

## ETHICS PROGRAM INSPECTION REPORT

Agency: National Security Agency

Report No.: 17-31I

Date: June 14, 2017

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



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	21,349
1.2	Number of agency special Government employees	Classified Information
1.3	Number of Presidentially appointed, Senate-confirmed (PAS) public financial disclosure reports required to be filed	0
1.4	Number of non-PAS public financial disclosure reports required to be filed	Classified Information
1.5	Number of confidential financial disclosure reports required to be filed	Classified Information
<b>ETHICS PROGRAM</b>		
1.6	Title of Designated Agency Ethics Official (DAEO)	Deputy General Counsel, Litigation & Management
1.7	Grade level of DAEO	SES Equivalent
1.8	Title of Alternate DAEO (ADAEO)	Associate General Counsel, Administrative Law & Ethics
1.9	Grade level of ADAEO	SES Equivalent
1.10	Title of the primary, day-to-day ethics program administrator	Deputy DAEO/Attorney
1.11	Grade level of the primary, day-to-day ethics program administrator	GS 13
1.12	Current number of full-time ethics officials	2
1.13	Current number of part-time ethics officials	10
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	2
<b>COMMENTS</b>		
<p>(1.2) This information is classified. Exact numbers were obtained by OGE during its onsite review and used to determine compliance with applicable requirements.</p> <p>(1.3) The positions of Director and Inspector General for the National Security Agency (NSA) became presidential appointments requiring the advice and consent of the Senate on July 7, 2014, under the 2014 Intelligence Authorization Act (Act). (This provision applies only to those appointed subsequent to the effective date of the Act). At the time of OGE's inspection, NSA had no PAS public financial disclosure reports required to be filed:</p> <ul style="list-style-type: none"> <li>The Director of NSA, a four-star commissioned military officer, is recommended by the Secretary of Defense and nominated for appointment by the President. Per 5 C.F.R. § 2634.602(f), members of the uniformed services file their public reports with the Secretary, or his delegate. The public financial disclosure report filed by the Director of NSA is reviewed, certified, and retained at NSA.</li> <li>Although the Intelligence Authorization Act was passed in 2014, it was not until 2017 that a candidate was named to fill the NSA Inspector General position. On January 4, 2017, the President nominated a new Inspector General. However, on February 28, 2017, the nominee withdrew from the nomination. OGE notes that whenever the Inspector General position is filled, the filer's public report will be retained at NSA.</li> </ul> <p>(1.4-1.5) This information is classified by NSA. Exact numbers were obtained by OGE during its onsite review and used to determine compliance with applicable requirements.</p>		

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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"/>
COMMENTS						
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"/>
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"/>	<input type="checkbox"/>	<input checked="" 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 type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
COMMENTS						
(3.1 – 3.5) At the time of OGE’s inspection, NSA had no PAS officials.						

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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DATA ANALYSIS				%		
4.5	Percentage of sampled non-PAS new entrant reports filed timely. <i>See</i> 5 C.F.R. § 2634.201(b).			84%		
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).			100%		

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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.	96%
4.9	Percentage of sampled PAS annual reports filed timely. <i>See</i> 5 C.F.R. § 2634.201(a).	N/A
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).	N/A
<b>COMMENTS</b>		
<p>(4.1) As a defense agency, NSA operates under the authority of the Department of Defense (DoD). Chapter 7 of the Joint Ethics Regulation (JER) serves as the written procedures for the administration of the financial disclosure system for all DoD components, including NSA. These procedures comply with regulatory requirements mandating that agencies have written procedures governing the administration of financial disclosure systems.</p> <p>(4.9 – 4.11) At the time of OGE’s inspection, NSA had no PAS official public reports required to be filed.</p> <p><u>Model Practice Identified:</u> In addition to the JER, NSA also established additional, more tailored, written procedures for administering its public financial disclosure system. In creating tailored written procedures, NSA has exceeded minimum requirements.</p> <p><u>General Observation: Benefits of an Electronic Filing System</u> At the time of OGE’s inspection, NSA required all of its public and confidential financial disclosure filers to file their public/confidential reports via hardcopy. OGE notes that during the review, the Deputy DAEO indicated an interest in pursuing an electronic filing system (e-filing) for NSA’s financial disclosure program to help with the administration of the financial disclosure program. OGE supports NSA in the pursuit of this endeavor. Other executive branch agencies who are using an e-filing system have found great efficiencies in time and resources, and the resources saved have been moved to other essential aspects of financial disclosure—such as conflicts analysis—and other aspects of the overall ethics program.</p>		

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"/>
<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).				43%		
5.6	Percentage of sampled confidential annual reports filed timely. <i>See</i> 5 C.F.R. § 2634.903(a).				90%		
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%		

