

ETHICS PROGRAM INSPECTION REPORT

Agency: Nuclear Waste Technical Review Board (NWTRB)

Report No.: 20-28I

Date: June 2, 2020

Period Covered by Review: January 1 through December 31, 2019

UNITED STATES OFFICE OF GOVERNMENT ETHICS

Preventing Conflicts of Interest
in the Executive Branch

1.0 AGENCY DATA		
EMPLOYEES		
1.1	Number of full-time agency employees.	10
1.2	Number of Presidentially appointed, Senate-confirmed (PAS) public financial disclosure reports required to be filed.	0
1.3	Number of non-PAS public financial disclosure reports required to be filed.	2
1.4	Number of confidential financial disclosure reports required to be filed.	6
ETHICS PROGRAM		
1.5	Title of Designated Agency Ethics Official (DAEO).	Director of Administration
1.6	Grade level of DAEO.	AD/GS-15 equivalent
1.7	Title of Alternate DAEO (ADAEO).	Executive Director
1.8	Grade level of ADAEO.	SES
1.9	Title of the primary, day-to-day ethics program administrator.	Director of Administration
1.10	Grade level of the primary, day-to-day ethics program administrator.	AD/GS-15 equivalent
1.11	Current number of full-time ethics officials.	0
1.12	Current number of part-time ethics officials.	2
1.13	Number of reporting levels between the DAEO and the agency head.	1
COMMENTS		
(1.2) NWTRB has no PAS officials. (NWTRB's Board members are Presidentially-appointed, but are not confirmed by the Senate.)		
(1.6 and 1.10) Pursuant to the Nuclear Waste Policy Amendments Act, NWTRB uses the Administratively Determined (AD) Pay Plan to establish the salaries for its employees.		

2.0 LEADERSHIP						
COMPLIANCE REQUIREMENTS				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. § 2638.107(a).			<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. § 2638.107(a).			<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
COMMENTS						
None						

3.0 PUBLIC FINANCIAL DISCLOSURE (OGE Form 278e, OGE Form 278-T)						
COMPLIANCE REQUIREMENTS				Yes	No	N/A
The agency has written policies and procedures in place governing: <i>See</i> 5 U.S.C. app. IV, § 402(d)(1).						
3.1	• Collection of public financial disclosure reports.			<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.2	• Review/evaluation of public financial disclosure reports.			<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.3	• Public availability of public financial disclosure reports.			<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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3.4	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"/>
3.5	Public financial disclosure reports are securely maintained. <i>See OGE/GOVT-1.</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.6	Public financial disclosure reports are retained in accordance with the retention requirements. <i>See 5 C.F.R. § 2634.603(g)(1).</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.7	There is reasonable assurance that the lead human resources official or designee promptly (no later than 15 days after appointment) notifies the DAEO of all appointments to positions that require incumbents to file public financial disclosure reports. <i>See 5 C.F.R. § 2638.105(a)(1).</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.8	There is reasonable assurance that the lead human resources official or designee promptly (no later than 15 days after termination) notified the DAEO of terminations of employees in positions that require incumbents to file public financial disclosure reports. <i>See 5 C.F.R. § 2638.105(a)(2).</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
DATA ANALYSIS		%		
3.9	Percentage of sampled non-PAS new entrant reports filed timely. <i>See 5 C.F.R. § 2634.201(b).</i>	N/A		
3.10	Percentage of sampled non-PAS annual reports filed timely. <i>See 5 C.F.R. § 2634.201(a).</i>	100%		
3.11	Percentage of sampled non-PAS termination reports filed timely. <i>See 5 C.F.R. § 2634.201(e).</i>	N/A		
3.12	Percentage of sampled non-PAS public financial disclosure reports reviewed within 60 days of receipt. <i>See 5 C.F.R. § 2634.605(a).</i>	100%		
3.13	Percentage of sampled non-PAS public financial disclosure reports certified within 60 days of receipt. <i>See 5 C.F.R. § 2634.605(a).</i>	100%		
3.14	Percentage of sampled PAS annual reports filed timely. <i>See 5 C.F.R. § 2634.201(a).</i>	N/A		
3.15	Percentage of sampled PAS termination reports filed timely. <i>See 5 C.F.R. § 2634.201(e).</i>	N/A		
3.16	Percentage of sampled PAS annual and termination reports reviewed within 60 days of receipt. <i>See 5 C.F.R. § 2634.605(a).</i>	N/A		
3.17	Percentage of sampled PAS annual and termination reports certified within 60 days of receipt. <i>See 5 C.F.R. § 2634.605(a).</i>	N/A		
COMMENTS				
(3.4) NWTRB did not have any public financial disclosure report filers who were subject to the late filing fee or who required a waiver of the fee during the period covered by this review.				
(3.8, 3.9 and 3.11) NWTRB did not have any non-PAS new entrant or termination public reports during the period covered by this review.				
(3.14 – 3.17) NWTRB does not have any PAS officials.				

