



United States Office
Of Government Ethics

Ethics Program Review

Office of Inspector General

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 Inspector General (OIG), 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 OIG'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 confidential financial disclosure reports that were required to be filed at OIG in 2009, covering calendar year 2008.¹ Based on OGE's observation of OIG's master list of confidential filers, OGE selected a judgmental sample of 146 of the 271 annual reports that were required to be filed for examination. These 146 reports consisted of 75 OGE Form 450 reports and 71 OGE Optional Form 450-A reports (OGE Form 450-A). OGE also examined 26 new entrant reports that were filed from January through November 2009. In total, OGE examined 172 of 297 annual and new entrant confidential reports. OGE examined the 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

OGE found OIG's financial disclosure program for confidential filers to be well-managed. Reports were generally filed, reviewed, and certified in a timely manner and it appeared that all reports examined were analyzed thoroughly for real or apparent conflicts as

¹ OGE did not examine the public reports filed by the Inspector General or the 14 other OIG public filers as these reports are reviewed and certified by DOT's Designated Agency Ethics Official (DAEO).

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evidenced by the annotations or other documentation associated with the review. OGE also identified several model practices during the course of the review that are highlighted below. However, despite the system's overall effectiveness, OGE is making one recommendation for overall improvement--modify OIG's existing written procedures to ensure full compliance with the Ethics Act.

OGE also identified a few areas in the financial disclosure program that ethics officials could improve. These include the need to improve the timely filing of new entrant confidential financial disclosure reports, the consistent use of the agency date of receipt stamp on all confidential reports as required by 5 CFR § 2634.605(a), and the timely notification to OGE of all criminal conflict of interest referrals and other required follow-up information using the required OGE Form 202, Notification of Conflict of Interest Referral. Because changes either were made while OGE was on-site or the review team was assured that corrective action would be taken, OGE is not making any recommendations but is making suggestions for improvement regarding these matters.

BACKGROUND AND ETHICS PROGRAM STRUCTURE

The OIG was established to create independent and objective units to conduct and supervise audits and investigations relating to the programs and operations of DOT. OIG keeps the Secretary of DOT and Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective actions. Under the direction of the Inspector General, a Presidentially appointed and Senate confirmed appointee, the OIG has a workforce of over 400 employees located throughout its headquarters office in Washington, DC and 11 regional offices.

In 2008, OIG's Office of Legal, Legislative and External Affairs, hereafter referred to as the Ethics Office, assumed the responsibility from DOT's Designated Agency Ethics Official (DAEO) to review and certify confidential reports filed by OIG employees. Prior to 2008, OIG had been rendering counseling, training, and other ethics program responsibilities to OIG employees. OGE notes that at the time of fieldwork, the review and certification of public reports filed by OIG employees was retained with the DAEO; however, ethics officials indicated that they were also considering taking on the responsibility of reviewing some OIG public reports as well.

The Assistant Inspector General for Legal, Legislative and External Affairs serves as OIG's Deputy Ethics Official (DEO) and has oversight responsibility for the overall ethics program. The Chief Counsel within OIG's Office of the Chief Counsel provides a supervisory role for the ethics program while the day-to-day management of the program has been delegated to an Associate Counsel who serves as team leader for the program. Assisting the team leader is another Associate Counsel. Both ethics officials are on the Chief Counsel's staff and have direct and immediate access to the DAEO and the Alternate DAEO, as needed, and administer the OIG ethics program as a collateral duty.

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General Observation

It was also clear during the review that a close working relationship exists between the DAEO (and staff) and OIG ethics officials as evidenced by regular communication on matters of mutual interest. Both offices considered their coordination with one another fundamental to their respective missions. Based on discussions with both parties, OGE is satisfied that procedures are in place to effectively exchange ethics-related information and to resolve ethics issues. This is important because the DAEO is required to ensure that prompt and effective action, including administrative action, is undertaken to remedy ethics violations. *See* 5 CFR § 2638.203(b)(11) and (12).

PRINCIPAL FINDING

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. While written procedures have been developed, OGE found that they did not cover the operations of the DOT component systems. Therefore, each operating administration within DOT is required to document how they collect, review, certify, and maintain financial disclosure reports. Although OIG's written procedures were found to generally comply with the requirements of the Ethics Act, OGE identified areas where they could be strengthened. For example, OGE did not find the written procedures to address the process for requesting and granting individual filing extensions nor the process for remedying possible violations when they are found. As a result, 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, in the event of turnover in ethics staff, OGE also encourages ethics officials to develop written procedures that reflect the current practices for administering other elements of OIG's ethics program as well. 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 finding noted above, OGE also identified technical issues during its examination of the confidential reports that OIG must be mindful of during future filing cycles. Based on assurances received from ethics officials, OGE is making no formal recommendations regarding these matters but is making suggestions for improvement.

