



United States Office
Of Government Ethics

Ethics Program Review

Federal Motor Carrier 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 Federal Motor Carrier Safety Administration (FMCSA), 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 FMCSA'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 in scope to the examination of the public and confidential financial disclosure reports that were required to be filed at FMCSA in 2009, covering calendar year 2008. Based on OGE's observation of FMCSA's master list of financial disclosure filers, OGE examined all 15 public reports and 323 confidential financial disclosure reports. The 15 public reports consisted of 10 incumbent reports and 2 termination reports.¹ The confidential reports consisted of 257 OGE Form 450 reports, 43 Optional Form 450-A reports (OGE Form 450-A), and 23 new entrant reports. OGE examined these reports to evaluate timeliness in filing, review, and certification. OGE's on-site fieldwork for this review was conducted in July 2009.

RESULTS IN BRIEF

OGE found FMCSA's financial disclosure program to generally accord with statutory and regulatory requirements as the reports examined were generally filed, reviewed, and certified timely. However, several improvements are needed before the program can be considered effective.

¹ OGE did not examine the public reports filed by the FMCSA 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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Therefore, OGE is recommending that the following improvements be made: (1) improve the timeliness of new entrant confidential filing; (2) develop written procedures that outline the process for collecting, reviewing, and evaluating financial disclosure reports; and (3) improve FMCSA's tracking system to aid in the timely collection, review, and certification of financial disclosure report. These improvements will help bring FMCSA's financial disclosure program into full compliance with OGE's financial disclosure regulation. In addition, OGE strongly suggests that FMCSA 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 for improvement regarding these matters based on assurances received from the Ethics Office that these issues would be corrected during future filing cycles.

BACKGROUND AND ETHICS PROGRAM STRUCTURE

FMCSA was established as a separate operating administration within the DOT on January 1, 2000, pursuant to the Motor Carrier Safety Improvement Act of 1999. Formerly a part of DOT's Federal Highway Administration, FMCSA's primary mission is to prevent commercial motor vehicle-related fatalities and injuries. Under the direction of the FMCSA Administrator, a Presidentially appointed and Senate confirmed appointee, the activities of this administration contribute to ensuring safety in motor carrier operations. To accomplish these activities, FMCSA has a workforce of over 1,000 employees located at its headquarters office in Washington, DC and throughout field offices in every State and the District of Columbia.

The ethics program at FMCSA 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 management of the ethics program is carried out by two members of the DEO's staff -the Assistant Chief Counsel for General Law and an attorney-advisor who serve the program as a collateral duty.

PRINCIPAL FINDINGS:

Recommendation: Improve Timeliness In 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 23 new entrant confidential reports that OGE examined, 20 were filed late. The vast majority of these reports were filed more than one year late and were captured during the annual filing cycle.

During discussions with ethics officials, 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, the Ethics Office established new procedures to help timely identify new

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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 increased coordination efforts with FMCSA's Human Resources Office and (2) during initial ethics orientation training. The Ethics Office also made changes to its training attendance roster to help ensure that all new employees who are entering into a covered position can identify themselves as filers so the Ethics Office can timely provide them with a confidential financial disclosure 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, which is a fundamental purpose of the ethics program. In view of these steps 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. Therefore, OGE recommends that the Ethics Office continually monitor and improve these steps to ensure that they are effective in operating as designed.

Recommendation: Written Procedures Need To Be Developed

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. At the time of fieldwork, OGE did not find the Ethics Office to have written procedures that documented the process on how FMCSA collects, reviews, certifies, or maintain their financial disclosure reports. 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 written procedures be developed to ensure compliance with the Ethics Act.

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 FMCSA'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.

Recommendation: Improve FMCSA's 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,

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and capability, depending on the needs of the agency. The Ethics Office uses its master list of filers to track the filing and review of both public and confidential reports. However, during the examination of both lists, OGE found it difficult to independently track timeliness of reports since dates of filing progression were not being recorded by ethics officials.

An effective tracking system should track the filing progression of each financial disclosure filer and should include the following dates: (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 recommends that the Ethics Office expand 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.

TECHNICAL 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 That SGE's Indicate Their Reporting Status As "New Entrant" Each Year

At the time of fieldwork, all five members of FMCSA's Medical Review Board Advisory Committee were active members who were required to file a confidential financial disclosure report in 2009. OGE confirmed that all five reports were timely filed, reviewed, and certified. However, OGE found that the five Board members did not indicate their reporting status on the first page of the confidential report as "New Entrant" in accordance with § 2634.903(b). OGE advised the Ethics Office that SGEs should always indicate their filing status as "New Entrant" each year on their report because it changes the information that has to be reported. Specifically a new entrant filer, unlike an annual filer, does not have to report gifts and travel reimbursements. The Ethics Office provided assurances that this will become a common practice during future filing cycles.