4.0	CONFIDENTIAL FINANCIAL DISCLOSURE			
	COMPLIANCE REQUIREMENTS	Yes	No	N/A
	The agency has written policies and procedures in place governing: <i>See 5 U.S.C app. IV, § 402(d)(1).</i>			
4.1	• Collection of confidential financial disclosure reports.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.2	• Review/evaluation of confidential financial disclosure reports.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.3	Confidential financial disclosure reports are securely maintained. <i>See OGE/GOVT-2.</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.4	Confidential financial disclosure reports are retained in accordance with the retention requirements. <i>See 5 C.F.R. § 2634.604.</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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4.5	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"/>
4.6	There is reasonable assurance that the lead human resources official or designee promptly (no later than 15 days after appointment) notifies the DAEO of all appointments to positions that require incumbents to file confidential financial disclosure reports. <i>See</i> 5 C.F.R. § 2638.105(a)(1).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DATA ANALYSIS		%		
4.7	Percentage of sampled confidential new entrant reports filed timely. <i>See</i> 5 C.F.R. § 2634.903(b).	N/A		
4.8	Percentage of sampled confidential annual reports filed timely. <i>See</i> 5 C.F.R. § 2634.903(a).	100%		
4.9	Percentage of sampled reports reviewed within 60 days of receipt. <i>See</i> 5 C.F.R. § 2634.605(a).	100%		
4.10	Percentage of sampled confidential financial disclosure reports certified within 60 days of receipt. <i>See</i> 5 C.F.R. §§ 2634.605(a) and 2634.909(a).	100%		
COMMENTS				
(4.5) NWTRB does not have an OGE-approved alternative confidential financial disclosure system.				
(4.7) No new entrant confidential financial disclosure reports were required to be filed during the period covered by this review.				

5.0	Notices to Prospective Employees			
COMPLIANCE REQUIREMENTS		Yes	No	N/A
Written offers of employment for positions covered by the Standards of Conduct provide: <i>See</i> 5 C.F.R. § 2638.303.				
5.1	• A statement regarding the agency's commitment to government ethics.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.2	• Notice that the individual will be subject to the Standards of Conduct and the criminal conflict of interest statutes as an employee.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.3	• Contact information for an appropriate agency ethics office or an explanation of how to obtain additional information on applicable ethics requirements.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.4	• Where applicable, notice of the time frame for completing initial ethics training.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.5	• Where applicable, a statement regarding financial disclosure requirements and an explanation that new entrant reports must be filed within 30 days of appointment.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.6	The agency has established written procedures for issuing the notice to prospective employees. <i>See</i> 5 C.F.R. § 2638.303(c).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.7	The agency's written procedures are reviewed by the DAEO each year. <i>See</i> 5 C.F.R. § 2638.303(c).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.8	The agency can demonstrate that there is an effective process for ensuring all covered employees receive the required information with their written offer of employment. <i>See</i> 5 C.F.R. § 2638.303.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
COMMENTS				
None				

