

**ETHICS PROGRAM REVIEW FOLLOW-UP REPORT**

Agency: Federal Mediation and Conciliation Service

Follow-up to OGE Report Number: 17-08I

Report No.: 19-12IF

Date: March 29, 2019

UNITED STATES OFFICE OF  
**GOVERNMENT ETHICS**

  
Preventing Conflicts of Interest  
in the Executive Branch

As a result of its inspection of the Federal Mediation and Conciliation Service (FMCS) ethics program, the Office of Government Ethics (OGE) issued six recommendations in its January 2017 inspection report. OGE recently conducted a follow-up review to assess whether FMCS has taken sufficient action to resolve the deficiencies underlying these recommendations. The results of the follow-up review are summarized below.

	<b>Recommendation</b>	<b>Agency Action and OGE Finding</b>	<b>Status</b>
1	Ensure that new entrant public financial disclosure reports are filed timely.	OGE's review of the FMCS new entrant public reports filed in 2018 indicated that all reports were filed timely.	Closed
2	Ensure that annual public financial disclosure reports are filed timely.	OGE's review of the FMCS annual public reports filed in 2018 indicated that all reports were filed timely.	Closed
3	Ensure that all public financial disclosure reports, including Presidentially appointed, Senate-confirmed (PAS) reports, are certified timely.	OGE's January 2017 inspection report indicated that PAS certification timeliness was 0% while non-PAS certification timeliness was 25%.  OGE's follow-up review of the 2018 public reports indicated that no PAS reports were required to be filed in 2018.  OGE's review of the 2018 non-PAS public reports indicated that certification timeliness improved to 83%. The one report that was certified late was certified only four days after the 60-day deadline.	Closed
4	Ensure that new entrant confidential financial disclosure reports are filed timely.	OGE's review of the new entrant confidential reports filed during 2018 indicated that filing timeliness improved from 33% to 80%.	Closed
5	Ensure that confidential financial disclosure reports are certified timely.	OGE's review of the confidential reports selected for review indicated that all the reports were certified timely.	Closed
6	Ensure that annual training content meets the requirements established by the revised OGE regulations at 5 C.F.R. Part 2638, Subpart C, effective January 1, 2017.	OGE's review of FMCS's 2018 annual ethics training material determined that the content met the OGE regulatory requirements.	Closed

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Based on the results of OGE's follow-up review, all recommendations are closed.

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1.0 AGENCY DATA		
<b>EMPLOYEES</b>		
1.1	Number of full-time agency employees	231
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	1
1.4	Number of non-PAS public financial disclosure reports required to be filed	4
1.5	Number of confidential financial disclosure reports required to be filed	33
<b>ETHICS PROGRAM</b>		
1.6	Title of Designated Agency Ethics Official (DAEO)	General Counsel
1.7	Grade level of DAEO	GS-15
1.8	Title of Alternate DAEO (ADAEO)	Deputy General Counsel
1.9	Grade level of ADAEO	GS-14
1.10	Title of the primary, day-to-day ethics program administrator	General Counsel
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	3
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%.)	25%
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

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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 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) FMCS' one PAS official complied with all ethics agreement requirements prior to 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).	0%		
4.6	Percentage of sampled non-PAS annual reports filed timely. <i>See</i> 5 C.F.R. § 2634.201(a).	67%		
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.	25%		
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>				
<p>(4.4) FMCS retained some reports approximately three years beyond their six year retention period. Subsequent to OGE's onsite visit, FMCS destroyed all reports that had been retained for more than six years. Therefore, OGE is not issuing a recommendation.</p> <p>(4.5) The one non-PAS new entrant public financial disclosure report required to be filed in 2016 was filed late.</p> <p>(4.6) Three non-PAS annual public financial disclosure reports were required to be filed in 2016. One of the three reports, the DAEO's report, was filed late.</p> <p>(4.7) No non-PAS termination reports were required to be filed in 2016.</p> <p>(4.8) Only one of the four non-PAS public financial disclosure reports required to be filed during the period under review was certified timely.</p> <p>(4.9) The one PAS annual public financial disclosure report filed in 2016 was filed timely.</p>				

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(4.10) No PAS termination reports were required to be filed in 2016.

