

ETHICS PROGRAM INSPECTION REPORT

Agency: National Labor Relations Board (NLRB)

Report No.: 22-371

Date: June 14, 2022

Period Covered by Review: January 1, 2021 through February 28, 2022

**UNITED STATES OFFICE OF
GOVERNMENT ETHICS**Preventing Conflicts of Interest
in the Executive Branch

1.0	AGENCY DATA	
	EMPLO YEES	
1.1	Number of full-time agency employees.	1,184
1.2	Number of Presidentially appointed, Senate-confirmed (PAS) public financial disclosure reports required to be filed.	6
1.3	Number of non-PASpublic financial disclosure reports required to be filed.	104
1.4	Number of confidential financial disclosure reports required to be filed.	31
	ETHICS PROGRAM	
1.5	Title of Designated Agency Ethics Official (DAEO).	Associate General Counsel, Ethics
1.6	Grade level of DAEO.	SES
1.7	Title of Alternate DAEO (ADAEO).	Special Ethics Counsel
1.8	Grade level of ADAEO.	GS-14
1.9	Title of the primary, day-to-day ethics program administrator.	Associate General Counsel, Ethics
1.10	Grade level of the primary, day-to-day ethics program administrator.	SES
1.11	Current number of full-time ethics officials.	7
1.12	Current number of part-time ethics officials.	0
1.13	Number of reporting levels between the DAEO and the agency head.	1
	COMMENTS	
	(1.13): The DAEO reports to both the Chairman and the General Counsel. NLRB has a unique bifurcated structure. The General Counsel, who is appointed by the President and Senate confirmed, is the investigator and prosecutor in unfair labor practice cases, and the Board and the Administrative Law Judges (ALJ) are the adjudicators. The General Counsel has the statutory authority to investigate unfair labor practice cases and determine whether the charge has merit, and is akin to a member of the public when appearing before the Board/ALJs as a party in litigation. To preserve the integrity of the Agency’s work and comply with administrative due process requirements, an internal screening wall separates the General-Counsel side of the Agency from the Board-side. That is the source of the General Counsel’s independence from the Board.	

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"/>

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GOVERNMENT ETHICS**Preventing Conflicts of Interest
in the Executive Branch

3.3	Public availability of public financial disclosure reports.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.5	Public financial disclosure reports are securely maintained. <i>See</i> OGE/GOVT-1.	<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</i> 5 C.F.R. § 2634.603(g)(1).	<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</i> 5 C.F.R. § 2638.105(a)(1).	<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</i> 5 C.F.R. § 2638.105(a)(2).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DATA ANALYSIS		%		
3.9	Percentage of sampled non-PASnew entrant reports filed timely. <i>See</i> 5 C.F.R. § 2634.201(b).	80%		
3.10	Percentage of sampled non-PASannual reports filed timely. <i>See</i> 5 C.F.R. § 2634.201(a).	100%		
3.11	Percentage of sampled non-PAStermination reports filed timely. <i>See</i> 5 C.F.R. § 2634.201(e).	90%		
3.12	Percentage of sampled non-PASpublic financial disclosure reports reviewed within 60 days of receipt. <i>See</i> 5 C.F.R. § 2634.605(a).	100%		
3.13	Percentage of sampled non-PASpublic financial disclosure reports certified within 60 days of receipt. <i>See</i> 5 C.F.R. § 2634.605(a).	100%		
3.14	Percentage of sampled PAS annual reports filed timely. <i>See</i> 5 C.F.R. § 2634.201(a).	100%		
3.15	Percentage of sampled PAS termination reports filed timely. <i>See</i> 5 C.F.R. § 2634.201(e).	100%		
3.16	Percentage of sampled PAS annual and termination reports reviewed within 60 days of receipt. <i>See</i> 5 C.F.R. § 2634.605(a).	83%		
3.17	Percentage of sampled PAS annual and termination reports certified within 60 days of receipt. <i>See</i> 5 C.F.R. § 2634.605(a).	83%		
COMMENTS				
<p>(3.17) OGE reviewed the four annual reports required to be filed by PAS officials in 2021. One official’s report was not certified because the Office of the Inspector General (OIG) conducted an investigation and determined that the official had participated in matters in which he had a conflicting interest.. OGE also declined to certify the official’s 2021 annual public financial disclosure report. However, OGE was able to certify the official’s 2021 termination report.</p> <p>NLRB’s OIG referred the potential criminal conflict of interest violation to the Department of Justice (DOJ), which declined to prosecute. The official’s term expired shortly after DOJ’s declination and no disciplinary action was taken. OGE received the required notification that NLRB had referred a potential criminal conflict of interest violation to DOJ and, subsequent disposition.</p>				

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"/>

ETHICS PROGRAM INSPECTION REPORT

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**UNITED STATES OFFICE OF
GOVERNMENT ETHICS**Preventing Conflicts of Interest
in the Executive Branch

4.4	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"/>
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).	67%		
4.8	Percentage of sampled confidential annual reports filed timely. <i>See</i> 5 C.F.R. § 2634.903(a).	95%		
4.9	Percentage of sampled reports reviewed within 60 days of receipt. <i>See</i> 5 C.F.R. § 2634.605(a).	96%		
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).	96%		
	COMMENTS			
	(4.7) OGE reviewed the three new entrant reports required to be filed in 2021. One new entrant report was filed late.			

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 must provide 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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6.2	• The text of 5 C.F.R. § 2638.103.	<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

6.3	• A copy of, a hyperlink to, or the address of a Web site containing the Principles of Ethical Conduct.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6.4	• 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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input 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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
COMMENTS				
None.				

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			
	None.			