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COMMENTS	
	<p>(5.1) As noted above, Chapter 7 of the JER serves as the written procedures for the administration of the financial disclosure system for NSA. In addition to the JER, NSA also established additional, more tailored, written procedures for administering its confidential financial disclosure system. In creating tailored written procedures, NSA has exceeded minimum requirements.</p> <p>(5.3) NSA does not have an alternative confidential financial disclosure system.</p> <p><u>Concern</u> (5.5) OGE examined 21 new entrant confidential financial disclosure reports that were filed in 2016. Of the 21 reports examined, 12 were filed late. The Deputy DAEO advised OGE that most of NSA's difficulty in identifying new entrant filers arises when employees are hired internally for filing positions or are assigned new duties requiring them to file a confidential report. The Deputy DAEO believes that a new process put in place by NSA's human resource office whereby filers are identified as part of NSA's internal job offer process will help resolve this issue. OGE also suggested that NSA consider sending quarterly reminders (instead of the current annual reminders) to supervisors to remind them to review who should be designated as a filer based on assigned duties. OGE recommends that NSA continue to implement corrective action and ensure that new entrant confidential reports are filed timely. OGE will conduct a follow-up review to assess the effectiveness of the actions taken.</p> <p><u>Model Practice Identified</u> To help supervisors detect real or apparent conflicts of interest during their review of financial disclosure reports, the Ethics Office uses an evaluation form to help supervisors with their analysis. This form provides NSA ethics officials with further assurances that supervisors have considered all relevant factors when reviewing a financial disclosure report for potential conflicts.</p>

INITIAL ETHICS ORIENTATION							
COMPLIANCE REQUIREMENT				Yes	No	N/A	
6.1	All initial ethics orientation material contains: <i>See 5 C.F.R. § 2638.703(a) and (b).</i>						
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 5 C.F.R. § 2638.703(c).</i>				<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>DATA ANALYSIS</b>				<b>%</b>			
6.3	Percentage of new agency employees who received initial ethics orientation within 90 days. <i>See 5 C.F.R. § 2638.703.</i>				98%		
COMMENTS							
(6.2) During the on-site portion of our inspection, OGE observed a live training session and found it informative and well-g geared to the variety of ethics issues that new NSA employees may face while on the job. Training completion was tracked using a sign-in sheet that is collected by the instructor at the end of each class. The new hires were also provided with written material to review after the training.							

7.0 ANNUAL ETHICS TRAINING							
COMPLIANCE REQUIREMENT				Yes	No	N/A	
7.1	All annual ethics training material contains: <i>See 5 C.F.R. § 2638.704(b).</i>						
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"/>	<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"/>	<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"/>	<input type="checkbox"/>

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UNITED STATES OFFICE OF  
GOVERNMENT ETHICS

Preventing Conflicts of Interest  
in the Executive Branch

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)	100%		
7.4	Confidential financial disclosure filers who completed annual ethics training. <i>See</i> 5 C.F.R. § 2638.705(a)(3).	98%		
<b>COMMENTS</b>				
<p><u>Model Practice Identified</u> In addition to written procedures governing financial disclosure, NSA has also established written procedures for administering the ethics training program. NSA has written escalation procedures to pursue employees who fail to complete their required annual ethics training by the end of September 30<sup>th</sup> of each year. Escalation actions range from reminding delinquent employees of the requirement to complete the training to forwarding the names of delinquent employees to NSA's senior leadership with a request to initiate personnel action.</p>				

<b>8.0 ETHICS ADVICE AND COUNSELING</b>				
<b>COMPLIANCE REQUIREMENT</b>		<b>Yes</b>	<b>No</b>	<b>N/A</b>
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				

<b>9.0 RECOMMENDATION(S)</b>			
#	Element	RECOMMENDATION	Compliance Due
1	(5.5)	<p><u>RECOMMENDATION:</u> Continue to implement corrective action and to ensure that new entrant confidential reports are filed timely.</p> <p><u>AGENCY RESPONSE:</u> The NSA ethics office agrees there were difficulties in identifying new entrant OGE450 filers due to the manual nature of the identification process for our external hires. In addition, there were difficulties with identifying filers who took on new duties within the Agency. As noted by OGE, however, the Agency has implemented a new identification process in order to comply with the revised regulations found in 5 CFR Part 2638. With the new identification process in place the Agency believes the identification issue for external hires will be significantly reduced. In addition, to reduce the likelihood of missing employees required to file reports due to assignment of new duties, the Agency agrees to implement OGE's suggestion to send quarterly reminders to supervisors to remind them to review who should be designated as a filer (in addition to the one time annual data call).</p>	12/13/2017