634.804.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.5	For all officials currently in PAS positions, ethics agreements are maintained with their financial disclosure reports. <i>See</i> 5 C.F.R. § 2634.805.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>COMMENTS</b>				
(3.1-3.3) No PAS officials entered into an ethics agreement during the period under review.				

4.0 PUBLIC FINANCIAL DISCLOSURE (OGE Form 278, OGE Form 278-T)							
COMPLIANCE REQUIREMENT				Yes	No	N/A	
4.1	The agency has written policies and procedures in place governing: <i>See</i> 5 U.S.C. app. IV, § 402(d)(1).						
4.1.1	• Collection of public financial disclosure reports	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
4.1.2	• Review/evaluation of public financial disclosure reports	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
4.1.3	• Public availability of public financial disclosure reports	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
4.2	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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.3	Public financial disclosure reports are securely maintained. <i>See</i> OGE/GOVT-1.				<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.4	Public financial disclosure reports are retained in accordance with the retention requirements. <i>See</i> 5 C.F.R. § 2634.603(g)(1).				<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>DATA ANALYSIS</b>				<b>%</b>			
4.5	Percentage of sampled non-PAS new entrant reports filed timely. <i>See</i> 5 C.F.R. § 2634.201(b).				100%		
4.6	Percentage of sampled non-PAS annual reports filed timely. <i>See</i> 5 C.F.R. § 2634.201(a).				81%		
4.7	Percentage of sampled non-PAS termination reports filed timely. <i>See</i> 5 C.F.R. § 2634.201(e).				100%		
4.8	Percentage of sampled non-PAS public financial disclosure reports certified timely (within 60 days of receipt or later when additional information was being sought or remedial action was being taken). <i>See</i> PA-11-04.				50%		
4.9	Percentage of sampled PAS annual reports filed timely. <i>See</i> 5 C.F.R. § 2634.201(a).				100%		
4.10	Percentage of sampled PAS termination reports filed timely. <i>See</i> 5 C.F.R. § 2634.201(e).				N/A		
4.11	Percentage of sampled PAS annual and termination reports certified timely (within 60 days of receipt or later when additional information was being sought or remedial action was being taken). <i>See</i> 5 C.F.R. § 2634.605(a).				100%		
<b>COMMENTS</b>							
<p>(4.1.1) At the beginning of the inspection, MSPB’s written procedures did not address the use of <i>Integrity</i>, the executive branch electronic financial disclosure system used to collect public financial disclosure reports (OGE Form 278) or periodic transaction reports (OGE Form 278-T). During the course of the inspection, MSPB updated its procedures to fully address the use of <i>Integrity</i> in the collection of OGE Forms 278 and 278-T. Therefore, OGE is not issuing a recommendation for improvement.</p> <p>(4.2 &amp; 4.6) OGE reviewed the 18-non PAS reports required to be filed in 2016. Three annual reports were filed beyond the due date. Two of the reports were filed late only by one day. The third report was filed by the DAEO 105 days late, including a 90-day extension, triggering the late filing fee. MSPB assessed the late filing fee and it was paid in March 2017. OGE raised the issue of the DAEO’s late filing with MSPB and reminds MSPB of the importance of filing financial disclosure reports timely.</p> <p>(4.4) During its onsite fieldwork, OGE noted that MSPB retained public reports beyond the six-year retention period. Subsequent to OGE’s onsite visit, MSPB destroyed all reports that had been retained for more than six years. Therefore, OGE is not issuing a recommendation for improvement.</p> <p>(4.8) Nine of the 18 non-PAS public reports OGE reviewed were certified late. In some instances the reviewer was awaiting additional</p>							

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information from the filers. However, OGE noted instances in which the reviewer waited until after 60 days of the receipt of the report to return it to the filer, presumably to request the additional information. Also, in some cases ethics officials received the corrected, re-submitted reports from the filer within a reasonable time, but waited to certify the reports for several months. Additionally, OGE observed two instances in which a report had been returned to a filer for correction but had not been resubmitted by the filer; the reports were still uncertified at the time of OGE's examination several months later.  
(4.10) MSBP did not have any PAS termination public financial disclosure filers during the period under review.

5.0 CONFIDENTIAL FINANCIAL DISCLOSURE						
COMPLIANCE REQUIREMENT			Yes	No	N/A	
5.1	The agency has written policies and procedures in place governing: <i>See</i> 5 U.S.C app. IV, § 402(d)(1).					
5.1.1	• Collection of confidential financial disclosure reports			<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.1.2	• Review/evaluation of confidential financial disclosure reports			<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.2	Confidential financial disclosure reports are securely maintained. <i>See</i> OGE/GOVT-2.			<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.3	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"/>
5.4	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 checked="" type="checkbox"/>	<input type="checkbox"/>
<b>DATA ANALYSIS</b>			<b>%</b>			
5.5	Percentage of sampled confidential new entrant reports filed timely. <i>See</i> 5 C.F.R. § 2634.903(b).			0%		
5.6	Percentage of sampled confidential annual reports filed timely. <i>See</i> 5 C.F.R. § 2634.903(a).			100%		
5.7	Percentage of sampled confidential financial disclosure reports certified timely (within 60 days of receipt or later when additional information was being sought or remedial action was being taken). <i>See</i> 5 C.F.R. §§ 2634.605(a), 2634.909(a).			60%		
<b>COMMENTS</b>						
<p>(5.3) MSPB does not have an alternative confidential financial disclosure system.</p> <p>(5.4) During its onsite fieldwork, OGE noted that MSPB retained confidential reports beyond the six-year retention period. Subsequent to OGE's onsite visit, MSPB destroyed all reports that had been retained for more than six years. Therefore, OGE is not issuing a recommendation for improvement.</p> <p>(5.5) Only one new entrant report was required to be filed in 2016. The report was filed one day after the deadline. Therefore, OGE is not issuing a recommendation for improvement.</p> <p>(5.7) Two (one new entrant report and one annual report) of the five required confidential reports had not been certified at the time of OGE's examination. The ADAEO agreed to review and certify the reports.</p>						

