



United States Office
Of Government Ethics

Ethics Program Review

Federal Railroad 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 Railroad Administration (FRA), 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 FRA'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 FRA in 2009, covering calendar year 2008. Therefore, based on OGE's examination of FRA's master list of financial disclosure filers, OGE examined 15 public financial disclosure reports, which consisted of 13 incumbent reports, 1 new entrant report, and 1 termination report.¹ OGE also examined a random selection of 102 of the 517 annual confidential financial disclosure reports for examination and all 14 new entrant confidential reports that were filed from January 2009 through June 2009. OGE examined these reports to evaluate whether the reports were filed, reviewed, and certified timely. OGE's on-site fieldwork for this review was conducted in June 2009.

RESULTS IN BRIEF

OGE is pleased to see that FRA has sustained improvements within the financial disclosure program since OGE's last review in 2002. In that review, we recommended a number

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

Ethics Program Review: Federal Railroad Administration

of improvements to both the public and confidential financial disclosure systems, including noting when public and confidential reports are submitted by filers, reviewing public reports within 60 days, certifying public reports promptly unless outstanding issues are pending, and keeping accurate lists of employees required to file and indicating on these lists when reports are received.

In our current examination OGE found FRA's financial disclosure program to generally accord with statutory and regulatory requirements, as our examination found reports to have been generally filed, reviewed, and certified timely. It also appeared that reports were reviewed thoroughly for conflicts as evidenced by the annotations or other documentation associated with the review. However, two issues were identified during the examination and brought to the attention of ethics officials. First, FRA did not have written procedures that outlined the process for administering FRA's financial disclosure systems as is required by the Ethics Act. Thus, OGE is recommending that written procedures be developed. Second, FRA must continually monitor its new entrant confidential filing process to ensure timeliness of filing. OGE is not making a recommendation for this finding but has made a suggestion for improvement.

BACKGROUND AND ETHICS PROGRAM STRUCTURE

Under the direction of the FRA Administrator, a Presidentially appointed and Senate confirmed appointee, FRA has the responsibility for promulgating and enforcing rail safety regulations, administering railroad assistance programs, conducting research and development in support of improved railroad safety and national rail transportation policy, providing for the rehabilitation of Northeast Corridor rail passenger service, and consolidating government support of rail transportation activities. FRA consists of approximately 812 employees who are located at its headquarters in Washington, DC and throughout eight regional offices.

The ethics program at FRA is located within the Office of Chief Counsel, hereafter referred to as the Ethics Office. The 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 carried out by a Senior Attorney, hereafter referred to as the primary ethics official, who serves the program as a collateral duty. Assisting the primary ethics official is an attorney-advisor who supports the ethics program in varying capacities also as a collateral duty.

SUPPLEMENTAL STANDARDS OF CONDUCT REGULATION

Part 6001 of 5 CFR prohibits FRA employees from holding stock or having any other financial interest, including outside employment, in a railroad company subject to FRA regulation. Likewise, no spouse or minor child of an FRA employee shall hold stock or any other securities interest in a railroad company subject to FRA regulation. Additionally, no FRA employee appointed after December 1991 shall hold reemployment rights with a railroad

Ethics Program Review: Federal Railroad Administration

company subject to FRA regulation after his or her first year of employment.² For purposes of this supplemental regulation, this prohibition does not apply to a financial interest in a publicly traded or publicly available investment fund, provided that, at the time of the employee's appointment or upon initial investment in the fund, whichever occurs later, the fund does not have invested, or indicate in its prospectus the intent to invest, more than 30 percent of its assets in a particular transportation or geographic sector and the employee neither exercises control nor has the ability to exercise control over the financial interests held in the fund. For those individuals who acquire a financial interest subject to this regulation, as a result of gift, inheritance, or marriage, they must divest the interest within a period set by the agency designee. Until divestiture, the employees must be disqualified from working on any matter that could affect his or her financial interests.

PRINCIPAL FINDING

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

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 FRA's ethics program as well. OGE considers this to be a model agency practice and a valuable resource to both employees and ethics officials.

² This mandatory divestiture is a condition of employment for FRA railroad inspectors. While under the supervision of another inspector, the newly hired inspector's reemployment and seniority rights are preserved to ensure the successful performance of his or her duties prior to relinquishing reemployment and seniority rights. After the first year of employment, they must divest of their reemployment and seniority rights.

Ethics Program Review: Federal Railroad Administration

TECHNICAL ISSUE IDENTIFIED

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 § 2634.903(b). Of the 14 new entrant confidential reports that OGE examined, 3 were filed late. Considering the size of our sample and the number of confidential filers required to file, we believe the number of new entrant reports submitted late is not an egregious matter. However, late filing, whether by new entrant or annual filers, precludes an agency from providing timely conflict-of-interest advice, which is a fundamental purpose of the ethics program. Therefore, OGE suggests that the Ethics Office continually monitor the new entrant confidential filing process to ensure that the steps established to address new entrant filing are effective. The Ethics Office could consider tracking on the master list of confidential filers the dates of filing progression to aid in the timely collection, review, and certification of reports. Tracking systems help to identify covered employees who have not filed their reports so that they can be reminded to do so before the filing due date and enable the Ethics Office to identify other potential problems, such as incomplete reports.

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

OGE recommends that FRA take the following action:

1. Develop written procedures for administering both the public and confidential financial disclosure systems.

AGENCY COMMENT

A draft of this report was sent to FRA for its review and comment. In a memorandum dated April 23, 2010, the DEO provided comment on the corrective action that FRA planned to take to address this recommendation. In response to our recommendation, the DEO indicated that FRA will implement written procedures for the financial disclosure reporting system. OGE will review these written procedures as part of a follow-up review that will be scheduled within six months from the date of this report.

FRA also provided comment with respect to our suggestion on monitoring the timeliness of new entrant confidential filing by indicating that procedures have been strengthened to address this concern.