



United States Office
Of Government Ethics

Ethics Program Review

Office of the Secretary of Transportation

July 2010 Report

Introduction

OBJECTIVE, SCOPE, AND METHODOLOGY

As part of the Office of Government Ethics' (OGE) monitoring activities, OGE conducted a focused review of the financial disclosure program administered at the Office of Secretary (OST) within the United States Department of Transportation (DOT). This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978 (Ethics Act), as amended. OGE's primary objective was to determine the financial disclosure program's compliance with applicable ethics laws and regulations. OGE also evaluated processes and procedures to assess the strengths and weaknesses of OST's financial disclosure system and its impact on the agency's ability to prevent and detect ethics violations through the use of financial disclosure reports.

To meet this objective, OGE's review was limited to the examination of the public and confidential financial disclosure reports that were required to be filed at OST in 2009, covering calendar year 2008. OGE randomly selected for examination 109 of 199 public reports and 113 of 228 confidential financial disclosure reports. The public reports consisted of 44 incumbent reports, 45 new entrant reports, and 20 termination reports while the confidential reports consisted of 52 OGE Form 450 reports, 45 Optional Form 450-A reports (OGE Form 450A), and 16 new entrant reports.¹ OGE examined these reports to evaluate timeliness of filing, review, and certification. OGE's on-site fieldwork for this review was conducted in November 2009.

RESULTS IN BRIEF

When OGE last reviewed OST's ethics program in February 2000 improvements were needed in the areas of financial disclosure and ethics training to further enhance OST's effectiveness and to bring the program into full compliance with OGE's financial disclosure regulation. Specifically, OGE recommended that OST take the following actions: (1) improve

¹ OGE did not examine the public reports filed by DOT's Presidentially appointed and Senate confirmed appointees as these reports are reviewed and certified by OGE.

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filing timeliness of both new entrant and incumbent confidential financial disclosure reports; (2) utilize the “Agency Use Only” and “Date Received by Agency” blocks on both public and confidential reporting forms to accurately reflect the dates of filing; (3) review and certify confidential reports in a timely manner; and (4) provide annual ethics briefings for all OST (excluding OIG) covered employees who had yet to be trained.

In our current examination, OGE found that OST has the basic elements necessary to support an effective ethics program. However, improvements are still needed in the areas of financial disclosure to bring the program into full compliance with OGE’s financial disclosure regulation as many of the same findings noted in our February 2000 review were again found in our current examination. Therefore, OGE is recommending that OST improve the filing timeliness of new entrant confidential filing; use the “Date Received by Agency” blocks on the public and confidential reports; and improve the review and certification timeliness of confidential reports. In addition, although OST’s written procedures covering the headquarter operations were found to generally comply with the requirements of the Ethics Act, OGE identified areas where they could be strengthened. Thus, OGE recommends that the DAEO modify these procedures to ensure compliance with the Ethics Act.

Several technical issues were also identified during our examination of both the public and confidential reports. However, based on assurances received from ethics officials that these issues would be corrected during future filing cycles OGE is not making formal recommendations but has made suggestions for improvement regarding these matters.

BACKGROUND AND ETHICS PROGRAM STRUCTURE

Leadership of the DOT is provided by the Secretary of Transportation, who is the principal advisor to the President in all matters relating to federal transportation programs. The Secretary is assisted by the Deputy Secretary in this role. OST oversees the formulation of national transportation policy and promotes intermodal transportation. Other responsibilities range from negotiating and implementing international transportation agreements, assuring the fitness of United States airlines, enforcing airline consumer protection regulations, issuing regulations to prevent alcohol and illegal drug misuse in transportation systems and preparing transportation legislation.

The administration of DOT's ethics program is decentralized, with general oversight provided by OST’s Office of the General Counsel (OGC). OGC’s Deputy General Counsel serves as the agency’s Designated Agency Ethics Official (DAEO) while the Assistant General Counsel for General Law serves as the Alternate DAEO (ADAEO). The DAEO and ADAEO, along with an Ethics Counsel, are responsible for establishing department-wide ethics program policy and overseeing the decentralized ethics programs at the operating administrations (modes). In addition to establishing policies and procedures for the overall operation of the DOT ethics program, the Ethics Office also provides Deputy Ethics Official (DEO)-related services to DOT employees within OST. The Ethics Counsel serves as the (DEO) for OST and is assisted by eight attorneys who all have duties others than ethics.

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PRINCIPAL FINDINGS

Recommendation: Improve The Timeliness Of New Entrant Confidential Filing

A new entrant confidential report must be submitted no later than 30 days after a filer enters a position or office that requires the filing of a financial disclosure report. *See* 5 CFR § 2634.903(b). Of the 16 new entrant reports that OGE examined, 3 were filed late. All three reports were filed more than one year late and were captured during the annual filing cycle. During discussions with the DEO, OGE was advised that while there have been continued challenges in identifying new entrant filers timely, considerable improvement has been made to address this concern. OGE found this to be true considering in our last review in February 2000, only 3 of the 10 new entrant reports OGE examined were filed timely.