6.0 INITIAL ETHICS ORIENTATION						
COMPLIANCE REQUIREMENT			Yes	No	N/A	
6.1	All initial ethics orientation material contains: <i>See</i> 5 C.F.R. § 2638.703(a) and (b).					
6.1.1	• Current contact information of relevant ethics official(s)			<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6.1.2	• Copy of the Standards of Ethical Conduct and any agency supplemental standards to keep or review; or • Summaries of the Standards, any agency supplemental standards, and 14 Principles for employees to keep			<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6.2	The agency can demonstrate that it has an effective process to ensure that new employees receive initial ethics orientations. <i>See</i> 5 C.F.R. § 2638.703(c).			<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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	DATA ANALYSIS	%
6.3	Percentage of new agency employees who received initial ethics orientation within 90 days. <i>See</i> 5 C.F.R. § 2638.703.	0
<b>COMMENTS</b>		
(6.2-6.3) MSPB failed to provide initial ethics orientation (IEO) to the 18 new employees who were required to receive it in 2016. According to ethics officials, the ethics office did not timely notify these new employees of the IEO requirement. The employees received the IEO in January 2017. The ADAEO explained that he has now established a new system with the Human Resources office (HR) to help ensure he is notified when new employees are hired. The ADAEO also expects to regularly contact HR to inquire about new employees. Additionally, the Deputy General Counsel, who is the ADAEO's supervisor, is notified of new hires during senior staff meetings. The ADAEO expects these measures will assist him in ensuring that all new employees receive IEO timely.		

7.0 ANNUAL ETHICS TRAINING				
	COMPLIANCE REQUIREMENT	Yes	No	N/A
7.1	All annual ethics training material contains: <i>See</i> 5 C.F.R. § 2638.704(b).			
7.1.1	• Current contact information of relevant ethics official(s)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7.1.2	• Review of the criminal conflict of interest statutes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7.1.3	• Review of the Standards of Ethical Conduct	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7.1.4	• Review of the 14 Principles	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7.1.5	• Review of any agency supplemental standards	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7.2	The agency can demonstrate that it has an effective process to ensure that covered employees receive annual ethics training. <i>See</i> 5 C.F.R. § 2638.704(c) and 705(c).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>DATA ANALYSIS</b>		<b>%</b>		
7.3	Public financial disclosure filers who completed annual ethics training. <i>See</i> 5 C.F.R. § 2638.704(a).	90%		
7.4	Confidential financial disclosure filers who completed annual ethics training. <i>See</i> 5 C.F.R. § 2638.705(a)(3).	60%		
<b>COMMENTS</b>				
(7.4) MSPB had 5 confidential filers in 2016. Three confidential filers received annual ethics training.				

8.0 ETHICS ADVICE AND COUNSELING				
	COMPLIANCE REQUIREMENT	Yes	No	N/A
8.1	Based on a sample collected by OGE, guidance provided by agency ethics officials to employees appears to be consistent with applicable laws and regulations.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>COMMENTS</b>				
None				

9.0 RECOMMENDATION(S)			
#	Element	RECOMMENDATION	Compliance Due
1	4.8	<p><b>RECOMMENDATION:</b> Implement corrective action to ensure that non-PAS public financial disclosure reports are certified within 60 days of receipt.</p> <p><b>AGENCY RESPONSE:</b> The MSPB concurs with OGE and is taking action to ensure that non-PAS public financial disclosure reports are certified within 60 days of receipt.</p>	July 2018

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2	5.7	<p><u>RECOMMENDATION:</u> Implement corrective action to ensure that confidential financial disclosure reports are certified within 60 days of receipt</p> <p><u>AGENCY RESPONSE:</u> The MSPB concurs with OGE and is taking action to ensure that confidential financial disclosure reports are certified within 60 days of receipt.</p>	July 2018
3	6.2 & 6.3	<p><u>RECOMMENDATION:</u> Continue improving the process for ensuring that new employees receive initial ethics orientation within 90 days of beginning work.</p> <p><u>AGENCY RESPONSE:</u> The MSPB concurs with OGE and is taking action to ensure that new employees receive initial ethics orientation within 90 days of beginning work.</p>	July 2018
4	7.4	<p><u>RECOMMENDATION:</u> Provide ethics training to all covered employees annually.</p> <p><u>AGENCY RESPONSE:</u> The MSPB concurs with OGE and is taking action to ensure that all covered employees are provided ethics training annually.</p>	July 2018