



United States Office  
Of Government Ethics

## Ethics Program Review

# Federal Transit Administration

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 Federal Transit Administration (FTA), United States Department of Transportation (DOT). This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended (Ethics Act). 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 FTA'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 was limited to the examination of the public and confidential financial disclosure reports that were required to be filed at FTA in 2009, covering calendar year 2008. Therefore, based on OGE's observation of FTA's master list of financial disclosure filers, OGE examined all 16 public financial disclosure reports and all 345 confidential financial disclosure reports.<sup>1</sup> The 16 public reports consisted of 14 incumbent reports and 2 termination reports while the confidential reports consisted of 326 OGE Form 450 reports and 19 new entrant reports. OGE examined these reports to determine whether these reports had been filed, reviewed, and certified timely. OGE's on-site fieldwork for this review was conducted in June 2009.

### RESULTS IN BRIEF

OGE's last review of FTA's ethics program was conducted in March 1999. In that review, several recommendations were made to help improve various areas of FTA's financial

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<sup>1</sup> OGE did not examine the public reports filed by the FTA Administrator, the Deputy Administrator, or the Chief Counsel/DEO as these reports are reviewed and certified by DOT's Designated Agency Ethics Official (DAEO).

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disclosure program. Specifically, OGE recommended that FTA (1) utilize the “Agency Use Only” block on the public reports; (2) improve filing timeliness of new entrant and incumbent confidential reports; (3) timely review and certify confidential reports; (4) ensure that confidential filers use the current OGE Form 450, rather than the outdated version; and (5) ensure that confidential filers file an OGE Optional Form 450-A only if they have filed an OGE Form 450 within the preceding 3 years.

OGE is pleased to see in its current examination that most of the recommendations have resulted in improvements to the financial disclosure program. In addition, we note that the Ethics Office has taken steps to address the timeliness of new entrant filing. However, because this area continues to be a challenge OGE is recommending that the Ethics Office continue to improve FTA’s new entrant confidential financial disclosure process. OGE is also recommending that the Ethics Office update its written procedures to ensure compliance with the Ethics Act.

While our examination found both the public and confidential financial disclosure systems to generally accord with statutory and regulatory requirements, OGE identified several technical errors during its examination of both the public and confidential reports. Since these issues were either corrected during the review or OGE has been assured will be corrected during future filing cycles, OGE is making no formal recommendation for improvement regarding these matters.

### **BACKGROUND AND ETHICS PROGRAM STRUCTURE**

Under the direction of the FTA Administrator, a Presidentially appointed and Senate confirmed appointee, FTA provides stewardship of combined formula and discretionary programs to support a variety of locally planned, constructed, and operated public transportation systems throughout the United States. Headquartered in Washington, DC, FTA consists of over 500 employees located at its headquarters office and at 10 regional offices across the Nation.

The ethics program at FTA is located within the Office of Chief Counsel, hereafter referred to as the Ethics Office. The Deputy Chief Counsel serves as the administration’s Deputy Ethics Official (DEO) and has oversight responsibility for the overall ethics program. The day-to-day operation of the ethics program is managed by several staff, all of whom have responsibilities other than the ethics program: a Senior Attorney hereafter referred to as FTA’s primary ethics official, an attorney-advisor and a paralegal specialist.

The Ethics Office also utilizes the regional counsels within the respective regions to serve as ethics counselors. These individuals serve the ethics program as a collateral duty and are responsible for providing advice and counseling services, referring ethics questions to the Ethics Office and providing ethics training to regional employees.

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### PRINCIPAL FINDINGS

#### Recommendation: Improve The Timeliness Of New Entrant 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 19 new entrant confidential reports that OGE examined, 11 were filed late. In fact, all 11 were filed more than one year late and were captured during the annual filing cycle. During discussions with the primary ethics official, OGE was advised that while there have been challenges in identifying new entrants timely the Ethics Office has been working to address this issue. For example, prior to the start of our review, FTA established new procedures to help timely identify new entrants and to provide them with a blank confidential report. OGE was advised that new entrants will now be identified in one of the following two ways: (1) through FTA's Operations and Staff Information System (OASIS)<sup>2</sup> and (2) during initial ethics orientation training. The Ethics Office will also begin to query the FTA senior staff at staff meetings throughout the year to ensure that all new employees who enter into a covered position timely submit a confidential financial disclosure report.

Ensuring the timeliness of new entrant confidential filing is important not only because of the regulatory requirement but by doing so it ensures that ethics officials can quickly determine whether conflicts of interest exist and, if so, take prompt and effective remedial action to resolve any issues. In view of the steps taken to address the issue of timely new entrant filing, OGE believes the Ethics Office is well on its way to ensuring full compliance. However, because these new procedures were only recently established, OGE was not able to determine their effectiveness at the time of review. In addition, while these steps should ensure that new filers are identified timely, steps also need to be taken that—once identified—reports are timely filed and reviewed. Therefore, OGE recommends that FTA continue to ensure that new entrants are timely identified and that their reports are then timely filed and reviewed.

#### Recommendation: Update 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. During the examination of FTA's written procedures for administering both its public and confidential financial disclosure systems, OGE noticed that the last update made to them was in November 1993. Since that time, however, FTA has made significant changes in how it administers its financial disclosure program. OGE recommends that FTA update these procedures to more fully comply with the prescribed requirement.

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<sup>2</sup> OASIS is an electronic system used only by FTA staff to maintain work related information about its employees and contractors. This information is used so that the FTA can create, maintain, and adjust email, login, and telecommunications information.

