



United States Office  
Of Government Ethics

## Ethics Program Review

# National Highway Transportation Safety 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 National Highway Transportation Safety Administration (NHTSA), 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 NHTSA'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 the objective, OGE's review was limited to the examination of the public and confidential financial disclosure reports that were required to be filed at NHTSA in 2009, covering calendar year 2008. OGE examined 21 of the 24 public reports<sup>1</sup> and randomly selected 224 of the 476 confidential financial disclosure reports. The public reports consisted of 19 incumbent reports and 2 termination reports while the confidential reports consisted of 117 OGE Form 450 reports, 100 Optional Form 450-A reports (OGE Form 450-A), and 7 new entrant reports. OGE examined the reports to evaluate timeliness of filing, review, and certification. OGE's on-site fieldwork for this review was conducted in October 2009.

### RESULTS IN BRIEF

NHTSA needs to make several improvements to its financial disclosure system before it can be considered effective. OGE found delays in completing the public report certification process, incorrect use of the OGE Form 450-As, and reviewer errors on public financial disclosure reports.

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

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OGE also identified non-filers who voluntarily filed either an OGE Form 450 or an OGE Form 450-A; written procedures governing NHTSA's administration of the financial disclosure system that did not fully comply with the Ethics Act; and a financial disclosure tracking system in need of improvement. As a result of these findings, OGE is recommending improvements to help bring NHTSA's financial disclosure program into full compliance with OGE's financial disclosure regulation. In addition, OGE strongly suggests that NHTSA develop a continuous learning strategy to enhance reviewer experience and expertise.

Several technical issues were also identified during our examination of both the public and confidential reports. However, OGE is making no formal recommendation regarding these matters but has made suggestions for improvement.

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

NHTSA's mission is to help reduce the mounting number of deaths, injuries, and economic losses resulting from motor vehicles crashes on the Nation's highways. Under the direction of the NHTSA Administrator, a Presidentially appointed and Senate confirmed appointee, NHTSA accomplishes its mission with a workforce of approximately 600 employees who are located at its headquarters office in Washington, DC and throughout its 10 regional offices.

The ethics program at NHTSA is located within the Office of Chief Counsel, hereafter referred to as the Ethics Office. The Assistant Chief Counsel for Legislation and General Law serves as the administration's Deputy Ethics Official (DEO) and has oversight responsibility for the overall ethics program. The day-to-day management of the ethics program has been delegated to a Senior Attorney on the DEO's staff, hereafter referred to as the primary ethics official, who serves the ethics program as a collateral duty. Assisting the Senior Attorney are three attorneys who support the ethics program in varying capacities also as a collateral duty.

### **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 7 new entrant confidential reports that OGE examined, all 7 were filed late. The vast majority of these reports were filed one year late and were captured during the annual filing cycle. Of note, all 7 reports were filed by employees who had been promoted into a covered position.

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 interests exist and, if so, take prompt remedial action, which is a fundamental purpose of the ethics program. Therefore, OGE recommends that the

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Ethics Office improve NHTSA's new entrant confidential filing process to ensure that reports are consistently collected from new entrant filers timely. Once this process has been developed, OGE strongly urges the Ethics Office to consistently monitor the new entrant confidential filing process to ensure that the steps established to address new entrant filing are effective.

### Recommendation: Ensure That All Public Reports Are Reviewed And Certified Timely

Public 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. To evaluate timeliness in review and certification of NHTSA's public financial disclosure system, OGE examined 21 of the 24 public reports that were required to be filed in 2009. Although OGE found that NHTSA had met the regulatory report review requirements by performing the initial review on the public reports within the required 60 days of filing for most of the public reports examined, three of the reports had not been reviewed by the Ethics Office by the start of OGE's review in October 2009 (more than 4 months after the filing deadline).<sup>2</sup> (Once this was brought to the attention of the primary ethics official, these three reports were reviewed and forwarded to the DEO for final review and certification prior to the conclusion of our review.)

During discussions with the primary ethics official, OGE was advised that this lack of timeliness was attributed to reviewer oversight. However, OGE also found that the Ethics Office did not track filing progression of financial disclosure reports. Therefore, there was no mechanism by which the Ethics Office could identify when covered employees had filed their reports and when reviews and certifications were occurring.