Timely filing of new entrant reports ensures that ethics officials can quickly determine whether conflicts of interests exist and, if so, take prompt remedial action, which is a fundamental purpose of the ethics program. Therefore, OGE recommends that the DEO first review the current process for identifying new entrant filers and then ensuring that they file timely determine where the process can be improved. Once those improvements have been identified, OGE recommends that they be documented and distributed to all affected parties.

Recommendation: Use The Agency Date Of Receipt Stamp On All Financial Disclosure Reports

Dates of receipt must be entered on each report to help assess compliance with the filing due date and the 60-day review requirements. *See* 5 CFR § 2634.605(a). During the examination of both the public and confidential reports, OGE found that the date of receipt stamp was not on all reports. Therefore, OGE based filing timeliness on the filers' signature dates. Using this method, OGE confirmed that all reports were filed timely. Although compliance with the filing due date had been met, OGE reminds the Ethics Office that a financial disclosure report is considered filed when the agency receives it. The agency date of receipt stamp is critical in determining timeliness of filing and review. OGE recommends that the DEO consider developing an intake checklist to remind whoever receives reports to date stamp them.

Recommendation: Improve Timeliness Of Review And Certification

Financial disclosure reports must be reviewed within 60 days of being filed and should be certified as soon as it can be determined that there is no violation of applicable statutes and regulations. *See* 5 CFR § 2634.605. OGE found that 30 of the 109 public reports and 17 of the 113 confidential reports examined were either reviewed or certified late. The DEO attributed some of these delays in review and certification to staffing limitations within the Ethics Office and the influx of presidential nominee reports, which require priority review. According to records provided by the DEO, in 2009 of the six attorneys who had ethics-related duties within OST, excluding the DAEO and ADAEO, only three attorneys spent up to 30 percent or more of their time on ethics. Specifically, one attorney was devoted to ethics 30 percent of the time, one

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attorney 48 percent of the time, and the DEO on average spent 85 percent of his time on ethics. Of these three, the one attorney who spent 48 percent of the time on ethics had been detailed to OGE for several months.

While we recognize staffing limitations can affect timeliness, it is imperative that reports receive timely review and certification. Prompt review ensures that ethics officials can quickly determine whether conflicts of interests exist and, if so, take prompt remedial action. OGE recommends that the DAEO develop a plan to improve timely review and certification. Such a plan could include a request for additional full-time resources or the use of supervisors to perform an initial review.

Recommendation: Modify Written Procedures

The Ethics Act requires the DAEO to develop DOT-wide written procedures that provide the overall framework for administering both the public and confidential financial disclosure systems. Since each mode within DOT has its own semi-autonomous ethics program, the written procedures developed by the DAEO are specific to OST procedures. OGE found that OST's written procedures generally comply with the requirements of the Ethics Act. However, OGE identified areas where they could be strengthened. For example, the written procedures do not address the process for requesting and granting individual filing extensions, the process for collecting the \$200 late filing fee and requesting waivers of the \$200 late filing fee (for public reports only), or the process for remedying possible violations when they are found. OGE recommends that the Ethics Office modify these procedures to more fully comply with the prescribed requirement.

In view of the importance of having a succession plan to help maintain the consistent administration of an ethics program, OGE also encourages the DEO to develop written procedures that reflect the current practices for administering other elements of OST's ethics program as well. We also encourage the DAEO to promote this practice with the other DEOs throughout DOT's operating administrations. OGE considers an agency's use of individualized written procedures to be a model agency practice and a valuable resource to both employees and ethics officials.

TECHNICAL ISSUES IDENTIFIED

In addition to the findings noted above, OGE also identified several technical errors during its examination of both public and confidential reports that the Ethics Office must be mindful of during future filing cycles. Based on assurances received from the DEO, OGE is not making formal recommendations but is making suggestions for improvement regarding these matters.

Ensure That Filers Are Made Aware Of Certain Reporting Errors And Omissions

The basic rule when reviewing financial disclosure reports is that an entry should disclose all required information and be sufficiently detailed to allow a full conflict of interest analysis.

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Anything more than that basic requirement is unnecessary; anything less is inadequate. While it was clear that OST was very diligent in paying close attention to over- and under-reporting, OGE still found instances when the filer either disclosed not enough information on their reports or disclosed more information than is required to be reported (e.g., personal identifiable information such as bank account numbers or retirement benefits from TSP accounts). OGE suggests that the DEO annotate reports that require correction and remind filers (perhaps at the start of the filing season) about what constitutes complete and correct filing. One useful reminder is a checklist that addresses what should and should not be reported. In addition, OGE also suggests that filers who have over-reported should be contacted during the review and certification process and asked if the reviewer can redact the extraneous information.