(4.11) The one PAS annual public financial disclosure report filed in 2016 was certified late.

### 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	<ul style="list-style-type: none"> <li>Collection of confidential financial disclosure reports</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.1.2	<ul style="list-style-type: none"> <li>Review/evaluation of confidential financial disclosure reports</li> </ul>	<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).	33%		
5.6	Percentage of sampled confidential annual reports filed timely. <i>See</i> 5 C.F.R. § 2634.903(a).	87%		
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).	15%		
<b>COMMENTS</b>				
<p>(5.3) FMCS does not have an alternative confidential financial disclosure system.</p> <p>(5.4) FMCS retained some reports approximately three years beyond their six year retention period. Subsequent to OGE's onsite visit, FMCS destroyed all reports that had been retained for more than six years. Therefore, OGE is not issuing a recommendation.</p> <p>(5.5) Three employees were required to file new entrant reports in 2016. This includes two employees who were promoted into new positions in early-to-mid 2016, but were not notified timely of the filing requirement. Both employees filed reports subsequent to OGE's onsite visit as a result of OGE's inquiries to identify new entrants during 2016.</p> <p>(5.7) Of the 33 confidential reports that OGE reviewed, 28 reports (85%) were certified late.</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	<ul style="list-style-type: none"> <li>Current contact information of relevant ethics official(s)</li> </ul>	<input checked="" type="checkbox"/>	<input 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"/>	<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"/>

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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.	96%
	COMMENTS	
	None	

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 type="checkbox"/>	<input checked="" 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"/>
	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%		
	COMMENTS			
	(7.1.3) FMCS's annual ethics training material did not include a discussion of the restrictions regarding gifts, an important component of the Standards of Ethical Conduct.			
	(7.1.5) FMCS 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"/>
	COMMENTS			
	None			

9.0	RECOMMENDATION(S)		
#	Element	RECOMMENDATION	Compliance Due
1	4.5	<p><u>RECOMMENDATION:</u> Ensure that new entrant public financial disclosure reports are filed timely.</p> <p><u>AGENCY RESPONSE:</u> The Agency ethics officials will make every effort to ensure that new entrant public financial disclosure reports are filed timely.</p>	

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2	4.6	<p><u>RECOMMENDATION:</u> Ensure that annual public financial disclosure reports are filed timely.</p> <p><u>AGENCY RESPONSE:</u> The Agency ethics officials will make every effort to ensure that public financial disclosure reports are filed timely.</p>	
3	4.8 4.11	<p><u>RECOMMENDATION:</u> Ensure that all public financial disclosure reports, including PAS reports, are certified timely.</p> <p><u>AGENCY RESPONSE:</u> The Agency ethics officials will make every effort to ensure that all public financial disclosure reports are certified timely.</p>	
4	5.5	<p><u>RECOMMENDATION:</u> Ensure that new entrant confidential financial disclosure reports are filed timely.</p> <p><u>AGENCY RESPONSE:</u> The Agency ethics officials will make every effort to ensure that new entrant confidential financial disclosure reports are filed timely.</p>	
5	5.7	<p><u>RECOMMENDATION:</u> Ensure that confidential financial disclosure reports are certified timely.</p> <p><u>AGENCY RESPONSE:</u> The Agency ethics officials will make every effort to ensure that confidential financial disclosure reports are certified timely.</p>	
6	7.1.3	<p><u>RECOMMENDATION:</u> Ensure that annual training content meets the requirements established by the revised OGE regulations at 5 C.F.R. Part 2638, Subpart C, effective January 1, 2017.</p> <p><u>AGENCY RESPONSE:</u> The Agency ethics officials will revise annual training content to ensure that it meets all requirements of the revised OGE regulations, effective January 1, 2107.</p>	