6.0	Notices to New Supervisors			
COMPLIANCE REQUIREMENTS		Yes	No	N/A
The agency provides each employee upon initial appointment to a supervisory position with: <i>See</i> 5 C.F.R. § 2638.306.				
6.1	• Contact information for the agency's ethics office.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6.2	• The text of 5 C.F.R. § 2638.103.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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6.3	<ul style="list-style-type: none"> A copy of, a hyperlink to, or the address of a Web site containing the Principles of Ethical Conduct 	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6.4	<ul style="list-style-type: none"> Other information the DAEO deems necessary. 	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6.5	The agency has established written procedures for supervisory ethics notices. <i>See</i> 5 C.F.R. § 2638.306(d).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6.6	The agency's written procedures are reviewed by the DAEO each year. <i>See</i> 5 C.F.R. § 2638.306(d).	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6.7	The agency can demonstrate that there is an effective process for ensuring that new supervisors receive the required information within one year of appointment. <i>See</i> 5 C.F.R. § 2638.306(b).	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

COMMENTS

(6.1 - 6.4; 6.7) NWTRB has only two supervisory positions, the DAEO and ADAEO - both are senior civilians with prior supervisory experience. No new supervisors were hired during the period under review and none are expected to be hired during CY 2020 according to ethics officials. According to the DAEO, should a supervisory position become vacant, either the DAEO or ADAEO would ensure that the supervisory notice is provided.

(6.5-6.6) At the time of inspection, the Ethics Office had not established a written procedure for issuing notices to new supervisors. However, prior to the conclusion of this review, the DAEO documented NWTRB's supervisory ethics notice procedures within its existing Guide for Processing New Employees, which is reviewed annually.

7.0	Initial Ethics Training			
COMPLIANCE REQUIREMENTS		Yes	No	N/A
	Each new employee of the agency subject to the Standards of Conduct must complete initial ethics training. <i>See</i> 5 C.F.R. § 2638.304.			
7.1	The training presentation(s) addressed concepts related to conflicts of interest, impartiality, misuse of position and gifts. <i>See</i> 5 C.F.R. § 2638.304(e)(1).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7.2	The agency provided new employees with either the following written materials or written instruction for accessing them: The summary of the Standards of Conduct distributed by the Office of Government Ethics or an equivalent summary prepared by the agency; provisions of any supplemental agency regulation that the DAEO determines to be relevant or a summary of those provisions; such other written materials as the DAEO determines should be included; instructions for contacting the agency's ethics officials. <i>See</i> 5 C.F.R. § 2638.304(e)(2).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7.3	The agency has established written procedures for initial ethics training. <i>See</i> 5 C.F.R. § 2638.304(f).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7.4	The agency's written procedures are reviewed by the DAEO each year. <i>See</i> 5 C.F.R. § 2638.304(f).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DATA ANALYSIS		%		
7.5	Percentage of new employees who received initial ethics training. <i>See</i> 5 C.F.R. § 2638.304.	100%		
7.6	Percentage of new employees who received initial ethics training within three months of appointment. <i>See</i> 5 C.F.R. § 2638.304(b).	100%		
COMMENTS				
	(7.5 – 7.6) OGE was advised that one new employee was hired in December 2019. This employee <u>observed</u> ethics training in November 2019 after being selected for a position, but prior to their entrance on duty, and <u>participated</u> in new entrant employee training with other new arrivals in February 2020.			