Continue To Improve The Financial Disclosure Tracking System

Financial disclosure tracking systems aid in the timely collection, review, and certification of financial disclosure reports. Tracking systems may vary in format, complexity, and capability, depending on the needs of the agency. Recent improvements have been made to the OST tracking system to help track the filing progression of OST public and confidential filers. One major improvement was that both tracking systems were converted into an Excel database format which now provides OST ethics officials with the ability to track the following elements: (1) the filer's name, position, and office; (2) who reviewed the report; (3) when the filer came on board; (4) the log-in date; (5) when the initial review was conducted; (6) when the report was certified and (7) the status of review. Because all financial disclosure filers must receive annual ethics training, the tracking system also simultaneously track when filers received this training.

OGE is pleased that OST has expanded the elements it tracks. Doing so will not only help to identify covered employees who have not filed their reports but it will also help to identify other potential problems, such as incomplete reports. However, a tracking system is only useful if the information is current, and OGE found that OST's tracking system was not up-to-date. During discussions with the DEO, OGE was advised that a paralegal would soon be hired and he/she would be responsible for updating the tracking system. OGE strongly urged the DEO to ensure that the new paralegal update both tracking systems throughout the year, rather than annually, to help account for new employees entering covered positions and employees leaving or transferring into covered positions. OGE also suggests that the DEO periodically spot-check the tracking system to ensure that it is current.

MODEL PRACTICES IDENTIFIED

Ethics laws and regulations are designed to act as a baseline that all agencies can reach. An ethics program that strives only to meet the baseline requirements is missing an opportunity to more fully advance the purpose of an ethics program. During an OGE ethics program review, OGE will assess the quality of the processes involved in administering the particular elements of an agency's ethics program. Further, OGE will identify model practices in use at an agency that enable it to exceed compliance with the regulatory requirements or identify areas where an

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agency can implement model practices. During OGE's review at OST, the following model practice was identified:

Leadership Support

Leadership support is critical toward maintaining a viable ethics program, for employees as well as for the ethics officials who are responsible for administering the program on behalf of the agency. Therefore, it is important for agency leaders to become involved in ethics by exercising their personal leadership in maintaining and carrying out the agency's ethics program, as required by 5 CFR § 2638.202(a). During the examination, OGE was provided with the written transcript of the remarks delivered by the DOT Secretary at ethics training in November 2009. During the training, the Secretary stressed the importance of ethics in DOT's mission. These remarks were taped and are now played during subsequent ethics training sessions agency-wide.

RECOMMENDATIONS

In view of the corrective action authority vested with the Director of OGE under subsection 402(b)(9) of the Ethics Act, as implemented in subpart D of 5 C.F.R. part 2638, it is important that OST take timely and effective action to resolve the following recommendations. These recommendations are considered necessary to bring OST's financial disclosure program into compliance with current OGE regulations.

OGE recommends that OST take the following actions:

1. Improve timeliness in new entrant confidential filing.
2. Develop a process for ensuring that all financial disclosure reports are reviewed and certified timely.
3. Use the agency date of receipt stamp on all financial disclosure reports.
4. Modify OST's written procedures for public financial disclosure systems to include specific steps for collecting the \$200 late filing fee, requesting an extension and processing possible deficiencies discovered through financial reporting.

AGENCY COMMENTS

A draft of this report was provided to OST for review and comment. In a memorandum dated April 23, 2010, the DEO concurred with our recommendations and provided comment on the corrective actions that OST had either taken or planned to take to address these recommendations.

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Here, we provide a summary of OST's comments from the draft report.

In response to our first recommendation, the DEO provided details on OST's plans to improve the timeliness of new entrant filing. The DEO indicated that OST had put three measures in place to timely capture New Entrant filers: 1) New Entrants are identified during their first day orientation sessions. During the session, identified filers are given financial disclosure reporting forms and told to submit them within 30 days of their first day of duty; 2) OST hired a paralegal whose responsibilities include tracking new entrants and ensuring that they file their financial disclosure reports within 30 days of their first day of duty; and 3) OST is working with its Office of Human Resources and OST program offices to improve the method for identifying employees who must file a financial disclosure report as a result of a promotion or change in duties.

In response to our second recommendation, OST reported it has taken several steps to improve the timeliness of financial disclosure report review and certification. The new paralegal supports the Ethics on a full time basis. This allows the attorneys to devote more time to the review and certification of financial disclosure. Additionally, OST has built a planning model to help the DAEO and the ADAEO determine how many resources need to be committed to financial disclosure review.

In response to our third recommendation, the DEO indicated that OST is working to improve its financial disclosure report intake process. OST has ordered a date stamp and is formulating specific written procedures that will require that each report be stamped upon receipt.

In response to our fourth recommendation, the DEO indicated that written procedures are being updated to include specific steps for requesting a filing extension, processing the \$200 late filing fee for public reports, and processing possible deficiencies discovered through financial reporting. These procedures will also incorporate the technical suggestions and guidance provided by OGE.

In addition to the above, the DEO also provided a written response to the suggestion that the financial disclosure tracking system be improved. The DEO stated that the paralegal's duties also include updating information in the tracking system and generating periodic reports based on information in the tracking system.

OGE will review the status of OST's progress in addressing our recommendations as part of a follow-up review that will be scheduled within six months from the date of this report.