In addition, OGE found that 23 of the 24 public reports had not been certified by the start of our review (October 2009). During discussion with the DEO, delays in certification were attributed to increased work load. However, OGE took a retrospective look at the reports that were filed in 2008 and also noticed delays in certification. Financial disclosure regulations at 5 CFR § 2634.605(b) provide that the certification of reports may occur later than the required time frame when additional information is being sought or remedial action is being taken. However, it is unusual for the certification process to be so lengthy, especially when it did not appear that these delays were due to ethics officials seeking additional information from filers.

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<sup>2</sup> OGE notes that although notations for one of the three reports did reflect dates in which the primary ethics official had follow-up conversations with the filer, which fell within 60 days of the report being filed, the initial review had not been completed. Much of the delay in reviewing this report was because the filer used a brokerage statement in lieu of making direct entries on the report, and the brokerage statement did not readily disclose in a clear and concise fashion all required information. The review team shared with the primary ethics official the February 22, 2000, DAEOgram (DO-00-007), OGE issues DAEOgram on Use of Brokerage Statements in Lieu of Entries on SF 278s which provides guidance to ethics officials on when a filer can use a brokerage statement in lieu of making direct entries.

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It is essential to the purpose of the public financial disclosure system that ethics officials conduct a timely and thorough review and certification of all public reports. Therefore, OGE recommends that NHTSA develop a process for ensuring that financial disclosure reports are reviewed and certified timely. Such a process should include an effective tracking system so that ethics officials are aware of the progress made on each financial disclosure report. An effective tracking system should track the filing progression of each financial disclosure filer and should include as appropriate the dates when: (1) the filer was notified of the filing requirement; (2) the filer was provided with the financial disclosure report; (3) the report was filed; (4) intermediate review commenced; (5) intermediate reviewer signed and dated the report; (6) the final review commenced; and (7) the reviewing official certified the report. Because all financial disclosure filers must receive annual ethics training, many ethics officials also simultaneously track when filers received, or will receive, this training. OGE also suggests that the Ethics Office remind filers—perhaps at the start of the filing season—of what constitutes clear and complete financial disclosure reporting.

### Recommendation: Ensure the Appropriate Use Of The OGE Form 450-A

The OGE Form 450-A may be used by incumbent filers in lieu of the OGE Form 450 if the filers can certify that neither they nor their spouses or dependent children have acquired new reportable interests and that the filers have not had a significant change in duties or change of position description assignment. *See* 5 CFR § 2634.905(b). This form may be used for a maximum of 3 consecutive years. However, in a presidential election year all employees in designated positions must file the OGE Form 450. During the examination of the 100 OGE Form 450-As, OGE found the Ethics Office permitting filers to use the OGE Form 450-A even though more than 3 years had passed since the filer may have submitted an OGE Form 450. In some cases, an OGE Form 450 report had not been filed since 2004. OGE also found that the OGE Form 450-As were not consistently being reviewed to ensure that the reports were being used by eligible filers as described in 5 CFR § 2634.905(b).

Due to the filing restrictions imposed by OGE's regulation on when the OGE Form 450-A can be used, OGE recommends that the Ethics Office require all confidential filers to submit an OGE Form 450 in 2010. While the OGE Form 450-A could be used again in 2011, an OGE Form 450 must be filed in 2012. After 2012, an OGE Form 450-A could be filed in 2013, 2014, and 2015, but an OGE Form 450 must be filed in 2016. In addition, because the Ethics Office has permitted employees to file the OGE Form 450-A inappropriately, employees may not understand when the form can and cannot be used. Therefore, OGE also suggests that when next permitting the use of the OGE Form 450-A, the Ethics Office devote some time and attention to providing additional advice to ensure that employees understand the limitations on using this optional confidential filing.

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### 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 NHTSA'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, NHTSA's written procedures did 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) nor 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. Should significant changes to NHTSA's financial disclosure system occur in the future, these procedures should be updated to reflect those changes.

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 NHTSA'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 IDENTIFED**

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 but is making suggestions for improvement regarding these matters.

#### Ensure That Non-Filers

#### Do Not File Confidential Reports

During the examination, OGE identified 20 non-filers who voluntarily filed either an OGE Form 450 or an OGE Form 450-A despite the fact that they did not meet the filing criteria. In error, these reports were reviewed and certified by the Ethics Office. During discussions with the primary ethics official, OGE recommended that these reports be destroyed since only reports filed by employees who meet the criteria for confidential filing are required to be retained. OGE was assured that these reports would be destroyed. OGE also suggested that the primary ethics official contact these employees to ensure that this does not happen in the future. In light of these findings, OGE suggests that the Ethics Office develop procedures for ensuring that it only collects forms from identified filers and that forms filed in error are immediately returned to the employee.