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Beyond being required, written procedures are important in establishing consistency and efficiency in ensuring that agency ethics officials follow the same step-by-step procedures for administering their portion of the financial disclosure system. When properly used and updated, written procedures provide ethics officials with the opportunity to plan for system improvement. Therefore, OGE recommends that the Ethics Office update its written procedures to ensure compliance 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 Ethics Office to develop written procedures that reflect the current practices for administering other elements of FTA'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.

### **TECHINCAL ISSUES IDENTIFIED**

In addition to the findings noted above, OGE also identified several technical issues 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 Ethics Office, OGE is making no formal recommendations for improvement regarding these matters.

#### Ensure Timely Collection Of Termination Public Reports

Any official who serves in a public filer position or office is required to file a termination public financial disclosure report on or before the 30th day after leaving the covered position. *See* 5 CFR § 2634.201(e). The filer must sign and date the termination report no earlier than the last day of service in the position. Officials who anticipate leaving a covered position on or within 90 days after the May 15 annual deadline may file a combined annual/termination report if they request and receive an agency extension of the annual filing deadline.

Of the two termination public reports that the review team examined neither were filed within 30 days after the filer left the covered position. One report was filed almost 2 months late. OGE is not considering these late termination reports to be an egregious matter. However, it is important to provide termination filers with timely and specific conflict of interest advice. Therefore, OGE strongly encourages the Ethics Office to develop a process for timely collecting termination public reports and to incorporate the process into FTA's written procedures.

#### Ensure that Filers Do Not Digitally Sign Their Confidential Reports

Of the 345 OGE Form 450 reports that the review team examined, 17 had been digitally signed. OGE also took a retrospective look at the number of instances this occurred during the 2008 filing cycle, covering calendar year 2007, and identified 21 reports that had been digitally signed. During discussions with the primary ethics official, OGE was advised that filers were told not to digitally sign their reports. However, these reports were not sent back to filers to obtain a handwritten signature.

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OGE reminds the Ethics Office that in accordance with OGE's January 30, 2009, DAEOgram (DO-09-004), Guidance on the Use of Digital Signatures with the Confidential Financial Disclosure Form, agencies are only authorized to allow digital signatures on the electronically fillable PDF version of the confidential financial disclosure report if their agency's Chief Information Officer has approved a digital signature process. FTA has not authorized to allow its filers to use the digital signature option at this time. OGE suggests that the Ethics Office begin to incorporate language restricting the filers' use of the digital signature option into the notification letter sent to FTA confidential filers. In addition, the Ethics Office must send back to filers any future reports received with a digital signature and have the filer re-sign his or her form.

### Ensure That Incomplete Reports Are Not Certified

Of the 345 confidential reports the review team examined, 15 reports were certified and dated even though additional information was still being sought from these filers months later. OGE reminds ethics officials that a reviewing official's certification on a report indicates that the filer's agency has reviewed the report and that the reviewing official has concluded that each required item has been completed and that on basis of information contained in the report, the filer is in compliance with applicable laws and regulations. Any lack of completeness or accuracy detected on a report should be resolved prior to a report being certified by the reviewing official. To prevent future occurrences, OGE suggests that the DEO institute a process for spot-checking certified reports and remove certification signatures from incomplete financial disclosure reports.

### Ensure That Non-Filers

#### Do Not File Confidential Reports

During the examination of FTA's master list of confidential filers, and in discussions with the primary ethics official, 14 non-filers were identified as having voluntarily filed an OGE Form 450, despite the fact that they did not meet the filing criteria to file. In error, these reports were reviewed and certified by the Ethics Office and added to the master list. During discussions with the primary ethics official, OGE recommended that all 14 reports be destroyed since only reports filed by employees who meet the filing criteria for confidential filing must be retained. OGE was assured that these reports would be destroyed. OGE also suggests that the Ethics Office contact these employees to ensure that they do not file in error again during future filing cycles. In addition, OGE suggests that the Ethics Office develop a process for ensuring that it only collects forms from identified filers and that forms filed in error are immediately returned to the employee. This process should also be incorporated into FTA's written procedures.

## **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 FTA take timely and effective action to resolve the following recommendations. These recommendations are considered necessary to bring FTA's financial disclosure program into compliance with current OGE regulations.

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OGE recommends that FTA take the following actions:

1. Improve timeliness in new entrant confidential filing.
2. Update written procedures for administering both the public and confidential financial disclosure systems.

### **AGENCY COMMENTS**

A draft of this report was provided to FTA for its review and comment. In a memorandum dated April 22, 2010, the DEO provided comment on the corrective actions that FTA either has taken or plans to take to address both our recommendations. OGE will review the status of FTA's progress in addressing these recommendations as part of a follow-up review that will be scheduled within six months from the date of this report.

Here, we summarize FTA's comments from the draft report.

In response to our first recommendation, the DEO indicated that FTA now has two systems in place to improve the timeliness of new entrant filing. Currently, the Ethics Office receives prompt notices of new and terminating employees through OASIS. Additionally, a renewed partnership with FTA's Office of Human Resources (HR) has been established and the Ethics Office now receives new entrant reports and initial ethics training certifications directly from HR shortly after new employee orientations are conducted instead of waiting for the employee to submit these documents to the Ethics Office. Further, the Ethics Office is working with HR to receive timely notices of employees who are promoted or reassigned into positions that require the filing of a financial disclosure report. (The Ethics Office also met with FTA's Office of Administration to resolve issues regarding the universe of employees who are required to file confidential reports).

In response to our second recommendation, the DEO indicated that FTA is currently updating its written procedures to include additional language that documents FTA's processes for collecting, reviewing, and tracking financial disclosure reports. These changes will be incorporated into a revision of the FTA Order on Financial Disclosure Reports.

The DEO also responded to the technical issues identified during our review. The DEO's responses incorporated many of the suggestions we offered to FTA during the review to help ensure program enhancement.