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8.0 Annual Ethics Training							
COMPLIANCE REQUIREMENTS				Yes	No	N/A	
Each calendar year, public filers, confidential filers, and certain other employees must complete ethics training which meets specified requirements. <i>See</i> 5 C.F.R. §§ 2638.307 and 2638.308.							
8.1	The training presentation(s) addressed concepts related to financial conflicts of interest, impartiality, misuse of position and gifts. <i>See</i> 5 C.F.R. §§ 2638.307(e)(1) and 2638.308(f)(1).				<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8.2	The agency provided employees with either the following written materials or written instruction for accessing them: The summary of the Standards of Conduct distributed by the Office of Government Ethics or an equivalent summary prepared by the agency; provisions of any supplemental agency regulation that the DAEO determines to be relevant or a summary of those provisions; such other written materials as the DAEO determines should be included; instructions for contacting the agency's ethics officials. <i>See</i> 5 C.F.R. § 2638.308(f)(2).				<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8.3	The agency's annual ethics training complies with the formatting requirements for public filers, confidential filers, and certain other employees. <i>See</i> 5 C.F.R. §§ 2638.307(d) and 2638.308(e).				<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8.4	The agency's program for annual ethics training complies with the tracking requirements for public filers, confidential filers, and certain other employees. <i>See</i> 5 C.F.R. §§ 2638.307(f) and 2638.308(g).				<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8.5	The agency can demonstrate it has an effective process for ensuring covered public filers, other than those whose pay is set at Level I or Level II of the Executive Schedule, complete live annual ethics training at least once every two years. <i>See</i> 5 C.F.R. § 2638.308(e)(2).				<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DATA ANALYSIS					Training Format		
					Live	Interactive	
Percentage of public filers who completed annual ethics training before the end of the calendar year. <i>See</i> 5 C.F.R. § 2638.308(a).							
8.6	<ul style="list-style-type: none"> Executive Schedule Level I and Level II. <i>See</i> 5 C.F.R. § 2638.308(e)(1). 				N/A	N/A	
8.7	<ul style="list-style-type: none"> Other PAS and Equivalent. <i>See</i> 5 C.F.R. § 2638.308(e)(2). 				N/A	N/A	
8.8	<ul style="list-style-type: none"> SES and Equivalent. <i>See</i> 5 C.F.R. § 2638.308(e)(3). 				100%	N/A	
Percentage of confidential filers and certain other employees who completed annual ethics training before the end of the calendar year. <i>See</i> 5 C.F.R. § 2638.307(a)(d).							
8.9	<ul style="list-style-type: none"> Employees required to file an annual confidential financial disclosure report. <i>See</i> 5 C.F.R. § 2638.307(a)(1). 				100%	N/A	
8.10	<ul style="list-style-type: none"> Employees appointed by the President. <i>See</i> 5 C.F.R. § 2638.307(a)(2). 				See reviewer note	See reviewer note	
8.11	<ul style="list-style-type: none"> Employees of the Executive Office of the President. <i>See</i> 5 C.F.R. § 2638.307(a)(2). 				N/A	N/A	
8.12	<ul style="list-style-type: none"> Contracting officers described in 41 U.S.C. § 2101. <i>See</i> 5 C.F.R. § 2638.307(a)(3). 				100%	N/A	
8.13	<ul style="list-style-type: none"> Other employees designated by the head of the agency. <i>See</i> 5 C.F.R. § 2638.307(a)(4). 				N/A	N/A	
COMMENTS							
<p>(8.1) OGE found the annual ethics training presentation provided during the period under review to address the required concept of gifts. However, the training was less than fulsome with respect to addressing the three other required concepts. While OGE is not making a formal recommendation regarding this, OGE suggests that in future trainings, ethics officials make certain to highlight each of the four topics through discussion questions or summary statements by the instructor to ensure that each concept is adequately addressed.</p> <p><u>Concern</u> During the review of the annual training presentation, OGE noticed that ethics officials were training on the requirement to obtain prior approval for outside employment without using an OGE-approved agency supplemental regulation. Although ethics officials indicated that prior approval was being required under its agency authority at 42 USC § 10262, OGE is recommending that ethics officials consult with</p>							

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OGE's Ethics Law and Policy Branch to ensure that the agency has sufficient statutory authority to require prior approval without an agency supplemental.

(8.2) While OGE was advised by ethics officials that all employees have access to the Standards in addition to the training presentation, OGE suggests that in future trainings, ethics officials make certain that a written notice is provided to employees about their obligations under the Standards of Conduct.

(8.10) NWTRB Board members are special Government employees appointed by the President. Ethics training percentages for these employees are highlighted in the Special Government Employees section.

(8.6, 8.7, 8.10, 8.11 and 8.13) NWTRB does not have any Executive Schedule Level I or Level II officials.

9.0 ETHICS ADVICE AND COUNSELING

COMPLIANCE REQUIREMENT

Yes

No

N/A

9.1 Based on a sample collected by OGE, guidance provided by agency ethics officials to employees appears to be consistent with applicable laws and regulations. *See* 5 C.F.R. § 2638.104(c)(4)

COMMENTS

(9.1) NWTRB did not render advice to employees on the criminal conflict of interest statutes or the Standards of Conduct during the period covered by this review.