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. § 2638.304(e)(2).	<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

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 type="checkbox"/>	<input checked="" 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	• Executive Schedule Level I and Level II. <i>See</i> 5 C.F.R. § 2638.308(e)(1).	N/A	N/A			
8.7	• Other PAS and Equivalent. <i>See</i> 5 C.F.R. § 2638.308(e)(2).	0%	100%			
8.8	• SES and Equivalent. <i>See</i> 5 C.F.R. § 2638.308(e)(3).	0%	100%			
	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	• Employees required to file an annual confidential financial disclosure report. <i>See</i> 5 C.F.R. § 2638.307(a)(1).	0%	100%			
8.10	• Employees appointed by the President. <i>See</i> 5 C.F.R. § 2638.307(a)(2).	N/A	N/A			
8.11	• 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	• Contracting officers described in 41 U.S.C. § 2101. <i>See</i> 5 C.F.R. § 2638.307(a)(3).	0%	100%			
8.13	• 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						
(8.5) NLRB paused all in-person training in CY 2020 and CY 2021 because of the COVID-19 pandemic. OGE reminds NLRB that a teleconference or an online video supplemented with live comments/instruction from a qualified ethics official are both considered to be live training. NLRB plans to require the three PAS to receive in-person live training in 2022. (8.6) NLRB does not have Executive Schedule Level I and Level II officials. (8.10-8.11, 8.13) OGE did not review any confidential disclosure reports for employees under those categories.						

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. <i>See</i> 5 C.F.R. § 2638.104(c)(4).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	COMMENTS			
	None.			

ETHICS PROGRAM INSPECTION REPORT

Agency: National Labor Relations Board (NLRB)

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**UNITED STATES OFFICE OF
GOVERNMENT ETHICS**Preventing Conflicts of Interest
in the Executive Branch**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.	0
	DATA ANALYSIS	%
10.2	Percentage of sampled confidential new entrant reports filed timely. <i>See</i> 5 C.F.R. § 2634.903(b).	N/A
10.3	Percentage of sampled reports reviewed within 60 days of receipt but not later than the SGE's first meeting. <i>See</i> 5 C.F.R. § 2634.605(a).	N/A
10.4	Percentage of sampled reports certified within 60 days of receipt. <i>See</i> 5 C.F.R. § 2634.605(a).	N/A

Ethics Training

	COMPLIANCE REQUIREMENTS	Yes	No	N/A
	Required ethics training must be provided to each SGE. <i>See</i> 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. <i>See</i> 5 C.F.R. § 2638.304(e)(1).	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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. <i>See</i> 5 C.F.R. § 2638.304(e)(2).	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	DATA ANALYSIS			%
10.7	Percentage of SGEs who received initial ethics training. <i>See</i> 5 C.F.R. § 2638.304.			N/A
10.8	Percentage of SGEs who received initial ethics training timely. <i>See</i> 5 C.F.R. § 2638.304(b)(2).			N/A
10.9	Percentage of SGEs who received annual ethics training. <i>See</i> 5 C.F.R. § 2638.307(d)(2).			N/A
	COMMENTS			
	None.			

GENERAL AGENCY COMMENTS

NLRB Ethics Office General Comments for OGE Program Review (2021)

(3.9) The NLRB's Ethics Office processed 15 Non-PAS New Entrant reports in 2021. The 3 that were filed late were associated with employees who were temporarily promoted and serving in an acting capacity. Because it was unclear how long the employees would serve in acting positions, the Ethics Office asked to be notified when an employee would serve in an acting capacity for more than 60 days. When we received notice for these three employees, we proactively granted them extensions, and each complied with our request to complete the report by the assigned due date.

(3.11) The NLRB's Ethics Office processed 12 Non-PAS Termination Reports in 2021. All but 1 report was completed within 30 days of the employee's departure from the filing position. As to the late report, this filer had served in an acting capacity and we were late in assigning the report after their return to a non-filing position.

(3.16) There was only one PAS annual report for which our review took longer than 60 days. We notified our OGE Desk Officer about the circumstances that caused the delay; specifically, our review resulted in a report to the NLRB's OIG. The OIG determined that the filer had

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UNITED STATES OFFICE OF GOVERNMENT ETHICS



Preventing Conflicts of Interest
in the Executive Branch

purchased assets that resulted in their participation in matters where there was a conflicting financial interest. We communicated with OGE frequently throughout the review process about the unique circumstances that were present.

(3.17) Please see our comment to 3.16. The NLRB's Ethics Office did not certify that individual's 2021 annual PAS report because the NLRB's OIG substantiated an allegation that the filer participated in matters where there was a conflicting financial interest. Therefore, we could not certify that the filer was in compliance with applicable laws and regulations.

(4.7) The NLRB's Ethics Office processed 5 new entrant Confidential Financial Disclosure Reports in 2021. In one instance, the filer did not complete the report by the due date even after we had sent multiple reminders and engaged with his supervisor. The other 4 New Entrant Reports were timely filed.

(4.8) The NLRB's Ethics Office processed 29 annual Confidential Financial Disclosure Reports in 2021. All but 2 were filed by February 16, 2021. These two individuals timely requested an extension, which we granted. Each filed their annual report prior to the assigned due date.

(4.9 and 4.10) The NLRB's Ethics Office processed a total of 34 Confidential Financial Disclosure Reports in 2021. In one instance, the Ethics Office did not meet the 60-day deadline for review and certification. This delay was related to a request for additional information about the filer's reported assets.

(8.5) Prior to the pandemic, the Agency's practice was to give live in-person annual ethics training to PAS employees (as well as other public filers) each year. During the pandemic (2020 – 2021), all annual ethics training was given through interactive online training modules. This year, PAS employees will receive live training. The Ethics Office is preparing a spreadsheet to track the format of the training given to all current PAS employees for any given year (live in-person, live online, or interactive self-directed module).