



United States Office
Of Government Ethics

Ethics Program Review

Research and Innovative Technology 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 Research and Innovative Technology Administration (RITA), 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 RITA'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 conducted its review in two parts: OGE examined the public and confidential disclosure reports that were filed at RITA headquarters in Washington, DC and the confidential reports that were filed at RITA's Volpe National Transportation Systems Center (Volpe Center) in Cambridge, Massachusetts, where the majority of RITA employees are located. Both reviews were limited to the examination of financial disclosure reports that were required to be filed at RITA in 2009, covering calendar year 2008.

OGE examined all 10 public reports¹, which consisted of 7 incumbent reports, 2 termination reports, and 1 combination annual/termination report, and 47 of the 48 confidential reports that were required to be filed at headquarters.² The confidential reports consisted of 45

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

² OGE did not examine one OGE Form 450 report due to an oversight. However, OGE did confirm with ethics officials that this report had been reviewed and certified.

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OGE Form 450 reports and 2 new entrant reports. At the Volpe Center, OGE examined all 409 confidential reports, which consisted of 391 OGE Form 450 reports and 18 new entrant reports. This included the confidential reports filed by three non-advisory committee members who serve for 130 days or less and have been designated as special Government employees (SGE). OGE examined the reports to evaluate timeliness of filing, review, and certification. OGE's on-site fieldwork at RITA headquarters was conducted in July 2009 and at the Volpe Center in August 2009.

RESULTS IN BRIEF

While OGE found RITA's financial disclosure program to generally accord with statutory and regulatory requirements, several issues were identified during our examination that were brought to the attention of ethics officials. First, new entrant confidential reports were often filed late at the Volpe Center. Therefore, OGE is recommending that RITA continually monitor and improve its new entrant confidential filing process to ensure timeliness of filing. Second, RITA did not have written procedures that outlined the process for administering RITA's financial disclosure systems as required by the Ethics Act. Therefore, OGE is recommending that written procedures be developed. Third, several technical errors were identified during our examination of the financial disclosure reports filed at RITA headquarters and the Volpe Center. Based on assurances received from ethics officials, OGE is making no formal recommendations but is making suggestions for improvement regarding these matters. To enhance the agency's financial disclosure program, OGE strongly suggests that RITA develop a continuous learning strategy to enhance reviewer experience and expertise.

BACKGROUND AND ETHICS PROGRAM STRUCTURE

RITA was established in 2005 under the Norman Y. Mineta Research and Special Programs Improvement Act of 2004. As one of the newest operating administrations within DOT, RITA is responsible for coordinating DOT's research programs and is charged with advancing the deployment of cross-cutting technologies to improve our Nation's transportation system. Under the direction of the RITA Administrator, a Presidentially appointed and Senate confirmed appointee, RITA has a workforce consisting of over 600 employees and is comprised of a staff from the former Research and Special Programs Administration's (RSPA) Office Innovation, Research, Development, and Education which includes the Volpe National Transportation Systems Center (Volpe Center) in Cambridge, Massachusetts and the Transportation Safety Institute (TSI) in Oklahoma City, Oklahoma. RITA also houses the Secretary's Office of Intermodalism and the Bureau of Transportation Statistics.

The ethics program at RITA is bifurcated between the Office of Chief Counsel at RITA headquarters and the Office of Chief Counsel at the Volpe Center, where the majority of RITA employees are located. The Chief Counsel (at RITA headquarters) serves as the administration's Deputy Ethics Official (DEO) and has oversight responsibility for the overall ethics program. While the DEO is responsible for administering the day-to-day operations of the ethics program for RITA headquarters and the TSI staff, the day-to-day ethics operations at the Volpe Center are carried out by the Center's Chief Counsel under the executive direction of the DEO. Assisting

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the Volpe Center's Chief Counsel is a staff comprised of five attorneys and specialists who support the ethics program in varying capacities as a collateral duty.

General Observation

At the time of OGE's fieldwork, the Chief Counsel/DEO position was vacant. As a result, an attorney within RITA's Office of Chief Counsel was serving as the Acting Chief Counsel/DEO and was devoting approximately 25 percent of the time on ethics-related work. It appeared that the Acting Chief Counsel/DEO was receiving the necessary support from DOT's Alternate DAEO and the Ethics Counsel, both of whom are on the DAEO's staff.

