

## ETHICS PROGRAM INSPECTION REPORT

Agency: Occupational Safety and Health Review Commission

Report No.: 17-511

Date: September 29, 2017

Period Covered by Review: January 1, 2016 – 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	54
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	19
1.5	Number of confidential financial disclosure reports required to be filed	3
<b>ETHICS PROGRAM</b>		
1.6	Title of Designated Agency Ethics Official (DAEO)	Senior Attorney-Advisor
1.7	Grade level of DAEO	GS-15
1.8	Title of Alternate DAEO (ADAEO)	Attorney-Advisor
1.9	Grade level of ADAEO	GS-14
1.10	Title of the primary, day-to-day ethics program administrator	Senior Attorney-Advisor
1.11	Grade level of the primary, day-to-day ethics program administrator	GS-15
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%.)	15%
1.15	Number of reporting levels between the DAEO and the agency head	1
<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</i> 5 C.F.R. § 2638.202(c).	<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. § 2638.202(c).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>COMMENTS</b>					
None					

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</i> 5 C.F.R. § 2634.804.	<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</i> 5 C.F.R. § 2634.804.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
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"/>	

## ETHICS PROGRAM INSPECTION REPORT

Agency: Occupational Safety and Health Review Commission

Report No.: 17-511

Date: September 29, 2017

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

UNITED STATES OFFICE OF  
**GOVERNMENT ETHICS**

  
 Preventing Conflicts of Interest  
 in the Executive Branch

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) During the period under review, the Occupational Safety and Health Review Commission (OSHRC) did not have any PAS officials who were required to take reportable actions to comply with their ethics agreement or any PAS officials who were required to notify OGE of their ethics agreement compliance.				

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 type="checkbox"/>	<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 type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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 checked="" type="checkbox"/>	<input 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).	N/A		
4.6	Percentage of sampled non-PAS annual reports filed timely. <i>See</i> 5 C.F.R. § 2634.201(a).	100%		
4.7	Percentage of sampled non-PAS termination reports filed timely. <i>See</i> 5 C.F.R. § 2634.201(e).	N/A		
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.	11%		
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).	0%		
<b>COMMENTS</b>				
(4.1.3) OSHRC had no written procedures governing the public availability of public financial disclosure reports. (4.2) OSHRC did not have any filers subject to the late filing fee during the period under review. (4.5, 4.7) OSHRC did not have any non-PAS new entrant or termination public financial disclosure filers during the period under review. (4.8) During the period under review, OSHRC had not certified 16 out of 18 non-PAS public financial disclosure reports within 60 days of receipt. (4.10) No PAS termination reports were required to be filed in 2016. (4.11) Neither of the two PAS annual reports were certified within 60 days of receipt. One report was certified 11 days beyond the 60 day period and the remaining report was certified 18 days after the 60 day period.				

## ETHICS PROGRAM INSPECTION REPORT

Agency: Occupational Safety and Health Review Commission

Report No.: 17-511

Date: September 29, 2017

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

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS

Preventing Conflicts of Interest  
in the Executive Branch

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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DATA ANALYSIS			%			
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).			100%		
COMMENTS						
<p>(5.3) OSHRC does not have an alternative confidential financial disclosure system.</p> <p>(5.5) OSHRC had one new entrant filer who provided a date of appointment in 2015, but did not file a new entrant report until November 2016. Ethics officials stated that the report was not filed timely because they were not informed that the filer had a change of duties which would require him to file a report. The filer eventually approached ethics officials because he thought he should be required to file a report. Ethics officials determined the employee was required to file and the report was promptly filed. Ethics officials will reinforce with supervisors and human resources officials the requirement to provide notification when a change in duties results in an employee becoming a filer. Due to the lack of evidence of a systemic deficiency and ethics officials' prompt resolution of the immediate problem and actions to prevent recurrence, OGE is not making a recommendation regarding this issue.</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 checked="" type="checkbox"/>	<input 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%		
COMMENTS						
None						

## ETHICS PROGRAM INSPECTION REPORT

Agency: Occupational Safety and Health Review Commission

Report No.: 17-511

Date: September 29, 2017

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

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS

Preventing Conflicts of Interest  
in the Executive Branch

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 type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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).			100%		
7.4	Confidential financial disclosure filers who completed annual ethics training. <i>See</i> 5 C.F.R. § 2638.705(a)(3).			100%		
<b>COMMENTS</b>						
(7.1.5) OSHRC does not have supplemental standards of conduct.						

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	4.1.3	<p><u>RECOMMENDATION:</u> Amend the agency's written policies and procedures to specifically address how the agency will make financial disclosure reports publicly available, when appropriate.</p> <p><u>AGENCY RESPONSE:</u> The agency has drafted a stand-alone provision that will become part of our practices and procedures.</p> <p><u>OGE COMMENT:</u> OGE has reviewed the new provision OSHRC submitted in response to a draft of this report and determined that it meets statutory and regulatory requirements. OGE is closing this recommendation.</p>	Closed
2	4.8	<p><u>RECOMMENDATION:</u> Ensure public financial disclosure reports are certified timely.</p> <p><u>AGENCY RESPONSE:</u> Although the filers submitted the 278 reports in a timely fashion in 2016, the reports were not always certified within the 60-day period. It appears that the Commission got behind on certifications in 2016 due in part to the departure of the ADAEO at a critical time – two weeks before reports were due and the fact that the incoming replacement for the ADAEO was not trained to review</p>	July 30, 2018

## ETHICS PROGRAM INSPECTION REPORT

Agency: Occupational Safety and Health Review Commission

Report No.: 17-511

Date: September 29, 2017

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



reports until after the certification window. The Commission has done much better in previous years and in 2017 as discussed below.

By way of explanation, the filer tracking charts are the system we use for tracking certifications and the filing of reports. The ADAEO checks and updates the chart regularly and shares it with the DAEO. The charts are in the ethics folder in the ADAEO's Working Drafts folder and have been in existence for some time.

In 2017, the due date for the reports covering CY 2016 was May 15, 2017. The twenty reports were timely filed (taking extensions into account), and only one report required longer than 60 days to certify, which means that 95% of the reports were certified within 60 days of filing. That single report, which involved a substantial number of assets and transactions, essentially required a complete redo by the filer. It still would not have required a delinquency notice under OGE's review timeframes. Public Financial Disclosure: A Reviewer's Reference, section 4.2 at p.4.3 (2d Edition). The reports of the Commission's two PAS appointees were among the 19 reports certified within 60 days. Finally, even if the time required to certify the late-certified report is factored in, the average time from filing to certification was under 20 days.

OGE COMMENT: OGE is encouraged that the Commission's review of reports filed in 2017 indicates that timeliness of certification has improved and now meets requirements. OGE will conduct a follow-up review in 2018 to ensure that the actions taken to resolve the issues which led to late certification in 2016 have resulted in sustained improvement.