

## ETHICS PROGRAM INSPECTION RESULTS

Agency:	Privacy & Civil Liberties Oversight Board		
Report No:	15-08I	Date:	December 4, 2014
Review Period:	January through December 2013		

1.0 AGENCY DATA		
	EMPLOYEES	Data
1.1	Number of full-time agency employees, as reported in the most recent Annual Questionnaire	5
1.2	Number of agency SGEs, as reported in the most recent Annual Questionnaire	4
1.3	Number of PAS public financial disclosure reports required to be filed, as reported in the most recent Annual Questionnaire	1
1.4	Number of non-PAS public financial disclosure reports required to be filed, as reported in the most recent Annual Questionnaire	0
1.5	Number of confidential financial disclosure reports required to be filed by employees, as reported in the most recent Annual Questionnaire	1
	ETHICS PROGRAM	Data
1.6	Name of DAEO	Peter A. Winn
1.7	Title of DAEO	Acting General Counsel
1.8	Grade level of DAEO	GS-15
1.9	Name of ADAEO	Lynn Parker Dupree
1.10	Title of ADAEO	Attorney-Advisor
1.11	Grade level of ADAEO	GS-14
1.12	Name of the primary, day-to-day ethics program administrator	Peter A. Winn
1.13	Title of the primary, day-to-day ethics program administrator	Acting General Counsel
1.14	Grade level of the primary, day-to-day ethics program administrator	GS-15
1.15	Current number of full-time ethics officials	0
1.16	Current number of part-time ethics officials	2
1.17	Average 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%.)	15%
1.18	Number of reporting levels between the ethics office/program and the agency head	1

2.0 LEADERSHIP			
	COMPLIANCE REQUIREMENT	Yes	No
2.1	OGE has received an up-to-date designation from the agency head naming the DAEO. <i>See</i> 5 C.F.R. § 2638.202(c).	<input checked="" 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. § 2638.202(c).	<input checked="" type="checkbox"/>	<input type="checkbox"/>

3.0 ETHICS AGREEMENTS			
	COMPLIANCE REQUIREMENT	Yes	No
3.1	All officials currently in PAS positions have complied with their ethics agreements. <i>See</i> 5 C.F.R. § 2634.804. ( <input type="checkbox"/> Not Applicable: see OGE comment section below)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3.2	All officials currently in PAS positions complied with their ethics agreements in a timely fashion. <i>See</i> 5 C.F.R. § 2634.804. ( <input type="checkbox"/> Not Applicable: see OGE comment section below)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3.3	For all officials currently in PAS positions, the agency notified OGE of ethics agreement compliance in a timely fashion. <i>See</i> DO-09-015. ( <input type="checkbox"/> Not Applicable: see OGE comment section below)	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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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 type="checkbox"/> Not Applicable: see OGE comment section below)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3.5	All PAS officials' ethics agreements are maintained with their financial disclosure reports. <i>See</i> 5 C.F.R. § 2634.805. ( <input type="checkbox"/> Not Applicable: see OGE comment section below)	<input checked="" type="checkbox"/>	<input type="checkbox"/>

4.0 PUBLIC FINANCIAL DISCLOSURE (OGE Form 278, OGE Form 278-T)				
COMPLIANCE REQUIREMENT			Yes	No
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"/>	
4.1.2	• Review/evaluation of public financial disclosure reports	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
4.1.3	• Public availability of public financial disclosure reports	<input checked="" 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"/>
4.3	Public financial disclosure records are securely maintained. <i>See</i> OGE/GOVT-1.			<input checked="" 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 checked="" type="checkbox"/> <input type="checkbox"/>
4.5	Agency ethics officials respond promptly to requests by OGE for additional information regarding PAS annual and termination public financial disclosure reports. <i>See</i> 5 U.S.C app. IV, § 402(d)(1). <i>See</i> 5 C.F.R. § 2638.203(b)(14). ( <input type="checkbox"/> Not Applicable: see OGE comment section below)			<input checked="" type="checkbox"/> <input type="checkbox"/>
DATA ANALYSIS			%	
4.6	Percentage of sampled non-PAS new entrant reports filed timely. <i>See</i> 5 C.F.R. § 2634.201(b).			N/A
4.7	Percentage of sampled non-PAS annual reports filed timely. <i>See</i> 5 C.F.R. § 2634.201(a).			N/A
4.8	Percentage of sampled non-PAS termination reports filed timely. <i>See</i> 5 C.F.R. § 2634.201(e).			N/A
4.9	Percentage of sampled non-PAS public financial disclosure reports certified within 60 days of receipt (unless additional information was being sought or remedial action was being taken). <i>See</i> PA-11-04.			N/A
4.10	Percentage of sampled PAS annual reports filed timely. <i>See</i> 5 C.F.R. § 2634.201(a).			100%
4.11	Percentage of sampled PAS termination reports filed timely. <i>See</i> 5 C.F.R. § 2634.201(e).			N/A
4.12	Percentage of sampled PAS annual and termination reports certified within 60 days of receipt (unless additional information was being sought or remedial action was being taken). <i>See</i> 5 C.F.R. § 2634.605(a).			100%