Ensure That The Agency Date Of Receipt Stamp Is Used On All Reports

Dates of receipt must be entered on each report to help assess compliance with the filing due date and 60-day review requirements. *See* 5 CFR § 2634.605(a). During the examination of both the public and confidential reports, the review team found none of the examined reports to have been date stamped. Therefore, OGE based filing timeliness on the filers' signature dates. Using this method, the review team confirmed that all reports were filed timely. Since compliance with the filing due date had been met, OGE reminds the Ethics Office that a financial

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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 the Ethics Office that the practice of date stamping reports would become routine during future filing cycles.

Ensure That Incomplete Reports Are Not Certified

It is essential that reviewers conduct as thorough a review as possible on each report. 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 the basis of information contained in the report, the filer is in compliance with applicable laws and regulations. OGE found both 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.

Reviewers should seek additional information on a report and annotate the report appropriately when (1) the form is incomplete (e.g. when a filer fails to check an asset value); (2) the form reveals one entry (or the absence of one) that is inconsistent with another entry on the report or on the filer's previous report; (3) the form omits an entry for which the reviewing official has independent knowledge; or (4) the reviewing official requires more information to ensure the filer's compliance with Federal ethics laws and regulations or with other 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. OGE suggests that ethics officials become familiar with the review standards to ensure that future incomplete reports are not certified.

Ensure That DEO Action On Filing Extensions Are Documented

The reviewing official must approve or deny requests for filing extensions in writing and it should be maintained as part of the official report file. *See* 5 CFR § 2634.201. During the examination of the one incumbent public report that received a filing extension, the review team found no evidence to support that the DEO's approval of the extension had been documented. OGE was assured that this would become a common practice in the future.

Ensure That FMCSA's Master List Of Filers Is Continually Up-to-Date

At the start of the examination, OGE found it difficult to assess the total number of employees who were required to file a confidential report based on FMCSA's master list of confidential filers. The master list indicated that 311 employees were required to file a report in 2009. After independently examining the master list against the physical number of confidential

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reports on file and through discussions with the Ethics Office, OGE determined that 323 employees were required to file. Through discussions with the Ethics Office, the review team was advised that the discrepancy in numbers occurred because updates had not been made to the master list. Although all required employees filed a report, OGE strongly suggests that the Ethics Office begin to update both master lists throughout the year, rather than annually, to help account for new employees entering covered positions and employees leaving or transferring into covered positions.

SUGGESTION FOR PROGRAM ENHANCEMENT

Based on the number of findings identified, OGE suggests that a continuous learning strategy be developed at FMCSA 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 ethics officials also 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 C.F.R. part 2638, it is important that FMCSA take timely and effective action to resolve the following recommendations. These recommendations are considered necessary to bring FMCSA's financial disclosure program into compliance with current OGE regulations.

OGE recommends that FMCSA take the following actions:

1. Improve timeliness in new entrant confidential filing
2. Develop written procedures for administering both the public and confidential financial disclosure systems in accordance with the requirements of the Ethics Act.
3. Improve FMCSA's financial disclosure tracking system to aid in the timely collection, review, and certification of financial disclosure reports.

AGENCY COMMENTS

A draft report was provided to FMCSA 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 FMCSA had either taken or planned to take to address these recommendations. FMCSA also provided comments on the technical accuracy of the report, and these comments have been incorporated within this final report as appropriate. For example, in the footnote under the "Objective, Scope, and Methodology" section FMCSA pointed out that the DAEO also reviews and certifies the public financial disclosure report of the FMCSA Deputy Chief Counsel. This particular report was not included as part of our review of

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the public reports examined at FMCSA. Therefore, we added the Deputy Chief Counsel to the list of positions that were listed in the footnote.

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

In response to our first recommendation, FMCSA provided details on their plans to improve the timeliness of new entrant filing. Based on this action plan we believe FMCSA is well on its way to ensuring that new employees required to file a new entrant confidential report will do so in a timely manner.

In response to our second recommendation, FMCSA indicated that they would draft written procedures for the financial disclosure program as well as written procedures that reflect the current practices for administering other elements of FMCSA's ethics program by June 1, 2010. FMCSA also plans to revise the program and training books prepared for OGE in conducting this review into continuity books for FMCSA attorneys who may perform ethics duties.

In response to our third recommendation, FMCSA revised its tracking sheets to now include the OGE recommendations with one exception. FMCSA revised its review system such that supervisors no longer serve as intermediate reviewers. Therefore, the tracking sheets do not include columns pertaining to intermediate reviews.

In addition to the above, FMCSA provided responses to the suggestions made throughout the review and summarized within this report to help improve the overall effectiveness of FMCSA's ethics program.

OGE will review the status of FMCSA'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.