

Ethics Program Review

United States Postal Service

June 2010 Report

Introduction

RESULTS IN BRIEF

USPS has made significant improvements within the confidential financial disclosure program since OGE's program review in 2005. During the 2005 review, OGE made two recommendations: The most serious recommendation focused on improving the confidential financial disclosure program.

In our current examination, OGE found USPS's confidential financial disclosure program to be in general accordance with the Ethics Act and 5 CFR part 2634, specifically Subpart I. Our examination found most reports were filed, reviewed, and certified timely. We also found that reports appeared to have been reviewed for conflicts of interest as evidenced by the annotations on the reviews and that certifiers appeared to possess the knowledge necessary to perform conflict of interest reviews. However, the OGE review team identified certifier training as an area that could benefit from further enhancements. To ensure that all certifiers are provided consistent, uniform information to carry out their duties, OGE strongly suggests that USPS formalize a training program for certifiers that at a minimum (1) requires mandatory, annual training; (2) provides consistent substantive materials; and (3) utilizes a tracking method to verify attendance.

OGE identified three technical errors during its examination of confidential financial disclosure reports. First, at the time of the fieldwork, the Ethics Office could not confirm that reports retained for a period of 6 years or longer after receipt had been destroyed unless needed in an ongoing investigation¹. Second, a significant number of filers disclosed more information than is required to be reported. Third, a large portion of our sample of new entrant confidential financial disclosure reports had either an incorrect or missing date of entry into a covered position. OGE is not making formal recommendations regarding these technical errors because they either did not affect the quality of the reports or were resolved before this report was issued.

¹ After the fieldwork was concluded, the Ethics Office confirmed that USPS had destroyed or was in the process of destroying confidential financial disclosure reports older than 6 years.

OBJECTIVE, SCOPE, AND METHODOLOGY

Title I of the Ethics in Government Act authorizes the Office of Government Ethics (OGE) to establish a confidential financial disclosure program for executive branch employees in certain designated positions. The purpose of this requirement is to foster confidence in the integrity of the Federal Government by demonstrating that employees are able to carry out their duties without compromising the public trust. A successful financial disclosure program serves to prevent conflicts of interest and to identify potential conflicts by providing a systematic review of the financial interests of employees. As part of the OGE's monitoring activities, OGE conducted a focused review of the confidential financial disclosure program administered at the United States Postal Service (USPS). OGE's objective was to determine whether the confidential financial disclosure program was in compliance with applicable ethics laws and regulations.

To meet this objective, OGE examined reports that were required to be filed at USPS headquarters in 2009, covering calendar year 2008. Because of the large number of confidential financial disclosure filers at USPS, OGE randomly selected 310 of the 1,538 confidential financial disclosure reports required to be filed. The sample OGE examined consisted of 278 annual reports and 32 new entrant reports. OGE examined these confidential financial disclosure reports to determine whether they had been filed, reviewed, and certified timely. OGE also conducted a conflict of interest analysis of the reports examined. Additionally, OGE interviewed 27 of the 33 headquarters component area ethics representatives²--hereafter referred to as certifiers--responsible for certifying confidential financial disclosure reports. The purpose of the interviews was to determine whether certifiers received training on how to review and certify confidential financial disclosure reports and whether they conducted a conflict of interest analysis of the confidential financial disclosure reports they reviewed.

OGE also evaluated the USPS confidential financial disclosure program's processes and procedures and their impact on the agency's ability to prevent and detect ethics violations. OGE's on-site fieldwork for this review was conducted in March 2010.

BACKGROUND AND ETHICS PROGRAM STRUCTURE

USPS was created as an independent establishment of the executive branch of the Government of the United States by the Postal Reorganization Act, approved August 12, 1970. USPS has approximately 593,850 career employees and oversees 33,264 properties including administrative offices at headquarters, eight areas, and district offices, as well as post offices, branches and stations throughout the United States. The Postmaster General is appointed by the nine Governors of the Postal Service, who are appointed by the President with the advice and consent of the Senate. The Governors and the Postmaster General appoint the Deputy Postmaster General and these 11 people constitute the Board of Governors. The members of the Board of

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² Three of the certifiers for the 2009 filing cycle retired before the start of OGE's review. Additionally, the OGE review team was not able to conduct interviews with two certifiers due to scheduling conflicts. The previous Alternate DAEO was also a certifier; the OGE review team did not interview her since her position made the interview unnecessary.

Governors (excluding the Postmaster General and Deputy Postmaster General) have been determined to be special Government employees (SGEs) since they are not expected to serve in excess of 130 days during any period of 365 consecutive days.