5.0 CONFIDENTIAL FINANCIAL DISCLOSURE				
COMPLIANCE REQUIREMENT			Yes	No
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"/>	
5.1.2	• Review/evaluation of confidential financial disclosure reports	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
5.2	Confidential financial disclosure records are securely maintained. <i>See</i> OGE/GOVT-2.			<input checked="" 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 checked="" type="checkbox"/> Not Applicable: see OGE comment section below)			<input type="checkbox"/> <input 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 checked="" type="checkbox"/> <input type="checkbox"/>

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	DATA ANALYSIS	%
5.5	Percentage of sampled confidential new entrant reports filed timely. <i>See</i> 5 C.F.R. § 2634.903(b).	100%
5.6	Percentage of sampled confidential annual reports filed timely. <i>See</i> 5 C.F.R. § 2634.903(a).	N/A
5.7	Percentage of sampled confidential financial disclosure reports certified within 60 days of receipt (unless additional information was being sought or remedial action was being taken). <i>See</i> 5 C.F.R. §§ 2634.605(a), 2634.909(a).	100%

6.0 INITIAL ETHICS ORIENTATION			
	COMPLIANCE REQUIREMENT	Yes	No
6.1	All initial ethics orientation material contains: <i>See</i> 5 C.F.R. § 2638.703(a) and (b).		
6.1.1	<ul style="list-style-type: none"> <li>Current contact information of relevant ethics official(s)</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6.1.2	<ul style="list-style-type: none"> <li>Copy of the Standards of Ethical Conduct and any agency supplemental standards to keep or review; or</li> <li>Summaries of the Standards, any agency supplemental standards, and 14 Principles for employees to keep</li> </ul>	<input checked="" 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 checked="" type="checkbox"/>	<input type="checkbox"/>
	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.	100%	

7.0 ANNUAL ETHICS TRAINING			
	COMPLIANCE REQUIREMENT	Yes	No
7.1	All annual ethics training material contains: <i>See</i> 5 C.F.R. § 2638.704(b).		
7.1.1	<ul style="list-style-type: none"> <li>Current contact information of relevant ethics official(s)</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7.1.2	<ul style="list-style-type: none"> <li>Review of the criminal conflict of interest statutes</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7.1.3	<ul style="list-style-type: none"> <li>Review of the Standards of Ethical Conduct</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7.1.4	<ul style="list-style-type: none"> <li>Review of the 14 Principles</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7.1.5	<ul style="list-style-type: none"> <li>Review of any agency supplemental standards (<input checked="" type="checkbox"/> Not Applicable: see OGE comment section below)</li> </ul>	<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"/>
	DATA ANALYSIS	%	
7.3	Public financial disclosure filers who completed annual ethics training. <i>See</i> 5 C.F.R. § 2638.704(a).	100%	
7.4	Confidential financial disclosure filers who completed annual ethics training. <i>See</i> 5 C.F.R. § 2638.705(a)(3).	100%	

8.0 ETHICS ADVICE AND COUNSEL			
	COMPLIANCE REQUIREMENT	Yes	No
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 type="checkbox"/> Not Applicable: see OGE comment section below)	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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## RECOMMENDATIONS

#	Element	RECOMMENDATION	Compliance Due
1	4.0	<p><u>CONCERN:</u> Employees in positions classified above GS-15 of the General Schedule or at an equivalent rate of basic pay equal to or greater than 120% of the minimum rate of basic pay for a GS-15 are required to file a public financial disclosure report. When an employee's position does not fall within one of these two categories, but duties of the position nevertheless involve executive responsibilities, an agency should request that the Director of OGE issue an equal classification determination for that position.</p> <p>Compensation for PCLOB's Executive Director is statutorily capped below the threshold for filing a public financial disclosure report. Therefore, the Executive Director filed a new entrant confidential financial disclosure report in 2013. Based on several factors, however, including the nature of the Executive Director's responsibilities and duties and position within the agency's organizational structure, OGE believes this position is of "equal classification" with positions required to file a public report.</p> <p><u>RECOMMENDATION:</u> Request an equal classification determination from OGE for the Executive Director position.</p> <p><u>AGENCY RESPONSE:</u> The Privacy and Civil Liberties Oversight Board accepts this recommendation. Although the statutory cap on the Executive Director's salary keeps it below the threshold in the regulations triggering the requirement to file a public financial disclosure form, the Board recognizes that given the role and responsibility of the Executive Director, this position would ordinarily be held by an individual in the Senior Executive Service at other agencies. As such, the Board will request an equal classification determination from the Office of Government Ethics for this position.</p>	3/16/2015
2	4.0	<p><u>CONCERN:</u> Special government employees (SGE) are distinguished from regular government employees on the basis of the number of days of expected service to the Federal Government. Specifically, an SGE provides a temporary service to the Federal Government, with or without compensation, for not more than 130 days during a consecutive 365-day period. 18 U.S.C. § 202(a). As a general rule, all SGEs file either a public or confidential financial disclosure report. An SGE is defined as a public filer if they are expected to perform the duties of the office for more than 60 days in a calendar year and meet the pay conditions for filing a public financial disclosure report. SGEs who do not meet these two criteria file confidential reports.</p> <p>PCLOB has five board members who are Presidentially appointed and Senate-confirmed (PAS). Four of the five board members are SGEs. All four SGE board members were required to file a new entrant confidential report in 2013 and 2014 since it was expected that they would work less than 60 days in each calendar year. In 2014, however, two of the four board members worked more than 60 days in the calendar year and are now required to file public reports.</p> <p><u>RECOMMENDATION:</u> Ensure new entrant public financial disclosure reports are filed by the two SGE board members who worked more than 60 days in 2014. Additionally, since OGE is responsible for the final review and certification of all public reports filed by PAS appointees, PCLOB must also submit both reports to OGE for review and certification.</p> <p><u>AGENCY RESPONSE:</u> The Privacy and Civil Liberties Oversight Board has completed this recommendation. The two Board members who worked more than 60 days in calendar year 2014 at the time of the inspection in June filed timely public financial disclosure forms with the PCLOB ethics officials. After internal review, the PCLOB ethics officials submitted timely reports to the Office of Government Ethics for review and certification. Please note that the two other SGE Board members, who worked substantially the same amount of time as the Board members who triggered the public financial disclosure requirement by the time of inspection in June, did not trigger the public financial disclosure requirement because they started new terms earlier in the year, which reset the day counting process the triggers public financial disclosure.</p>	Closed