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### Ensure That DEO Action On Filing Extensions Are Documented

During the examination of the one incumbent public report that received a filing extension, OGE found no evidence showing that the DEO's approval had been documented. In accordance with 5 CFR § 2634.201, the reviewing official must approve or deny such requests in writing and it should be maintained as part of the official report file. OGE was assured that this would become a common practice in the future.

### Ensure That Incomplete Reports Are Not Certified

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. Therefore, any lack of completeness or accuracy detected on a report should be resolved prior to a report being certified by the reviewing official. OGE found public and confidential reports that had been certified even though information was missing. For example, on public reports, OGE noticed that some filers did not report whether certain investments met the definition of an Expected Investment Fund (EIF) and; therefore, omitted reporting the investments' underlying holdings on Schedule A. If an asset qualifies as an EIF, then the EIF box must be checked. If the asset does not qualify as an EIF, then each of the underlying holdings of the asset must be reported so that a complete conflict of interest determination can be made. On confidential reports some filers had not listed his/her date of appointment on the cover page or left a schedule or part blank. OGE suggests that the Ethics Office become familiar with the review standards to ensure that future incomplete reports are not certified. To prevent future occurrences, OGE suggests that the Ethics Office institute a process for spot-checking certified reports and remove certification signatures from incomplete financial disclosure reports.

### Inform Filers And Reviewers Of Over-Reporting Errors

During the examination of some confidential reports, the review team noticed that when an over-reporting error was identified, the initial reviewer struck a line through the entry. This practice does eliminate the over-reported item. However, it does not prevent the filer from making the same mistake in the future. This practice also does not inform future reviewers of why the correction was made. Therefore, OGE suggests the corrected form should be returned to the filer to use as a guide on what should not be reported the next year. In addition, reviewer notes should be documented on a separate sheet of paper. This documentation would allow for greater efficiency during a year-to-year review and would also help prevent redundant follow-up with the filer.

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### **SUGGESTION FOR PROGRAM ENHANCEMENT**

Based on the overall findings identified above, OGE suggests that a continuous learning strategy be developed at NHTSA to enhance the agency's financial disclosure program. Consistent, timely, and accurate review of reports requires agencies to enhance reviewer experience and expertise by providing specialized training to reviewers. OGE offers financial disclosure review training courses and other training throughout the year. OGE suggests that in addition to attending formal training that the ethics officials make frequent use of the financial disclosure review guides that are on the OGE website.

### **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 CFR part 2638, it is important that NHTSA take timely and effective action to resolve the following recommendations. These recommendations are considered necessary to bring NHTSA's financial disclosure program into compliance with current OGE regulations.

OGE recommends that NHTSA take the following actions:

1. Improve timeliness in new entrant confidential filing.
2. Develop a process for ensuring that all financial disclosure reports, especially public reports, are reviewed and certified timely.
3. Ensure the appropriate use of the OGE Optional Form 450-A.
4. Modify NHTSA's written procedures for administering both the public and confidential financial disclosure systems.

### **AGENCY COMMENTS**

We provided a draft of this report to NHTSA for review and comment. In a memorandum from the DEO dated April 22, 2010, the DEO concurred with our recommendations and provided comment on the corrective actions that NHTSA had either taken or planned to take to address these recommendations.

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

In response to our first recommendation, the DEO provided details on NHTSA's plans to improve the timeliness of new entrant filing. The DEO indicated that a meeting was held with the Director of the Office of Human Resources to develop a process to ensure that the Ethics Office is provided with new employee and promotion information in sufficient time to permit new entrants to file their reports within 30 days of joining NHTSA or being promoted to a GS-12.

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In response to our second recommendation, the DEO indicated that NHTSA will begin to ensure that all financial disclosure reports are reviewed within 60 days and certified shortly thereafter, except when the Ethics Office seeks additional information or is taking remedial action.

In response to our third recommendation, the DEO indicated that NHTSA no longer plans to have NHTSA confidential filers use the OGE Optional Form 450-A in view of the fact that the current OGE Form 450 is already streamlined and user friendly. For the 2010 filing cycle, all NHTSA confidential filers filed an OGE Form 450.

In response to our fourth recommendation, the DEO indicated that written procedures will be drafted for administering NHTSA's financial disclosure program. These procedures will also incorporate the technical suggestions and guidance provided by OGE.

In addition to the above, the DEO also provided written responses to the suggestions made throughout this review to help improve the overall effectiveness of NHTSA's ethics program.

OGE will review the status of NHTSA'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.