The ethics program at USPS is overseen by the Office of the General Counsel. The General Counsel serves as the Designated Agency Ethics Official (DAEO) and has oversight responsibility for the overall ethics program. The day-to-day operations of the ethics program are managed by the Chief Counsel, Ethics and Federal Requirements, who also serves as the Alternate DAEO. The Alternate DAEO reports directly to the Managing Counsel, Civil Practice. The resources of the full-time Alternate DAEO, three full-time attorneys and one full-time specialist are devoted exclusively to ethics; these individuals comprise the headquarters "Ethics Office." During the year under review, the Ethics Office was not fully staffed at any given time, but currently it is.

The DAEO delegates responsibility for the final review of confidential financial disclosure reports to Vice Presidents from all components. Vice Presidents may then designate a subordinate employee to accomplish the final review and certification of confidential financial disclosure reports. Certifiers are generally designated because of their knowledge of projects within their components and they often have a financial background. Certifiers are not typically ethics officials; they usually have no ethics background. The Ethics Office conducts the intermediate review of the reports to correct technical errors but certifiers are responsible for conducting a conflicts of interest review and certifying the reports they are assigned.

USPS's Electronic Filing System

In 2007, USPS contracted with a private company to develop an electronic filing system to help USPS manage OGE's public and confidential financial disclosure filing requirements. OGE provided USPS with comment and approval on the electronic filing system at the time of development. For the current review, the OGE review team focused on the confidential financial disclosure aspect of the electronic filing system.

Each USPS Vice President, with guidance and assistance from the Ethics Office, periodically identifies positions that require the filing of a confidential financial disclosure report. The Ethics Office then enters the "occupation codes" correlating to these positions into the electronic filing system, known as the "Financial Disclosure System" or "FDS." Each month, the Ethics Office causes FDS to pull data regarding employees who have just entered covered positions directly from the USPS Human Resources Department through its computerized active directory. FDS is populated with information from active directory, including employee name, position title, email address, phone number, and employment status. Once this task is completed, an email to new filers is automatically generated to inform them of the filing requirement and how to accomplish filing. This same process is used to generate the notifications for annual filers.

While new filers have the option of submitting a paper confidential financial disclosure report, the vast majority of filers submit the reports electronically. When a report is submitted electronically, the Alternate DAEO assigns it to an ethics attorney who examines the report for

technical sufficiency³. Once the ethics attorney deems the report technically sound, the report automatically drops into the queue of the designated certifier for the employee's component, who then conducts the final review for conflicts of interest. Certifiers are notified via automated email that they have been assigned a report. The ethics attorney and the certifier can make comments electronically in designated areas in FDS. While the ethics attorneys may perform an intermediate review on any report in the system (except their own), certifiers may only view and certify their assigned reports. Certifiers may not certify their own reports.

USPS officials explained that FDS is a direct result of OGE's previous review that identified several deficiencies in the confidential financial disclosure program. The resulting FDS is a robust tracking and management system that gives the USPS Ethics Office substantial control over the administration of the confidential financial disclosure program. From the sample of reports that the OGE team reviewed, it was evident that FDS has been instrumental in greatly reducing late reports and in timely identifying new entrants. FDS has introduced efficiency and consistency into the confidential financial disclosure system. OGE considers the implementation and use of FDS as a model practice.

PRINCIPAL FINDINGS:

The OGE review team found that certifiers are generally well-trained and are comfortable conducting conflict of interest reviews. Certifiers indicated that they have an understanding of their filers' current duties and pending assignments. All certifiers were comfortable in their ability to identify assets or activities that may cause actual or potential conflicts of interest and were able to explain their responsibilities as a certifier and what constitutes a conflict of interest review.⁴

<u>Suggestion: Provide Certifiers</u> <u>with Mandatory Annual Training</u>

The Ethics Office stated that training for certifiers was an annual and mandatory requirement. Despite the Ethics Office's stated intention, several certifiers were not aware that the training was an annual requirement. In addition, while all certifiers recalled receiving training, the training provided varied widely. One certifier reported that he had to request training while others reported ample training opportunities. Additionally, the materials provided to certifiers were varied: some reported only receiving materials on how to log into the electronic system while others reported receiving copies of PowerPoint presentations, OGE materials, Frequently Asked Questions handouts, and other job aides.

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³ Filers must provide enough information about their financial holdings, outside interests and activities so that the reviewer and certifier can make informed judgments as to compliance with applicable laws and regulations.

⁴ During OGE's review of the confidential financial disclosure reports we identified a filer with an outside position that could potentially pose a conflict of interest. The review team found no evidence that the certifier had conducted a conflict of interest review. According to the Ethics Office, the certifier erroneously believed that the Ethics Office's role was to identify potential conflicts of interest. Upon follow-up with the certifier and the filer, the Ethics Office confirmed that the outside position posed no conflict. While this incident appears to be an exception, it emphasizes the need to provide frequent training to certifiers and to remind them of the important role they play in the USPS ethics program.