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SUGGESTION		
#	Element	SUGGESTION
1	4.0 5.0	<p><b>CONCERN:</b> Financial disclosure reporting requirements can become complicated when SGEs shift during their term of office from working less than 61 days to working more than 60 days in any calendar year. When this happens, SGEs are subject to filing both types of financial disclosure reports in a 12-month period.</p> <p><b>SUGGESTION:</b> To avoid the administrative burden of managing dual reporting cycles for SGEs and to eliminate the possibility of an SGE public filer filing both types of financial disclosure reports in a 12-month period, OGE suggests that the DAEO ask all SGE board members to voluntarily file, in lieu of the confidential report, a modified new entrant public report, which would be updated and values added if the SGE works more than 60 days in the calendar year. This modified public report would differ from the typical new entrant report in that the filer would only list on Schedule A the assets held that meet either income or asset value reporting requirements; the filer would not include information about asset and income values. Also, the filer would only report the general description of any liabilities held on Schedule C, Part 1. The modified report would be treated as confidential until the SGE exceeds 60 workdays in the calendar year. At that point, the SGE would be required within 15 days after the 60<sup>th</sup> workday to update the modified new entrant report, reflecting any change in finances and adding the asset and income values for all items on Schedule A, in addition to the liabilities values and terms on Schedule C, Part 1. Once the report has been updated, it would become public.</p> <p>In addition, PCLOB should consider requiring all SGEs to use May 15 for their SGE report filing anniversary date. Choosing this date gives confidential filers the same reporting deadline as public SGE filers. It also places all SGE reporting deadlines on the same date as all non-SGE annual public report filers.</p> <p><b>AGENCY RESPONSE:</b>                      As the work of the Board has evolved since its inception, it has become clear that every SGE Board member expects to work at least 61 days in any given year. Therefore, we expect that every Board member will need to file a public report rather than a confidential report. Thus, we do not read your recommendation as suggesting that it will also be necessary for Board members to file a voluntary modified public report earlier in the year in addition to the public report. Instead, Board members will file public disclosure reports every May, and will continue to make such yearly filings until circumstances change and they no longer are reasonably expected to work more than 61 days in a given year.</p>

COMMENTS
<p><u>OGE Comments</u></p> <p>(4.1) Although PCLOB's written procedures provided the overall framework for how the agency administers the public financial disclosure systems, OGE identified areas where they could be strengthened. For example, OGE noticed that the procedures did not fully address the review/evaluation of public reports. During the inspection, PCLOB modified its procedures to comply with the content requirements of 5 U.S.C app. IV, § 402(d)(1).</p> <p>(4.6 – 4.9) PCLOB did not have any non-PAS public filing positions in CY2013.</p> <p>(4.10) The Chairman of the Board, a PAS appointee, is the only official required to file a public report. In 2013, the Chairman filed an annual report which was required to be forwarded to OGE for final review and certification.</p> <p>(5.1) As with PCLOB's written procedures governing its public financial disclosure system, OGE also identified areas of PCLOB's written procedures governing its confidential financial disclosure system that could be strengthened. During the inspection, PCLOB also modified its procedures governing the confidential system to comply with the content requirements of 5 U.S.C app. IV, § 402(d)(1).</p> <p>(5.3) PCLOB does not have an alternative confidential financial disclosure system.</p> <p>(7.1.5) PCLOB does not have an agency supplemental standards regulation.</p>