10.0 Special Government Employees (SGE) Serving on Advisory Committees and Boards

Confidential Financial Disclosure

10.1 Number of SGEs serving on Advisory Committees and Boards.

10

DATA ANALYSIS

%

10.2 Percentage of sampled confidential new entrant reports filed timely. *See* 5 C.F.R. § 2634.903(b).

100%

10.3 Percentage of sampled reports reviewed within 60 days of receipt but not later than the SGE's first meeting. *See* 5 C.F.R. § 2634.605(a).

100%

10.4 Percentage of sampled reports certified within 60 days of receipt. *See* 5 C.F.R. § 2634.605(a).

100%

Ethics Training

COMPLIANCE REQUIREMENTS

Yes

No

N/A

Required ethics training must be provided to each SGE. *See* 5 C.F.R. §§ 2638.304 and 2638.307.

10.5 The training presentation(s) addressed concepts related to conflicts of interest, impartiality, misuse of position and gifts. *See* 5 C.F.R. § 2638.304(e)(1).

10.6 The agency provided employees with either the following written materials or written instruction for accessing them: The summary of the Standards of Conduct distributed by the Office of Government Ethics or an equivalent summary prepared by the agency; provisions of any supplemental agency regulation that the DAEO determines to be relevant or a summary of those provisions; such other written materials as the DAEO determines should be included; instructions for contacting the agency's ethics officials. *See* 5 C.F.R. § 2638.304(e)(2).

DATA ANALYSIS

%

10.7 Percentage of SGEs who received initial ethics training. *See* 5 C.F.R. § 2638.304.

N/A

10.8 Percentage of SGEs who received initial ethics training timely. *See* 5 C.F.R. § 2638.304(b)(2).

N/A

10.9 Percentage of SGEs who received annual ethics training. *See* 5 C.F.R. § 2638.307(d)(2).

100%

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(10.2) NWTRB Board members are SGEs appointed by the President from a list of candidates submitted by the National Academy of Sciences to 4-year terms. Nominees to the Board are selected solely based on their established records of distinguished professional service and eminence in a field of science or engineering. OGE examined nine confidential financial disclosure reports filed by NWTRB SGE board members. None of the reports indicated the reporting status as “New Entrant,” as required by 5 C.F.R. § 2634.903(b). OGE notes that this is an important distinction, because a new entrant report covers a different reporting period than an annual report does. Moreover, a new entrant filer, unlike an annual filer, does not have to report gifts or travel reimbursements. OGE recommends that, going forward, ethics officials ensure that all SGE members file only new entrant reports.

(10.5) OGE found the annual ethics training presentation provided during the period under review to address the required concept of gifts. However, the training was less than fulsome with respect to addressing the three other required concepts. While OGE is not making a formal recommendation regarding this, OGE suggests that in future trainings, ethics officials make certain to highlight each of the four topics through discussion questions or summary statements by the instructor to ensure that each concept is adequately addressed.

(10.6) While OGE was advised by ethics officials that all employees have access to the Standards in addition to the training presentation, OGE suggests that in future trainings, ethics officials make certain that a written notice is provided to employees about their obligations under the Standards of Conduct.

RECOMMENDATION

#	Element	RECOMMENDATION	Compliance Due
1	8.1	<p><u>RECOMMENDATION:</u> Consult with OGE’s Ethics Law and Policy Branch to determine whether an agency supplemental regulation is needed to require prior approval of outside employment.</p> <p><u>AGENCY RESPONSE:</u> NWTRB has consulted with OGE’s Ethics Law and Policy Branch and will continue to work with them.</p>	February 2021
2	10.2	<p><u>RECOMMENDATION:</u> Ensure that all SGE members indicate their reporting status on the first page of the confidential report as New Entrant each year.</p> <p><u>AGENCY RESPONSE:</u> NWTRB has implemented this action in its review of the CY2020 OGE Form 450 reports and going forward.</p>	February 2021