Certifiers play a critical role in the USPS ethics program: any weakness in certifier training may compromise the effectiveness of the confidential financial disclosure process and ultimately the ethics program. Therefore, it is imperative that all certifiers have access to the same information and that the information be updated and reinforced so that quality and consistency is maintained in the review and certification process. To ensure that all certifiers receive the necessary tools to carry out their duties, OGE suggests that USPS formalize its training program for certifiers and that the training at least contain these elements: (1) mandatory, annual training; (2) consistent and substantive materials; and (3) a tracking method to verify attendance.

TECHNICAL ISSUES IDENTIFIED

In addition to the findings noted above, OGE also identified three technical issues during its examination of the confidential reports that the Ethics Office must be mindful of during future filing cycles. OGE is making two suggestions for improvement regarding these three technical issues.

Ensure that confidential reports are destroyed after 6 years

OGE Form 450, Forms 450-A, and any alternative or supplemental forms must be retained for a period of 6 years after receipt, after which they are to destroyed (unless needed in an ongoing investigation). (5 CFR § 2634.604) During our examination of the confidential financial disclosure system at USPS, the review team inquired about the paper reports that predated the advent of the electronic filing system in 2008. The Ethics Office explained that these older paper reports remained at the various components with the certifiers. At the time the fieldwork was conducted, the Ethics Office could not confirm whether paper reports that remain with component certifiers were being destroyed after 6 years. The Ethics Office told the OGE ethics team that ensuring the destruction of the reports would be an onerous process. The Ethics Office did have a process in place for destroying reports contained in the electronic filing system; however, at the time the fieldwork was conducted there was no plan to purge the paper-based reports that remained in possession of the certifiers.

After OGE finished the fieldwork for the review, the Ethics Office said that every field office and every headquarters component had destroyed or was in the process of destroying confidential financial disclosure reports older than 6 years. In addition, the Ethics Office said it has implemented a system of annual reminders to certifiers to destroy the paper reports retained for a period of 6 years or longer after receipt. OGE will follow-up with USPS to ensure that the new process in place for the destruction of confidential reports that were retained for a period of 6 years or longer is effective.

Ensure that filers are aware of certain reporting errors and omissions

The basic rule when reviewing financial disclosure reports is that an entry should disclose all required information and be sufficiently detailed to allow a full conflict of interest analysis.

Anything more than that basic requirement is unnecessary; anything less is inadequate. During the examination of financial disclosure reports, the review team identified a recurring technical error: many filers disclose more information than is required to be reported (e.g., including retirement benefits from Thrift Savings Plan accounts, Federal salary, exact property address, etc.). In the majority of the cases, the Ethics Office annotated reports that required correction and notified filers that they disclosed more information than required to be reported. OGE suggests that the Ethics Office remind filers at the start of the filing season about what constitutes complete and correct filing. One useful reminder is a checklist that addresses what should and should not be reported.

Ensure that new entrant reports have the correct date of entry

Employees generally must file new entrant confidential financial disclosure reports within 30 days of beginning duty in a designated position--hereafter referred to as a covered position. To determine if new entrant confidential financial disclosure reports are being filed timely, the reports must contain an accurate date of entry into the covered position. OGE found that 17 of the 32 new entrant reports in the sample had either an incorrect or missing date of entry into a covered position. Many filers were confused as to what the new entrant date meant and instead entered their date of entry into the Federal Government or did not enter a date at all. The Ethics Office explained that all but one of the reports with the incorrect dates belonged to filers who occupied the same type of covered position that had been recently determined to be a covered position. (The Ethics Office provided supporting documentation that corroborated this assertion.) With the supporting documentation, OGE determined that the 17 new entrant reports were filed, reviewed, and certified timely. OGE found only one instance where the reviewer contacted the filer to determine the correct date of entry into the covered position. OGE is not making a recommendation for this finding. However, the Ethics Office should include a reminder in the automated e-mail notification to new filers describing common mistakes, including information explaining the date of entry into a covered position terminology.

AGENCY COMMENTS

On May 18, 2010, OGE provided USPS with a draft of this report and solicited comments. On May 20, 2010, USPS delivered their response to the draft and suggested several changes be made to the report. The suggested changes focused on the *Background and Ethics Program Structure* and the *USPS's Electronic Filing System* sections of the report. Their changes have been incorporated. While the suggested changes corrected and clarified areas of the report, they did not change the findings outlined in the report.

If you have any comments or would like to discuss the report, please contact Patricia Zemple, Associate Director, Program Review Division, at 202-482-9286.