



United States Office
Of Government Ethics

Ethics Program Review

Maritime 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 Maritime Administration (MARAD), 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 MARAD'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 MARAD in 2009, covering calendar year 2008. Therefore, based on OGE's observation of MARAD's master list of financial disclosure filers, OGE examined all 15 public financial disclosure reports, which consisted of 13 incumbent reports and 2 termination reports,¹ and 163 of the 164 confidential financial disclosure reports.² The confidential reports consisted of 52 OGE Form 450 reports, 88 Optional OGE Form 450-A reports (OGE Form 450-A), and 23 new entrant reports. OGE examined these reports to evaluate the timeliness of filing, review, and certification. OGE's on-site fieldwork for this review was conducted in September 2009.

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

² OGE did not examine one confidential report because the filer was on assignment in Iraq and was not required to file.

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RESULTS IN BRIEF

OGE is pleased to see that MARAD has sustained improvements within the financial disclosure program since OGE's last review in 1997. During that review, we recommended a number of measures related to improving both the public and confidential financial disclosure systems, including the timely filing of new entrant and incumbent public and confidential reports, the timely review and certification of public and confidential reports, and the prompt collection of missing public reports and the late filing fee unless a request for a waiver is granted.

In our current examination, OGE found MARAD'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 for conflicts as evidenced by the annotations or other documentation associated with the review. Assisting in the management of MARAD's financial disclosure program were comprehensive written procedures relating to the collection, review, and evaluation of financial disclosure reports that were found to be in compliance with the Ethics Act. Notwithstanding this, however, OGE is making two recommendations for overall improvement. These recommendations include (1) changing who certifies the public and certain confidential financial disclosure reports and (2) improving the timely collection of new entrant confidential financial disclosure reports. In addition, OGE has made one suggestion for program improvement.

BACKGROUND AND ETHICS PROGRAM STRUCTURE

Under the direction of the MARAD Administrator, a Presidentially appointed and Senate confirmed appointee, MARAD is responsible for dealing with waterborne transportation. Its programs promote the use of waterborne transportation and its seamless integration with other segments of the transportation system, and the viability of the U.S. merchant marine. MARAD is also charged with maintaining the health of the merchant marine, since commercial mariners, vessels, and intermodal facilities are vital for supporting national security, and so the agency provides support and information for current mariners, extensive support for educating future mariners, and programs to educate America's young people about the vital role the maritime industry plays in the lives of all Americans. MARAD has a workforce consisting of over 700 employees located throughout its headquarters office in Washington, DC, the Merchant Marine Academy, its Gateway Offices and Fleet Sites.

The ethics program at MARAD is organizationally 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 has been delegated to the Assistant Chief Counsel who serves as the Assistant DEO and to an attorney who serves as MARAD's primary ethics official, both of whom are on the DEO's staff. Devoted primarily to the ethics program, the primary ethics official is responsible for carrying out the majority of the ethics functions, including providing the final review and certification of all public and confidential financial disclosure reports.

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PRINCIPAL FINDINGS

Recommendation: Elevate Certification Of All Public And Certain Confidential Reports To The DEO Level

Public financial disclosure rules require that public reports be certified by the DAEO, the Alternate DAEO, or a delegate of the DAEO, such as deputy ethics official, deputy ethics counselor, deputy standards of conduct counselor, or the equivalent.³ During the examination of the 15 public reports, OGE noticed that the primary ethics official was the certifying official on all public reports. This practice stood out since OGE's review at the other DOT operating administrations found the DEOs have retained this responsibility. During discussions with the DEO, OGE was advised that certification authority had been delegated to the primary ethics official mainly because she is devoted to the ethics program. As discussed during the review, the responsibility to certify public reports should not be re-delegated. Therefore, OGE recommends that the DEO begin to certify all public financial disclosure reports in the future. Of course, the primary ethics official can continue to perform the initial review of these reports.

During the examination of the confidential reports, OGE also found that the primary ethics official was the certifying official on her own confidential report. The certification of a financial disclosure report should be done by someone who can independently assess that the report is complete and in compliance with the laws and regulations. Obviously independence cannot be achieved in those instances where the filer and the certifier are the same person. OGE notified the primary ethics official that she should immediately stop the practice of certifying her own report and that her report should be forwarded to the DEO for final review and certification.

To ensure that this practice does not continue, OGE is recommending that the DEO provide the final review and certification for the financial disclosure report of the primary ethics official. In addition, since the Assistant DEO is the immediate supervisor to the primary ethics official and the DEO is available to certify this report as well, OGE recommends that certification of the Assistant DEO's confidential report be elevated to the DEO level as well.

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 23 new entrant confidential reports that OGE examined, 17 were filed late. Of the 17 late reports, 7 were filed more than one year late and captured during the annual filing cycle.

During the review, OGE discussed ways in which the Ethics Office could improve timeliness in new entrant filing and was advised that certain steps had been taken prior to the

³ See 5 CFR part 2638, Subpart B which discusses agency ethics officials' appointment, qualifications, and duties.

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review to help address this issue. OGE recognizes the challenges that some agencies face in ensuring that reports are consistently collected from new entrant filers in a timely manner in accordance with 5 CFR § 2634.903(b). Beyond the need to comply with the regulatory requirement that the 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 Ethics Office improve MARAD's new entrant confidential filing process to ensure that reports are consistently collected from new entrant filers timely.

TECHNICAL ISSUE IDENTIFIED

In addition to the findings noted above, OGE identified a technical issue during its examination of the confidential reports. Based on assurances received from the Ethics Office, OGE is making no formal recommendation but has made a suggestion for improvement.

Ensure That MARAD's Master List Of Filers Is Continually Updated

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 MARAD's master list of confidential filers. The master list indicated that 164 employees were required to file a report in 2009. After independently examining the master list against the physical number of confidential reports on file, OGE determined that 166 employees were required to file. Through discussions with the Ethics Office, OGE 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.

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

OGE recommends that MARAD take the following actions:

1. Elevate certification of all public and certain confidential reports to the DEO level.
2. Improve timeliness in new entrant confidential filing.

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AGENCY COMMENTS

A draft of this report was provided to MARAD for review and comment. In a memorandum dated April 21, 2010, the DEO provided comment on the corrective actions that MARAD either had taken or planned to take to address both recommendations.

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

In response to our first recommendation, despite indicating that 5 CFR Part 2638 may not be explicit on the point, the DEO indicated that MARAD would amend its procedures to provide for the recommended review alignment.

In response to our second recommendation, the DEO indicated that prior to OGE's visit the Ethics Office had identified possible deficiencies in their reporting system, instituted measures to improve it, and had implemented a tracking system in their confidential reporting procedures to ensure consistent identification of new entrants required to file reports. Compliance by new entrants improved. The DEO will continue to improve MARAD's procedures and monitor the results to ensure new entrant filing is complete and timely.

OGE will review the status of MARAD'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.