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 18 new entrant confidential reports that OGE examined at the Volpe Center, 8 were filed late. Of note, one of these eight late reports was filed more than one year late and captured during the annual filing cycle. OGE also examined the two new entrant reports at headquarters and found that one was also filed late.

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 new entrant confidential 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. Therefore, OGE recommends that the DEO and the Volpe Center's Chief Counsel improve RITA'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 both officials to consistently monitor the new entrant confidential filing process to ensure that the steps established to address new entrant filing are effective.

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, neither headquarters nor the Volpe Center had written procedures that documented the process on how financial disclosure reports are collected, reviewed, certified, and maintained at RITA. 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

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disclosure system. When properly used and updated, written procedures provide ethics officials with the opportunity to plan for system improvement. OGE recommends that the DEO develop written procedures—to include operations at the Volpe Center--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 DEO to develop written procedures that reflect the current practices for administering other elements of RITA's ethics program as well. OGE considers this to be a model agency practice and a valuable resource to both employees and ethics officials.

TECHNICAL ISSUES IDENTIFIED

In addition to the findings noted above, OGE also identified technical issues during its examination of both public and confidential reports that ethics officials must be mindful of during future filing cycles. Based on assurances received from ethics officials, OGE is making no formal recommendations regarding these matters but is making suggestions for improvement.

Ensure That RITA's Master List Of Public Filers Is Continually Updated

At the start of our examination at headquarters, OGE noticed that the DEO was not maintaining a master list of public filers, despite the fact that a master list of confidential filers was being maintained. OGE is not considering this to be an egregious matter since we were assured that all required employees filed a public report in 2009 and a master list was developed prior to the conclusion of our review. OGE reminds the DEO that a master list helps account for new employees entering covered positions and employees leaving or transferring into covered positions. Therefore, OGE strongly suggests that the DEO begin to update both master lists, public and confidential, throughout the year, rather than annually.

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 at both headquarters and the Volpe Center, OGE identified two recurring technical errors: filers either disclosing more information than was required to be reported (i.e., including retirement benefits from TSP accounts or reporting personal identifiable information such as bank account numbers and exact property addresses) or not disclosing enough information. To ensure that reports are technically complete, OGE suggests ethics officials to annotate reports that require correction and remind filers (perhaps 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. In addition, OGE also suggests that filers who have over-reported should be contacted during the review and certification process and asked if the reviewer can redact the extraneous information.

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Ensure That Reports Are Not Certified When Additional Information is Needed

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. During the examination of the public reports filed at headquarters, OGE found two reports that were certified even though they contained incomplete information. Specifically, the filers listed their mutual fund's family name rather than the specific name of the fund on the report. Although OGE was advised that these particular mutual funds posed no potential conflict for the agency, there was no evidence to support that additional information was obtained from either the filer or from other sources of information such as the internet (or a financial publication) to correct this entry prior to the report being certified. To ensure that reports are technically complete, any lack of completeness or accuracy detected on a report should be resolved prior to a report being certified by the reviewing official. Therefore, OGE suggests that ethics officials institute the practice of annotating on the report itself when entries require additional information, clarification, or correction.

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

Dates of receipt must be entered on each financial disclosure report to help assess compliance with the filing due date and 60-day review requirements. *See* 5 CFR § 2634.605(a). During the review of confidential reports at headquarters, OGE noticed that dates of receipt were not consistently stamped on all reports. Therefore, in cases where the agency date stamp was not used OGE based filing timeliness on the filers' signature dates. Using this method, OGE confirmed that all reports were filed timely. OGE reminds the DEO that a financial 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 that this would become routine practice during future filing cycles.