Continue To Monitor 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 §

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2634.903(b). Of the 26 new entrant confidential reports that OGE examined, 7 were filed late. During discussions with OIG ethics officials, OGE was advised that while there have been challenges in identifying new entrant filers timely considerable improvement has been made to address this concern. For example, in 2008, when OIG assumed the responsibility for reviewing confidential reports, ethics officials noticed that OIG's Office of Human Resources (OHR) was not maintaining an exhaustive list that classified filing positions and non-filing positions. As a result, when a new job series was introduced to OIG there was no indication that the position required the filing of a confidential report. Upon the recommendation of the Ethics Office, the Deputy IG directed OHR to start maintaining a complete list that classifies all positions as either requiring or not requiring the filing of a financial disclosure report. In fact, however, ethics officials put the list together. Now when a series and grade is not on that list, the OHR is required to refer the new position to the Ethics Office and get a determination as to whether the position requires the filing of a confidential report.

Beyond the need to comply with the regulatory requirement that new entrant reports are to be filed within 30 days, timely filing of new entrant reports ensure that ethics officials can quickly determine whether conflicts of interest exist and, if so, take prompt remedial action. In view of the corrective steps taken by OIG ethics officials to address this issue, OGE is not making a recommendation for improvement. However, OGE strongly urges ethics officials to continually monitor OIG's new entrant confidential filing process to ensure that the steps established to address new entrant filing are effective..

Ensure That The Agency Date Of Receipt Stamp Is Consistently Provided On All 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, OGE noticed that dates of receipt were not consistently being stamped on all reports. Therefore, in cases where the agency date stamp was not used OGE based filing timeliness on the filers' signature dates. Using this method, OGE confirmed that all reports were filed timely. OGE reminds the Ethics Office that a financial disclosure report is considered filed when the agency receives it. Therefore, the agency date of receipt stamp is critical in determining timeliness of filing and review. OGE was assured by ethics officials that the practice of date stamping reports would become routine during future filing cycles.

Ensure That OGE Is Concurrently Notified Of All Referrals To The Department of Justice

While outside the scope of the review, OGE discussed with ethics officials that OGE was not being concurrently notified when a referral involving an alleged violation of a criminal conflict-of-interest statute was sent to the Department of Justice. During the review, the Ethics Office assured OGE that in the future OGE will be notified of all criminal conflict of interest referrals and other required follow-up information using the required OGE Form 202, Notification of Conflict of Interest Referral.

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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 will identify areas where an agency can implement model practices. During OGE's review at OIG, the following model practices were 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. See 5 CFR § 2638.202(a). This involvement helps to better coordinate and manage an ethics program. During the examination, OGE was provided with e-mail documents sent by the Inspector General that demonstrated two specific leadership actions: public recognition of ethics officials for their efforts on behalf of the OIG ethics program and notification to filers that stressed the importance of financial disclosure. It should also be noted that the Inspector General notified employees of the annual training requirement and provided public recognition to ethics officials for their efforts regarding this requirement as well.

Proper Filing

As noted, in 2008, OIG assumed the responsibility for reviewing and certifying confidential reports filed by OIG filers. At that time there were over 300 employees who were required to file a confidential report. Prior to the start of the 2009 confidential filing cycle, the Ethics Office reevaluated the filing determinations of all OIG confidential filers based on the filing criteria found at 5 CFR § 2634.202. Through this effort, the Ethics Office recommended to the Deputy IG that OIG exclude GS-12s and below in audit positions from filing a confidential report on the basis that "the duties of the position involve such a low level of responsibility that the submission of an OGE Form 450 is unnecessary because of the substantial degree of supervision and review over the position." This recommendation was approved and resulted in a significant reduction in the number of confidential filing positions. OGE views this effort which resulted in a more appropriate application of the filing criteria to be a model practice and encourages the Ethics Office to continually reevaluate filing determinations each year.

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RECOMMENDATION

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 OIG take timely and effective action to resolve the following recommendation. This recommendation is considered necessary to bring OIG's financial disclosure program into compliance with current OGE regulations.

OGE recommends that OIG take the following action:

1. Modify OIG's written procedures for administering the confidential financial disclosure system.

AGENCY COMMENT

A draft of this report was provided to OIG for review and comment. In a letter dated April 23, 2010, the DEO provided comment on the corrective action that OIG has taken to address our recommendation. The DEO indicated that OIG adopted in large part the model procedures that OGE provided during the on-site review. In addition, the DEO indicated that written procedures had also been developed for how OIG deals with certain issues like training. OIG's work plan also includes additional documentation of OIG's policies and procedures. OGE will review OIG's written procedures as part of a follow-up review that will be scheduled within six months from the date of this report.

In addition to the above, the DEO also provided technical comments on several inaccuracies that were included in the draft report. For example, the draft report incorrectly stated that OIG had 8 regional offices while in fact they have 11. The draft report also incorrectly stated that in 2008, OIG's Legal, Legislative, and External Affairs assumed the ethics responsibilities from the DAEO in carrying out a majority of the ethics functions for OIG employees. In fact, however, prior to 2008, OIG had been conducting counseling, training, and other ethics program responsibilities for OIG employees. It was in 2008 that OIG assumed the responsibility for reviewing confidential reports. OGE has incorporated these technical comments throughout this report.