Ensure That Timeliness Of Review Can Be Determined At All Times

During the examination of the confidential financial disclosure reports filed at the Volpe Center, it initially appeared to OGE that several reports had not been reviewed within 60 days of being filed as required by 5 CFR § 2634.605. Through discussions with the Volpe Center's Chief Counsel, OGE confirmed that all reports were timely reviewed. OGE was advised that when completed confidential reports are submitted to the Volpe Center Ethics Office they are date stamped and then distributed among the ethics staff who then conducts an initial compliance review. Upon their completion, the reports are forwarded to the Chief Counsel, who provides final review and certification. To facilitate review, completed reports are organized by divisions; each division has its own folder. After the initial review of each division, the reviewer notes on the folder cover the date the initial review was completed and marks with post-it notes those

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reports that require follow-up. OGE found that the reviewers were not always indicating on the report itself when their initial review was completed and at the time of examination, OGE did not have access to the folders. As a better management practice, OGE suggests that reviewers either sign and date on the report in the block marked, “Signature and Title of Supervisor/Other Intermediate Reviewer” or initial and date in the block marked, “Comments of Reviewing Officials” when their initial review as been completed. Writing dates on the reports would help ensure that when the folders are not available, timeliness of review can still be assessed.

Ensure That Confidential Reports Are Destroyed After 6 Years

OGE Form 450s, OGE Forms 450-As, 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). *See* 5 CFR § 2634.604. During our examination of the confidential reports filed at the Volpe Center, OGE identified a number of confidential reports that were older than 6 years, some dating back to 1995 for several filers. OGE was assured that these reports would be destroyed and that all reports, hereafter, would be destroyed after a 6-year period, unless needed in an ongoing investigation. To ensure future regulatory compliance, OGE suggests that the DEO develop a process for continual annual destruction of confidential reports that are filed more than 6 years ago.

Ensure That Filers Do Not Digitally Sign Their Confidential Reports

Of the 391 OGE Form 450 reports that OGE examined at the Volpe Center, 3 had been digitally signed. It was clear, however, during discussions with the Chief Counsel that this was due to reviewer oversight. The Chief Counsel advised OGE that these reports would be sent back to the filer to re-sign the report. While OGE is not considering digital signatures to be an egregious matter, OGE suggested that the Chief Counsel begin to incorporate language restricting the filers’ use of the digital signature option into the notification letter sent to Volpe Center confidential filers.

SUGGESTION FOR PROGRAM ENHANCEMENT

Based on the overall findings identified above, and the unique organizational ethics program structure at RITA, OGE suggests that a continuous learning strategy be developed at RITA 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.

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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 RITA take timely and effective action to resolve the following recommendations. The following recommendations are considered necessary to bring RITA's ethics program into compliance with current OGE regulations.

OGE recommends that RITA take the following actions:

1. As DEO, develop a process in collaboration with the Volpe Center's Chief Counsel to ensure that new entrant confidential reports are collected and filed timely RITA-wide.
2. Develop written procedures--to include operations at the Volpe Center--for administering both the public and confidential financial disclosure systems in accordance with the requirements of the Ethics Act.

AGENCY COMMENTS

A draft of this report was provided to RITA for its review and comment. In a memorandum from RITA's Chief Counsel dated April 16, 2010, RITA agreed with our report's information and indicated that our recommendations have helped to improve RITA's confidential financial disclosure reporting system. The Chief Counsel provided comment on the corrective actions that RITA either had taken or planned to take to address our recommendations. OGE will review the status of RITA'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.

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

In response to our first recommendation, to help improve the timeliness of new entrant filing, the Volpe Center's Human Resources Division (HRD) will send a biweekly email to the Volpe Center's Ethics Office of names, titles, grades, and a brief description of background and duties for each new employee. The Ethics Office will participate in HRD's biweekly orientations, and will inform those new employees who meet the filing criteria of their requirement to file. Supervisors who have been assigned new employees at the grade level of a GS-11 and above will be also contacted to assist the Ethics Office in determining filing status. Additionally, the Ethics Office will share its list of new filers with the Acquisition Management Division who does not permit an employee to process a purchase requisition if they do not have a current report on file. (The Chief Counsel noted that most RITA/Volpe Center filers are required to file a confidential report because they have significant procurement-related duties).

In response to our second recommendation, the Chief Counsel indicated that RITA has already improved its system for collection and review of confidential reports and plans to document its improved process in the third quarter of CY 2010. Plans are also being made to develop and document an administration-wide process for collecting and reviewing financial disclosure reports, which will supplement the DOT-wide process, by the end of CY 2010.

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In addition to the above, the Chief Counsel also commented on the technical issues that were identified during the examination. The Chief Counsel's comments indicated that the suggestions made will be incorporated into the daily administration of RITA's ethics program.