

Additional Information Concerning OGE's Review of the Confidential Financial Disclosure System

The following sections provide general background information on OGE's efforts to improve the confidential system, discuss our recent review's scope and methodology, and provide details on our primary findings.

BACKGROUND

In 1994, OGE conducted a single issue review and held two brown-bag lunches for ethics officials which concentrated on how to improve the confidential financial disclosure system. One of the findings of the 1994 single issue review was that while OGE's 1992 regulation, at 5 C.F.R. part 2634 subpart I, offered greater flexibility to agencies on designating covered positions, it also had the unintended effect of increasing the number of confidential filers at many agencies. By the mid-1994 time frame, OGE was strongly urging agencies to reevaluate their filing designations. We advised ethics officials by DAEOgram (1) to consider additional guidance in reevaluating which positions required confidential disclosure. Since 1994, OGE has made several improvements to the confidential system, which focused mostly on report format-related changes and reducing the level and type of information required to be disclosed.

A significant amendment to 5 C.F.R. part 2634 was made when OGE published its final rule amendment on June 24, 1997, giving agencies a new confidential system filing option. This amendment provided agency authority to adopt and use the OGE Form 450-A (Certificate of No New Interests) as an alternative procedure. In lieu of the OGE Form 450, the OGE Form 450-A could be used by (regular employee) annual confidential disclosure filers who could make the required certification. (2)

Agencies were permitted to first begin using the optional form for incumbent reports due by October 31, 1997. Our final rule clarified that the OGE Form 450-A may be used by eligible filers for a maximum of three consecutive years before filers are required to complete a new OGE Form 450 (every fourth year). At agency discretion, however, agencies were also permitted to use the OGE Form 450-A for only one or two years and then require covered employees to file a new OGE Form 450 every second or third year, respectively. OGE's final rule established that in 2000 all incumbent filers must file a new OGE Form 450, rather than an OGE Form 450-A, regardless of how recently they may have filed an OGE Form 450, unless the agency meets the exception criteria provided for in 5 C.F.R. § 2634.905(d)(5).

SCOPE AND METHODOLOGY

Based on statistics reported in OGE's 1998 Agency Questionnaires (Questionnaire), of the 125 Questionnaires received, 56 agencies (3) reported that at least 100 confidential reports were required to be filed within their agencies in 1998. These 56 agencies accounted for 99 percent of all 270,317 confidential reports required executive branchwide. The remaining 69 agencies required fewer than 100 confidential reports to be filed within their agencies in 1998.

For purposes of our review, to obtain views and opinions from representatives from various sized agencies, we judgmentally selected 50 agencies based on the number of confidential

reports required to be filed as reported in agency Questionnaires in 1998. We separated agencies into the following five size categories: (1) 100 to 499; (2) 500 to 999; (3) 1,000 to 3,999; (4) 4,000 to 8,999; and (5) 9,000 or more, and we selected agencies for surveying from each group.

Of the 50 agency officials contacted by telephone in June, almost all indicated that they preferred to respond to our survey questions in writing rather than verbally. By our deadline of July 16, 1999, we obtained responses from 44 officials.

PRIMARY FINDINGS

The following sections summarize our primary findings.

OGE Form 450-A is Being Used by Most Agencies and Most Officials are Satisfied

- The OGE Form 450-A is in widespread use--ethics officials from 34 of the 44 responding agencies (77 percent) permitted filers to use the OGE Form 450-A in either 1997 or 1998. (In 1997, 25 agencies put the optional form into use. The remaining 9 first allowed filers to use the optional form in 1998. All but 1 of the 25 agencies that first used the optional form in 1997, used the OGE Form 450-A in 1998.)
- In the same 34 agencies where the optional form was first used in either 1997 or 1998, officials indicated that they intend to allow filers to use the optional form in 1999.
- Overall, of the 34 agencies using the OGE Form 450-A, 30 ethics officials reported that they are satisfied with the results of using the optional form. Only three officials reported that they are not satisfied, while one offered no opinion regarding level of satisfaction.
- Ethics officials from 23 of the 34 agencies reported that they have received favorable feedback from employees on the option to use the OGE Form 450-A; none told us of receiving any unfavorable feedback from their agencies' employees. Officials from the remaining 11 agencies using the optional form have not received any employee feedback.
- While OGE did not require that agencies maintain records on filers' use of the OGE Form 450-A, we found that 9 of the 34 agencies using the optional form did track its use. Our analysis of the statistics provided to us showed that the rate of using the optional form--based on total number of filers within those agencies--generally ranged from 31 percent to 61 percent (except for two agencies who reported low rates of use of only 2 and 5 percent).
- Almost all--91 percent--of the ethics officials representing the 34 agencies where the optional form has been used believe that use of the OGE Form 450-A has been advantageous because it has reduced both filers' and report reviewers' administrative burdens.
- However, among this same group of 34, 20 ethics officials (59 percent) also reported disadvantages in using the optional form. While it appears that, overall, the administrative burdens are lessened by using the optional form, officials reported that they are nonetheless burdened by fulfilling filers' requests to provide copies of previous years' confidential reports, making corrections to those optional forms that are not properly completed, and monitoring that only those employees who can make the certification are using the optional form.

- While most ethics officials using the optional form (24 of the 34 or 71 percent) reported that they do not foresee difficulties in meeting our requirement which calls for all employees to file OGE Forms 450 in 2000 (unless the agency meets the exception criteria provided for in 5 C.F.R. § 2634.905(d)(5)), the remaining 10 officials expressed concern that requiring the submission of OGE Forms 450 in 2000 may be confusing for filers or that this requirement will increase ethics officials' burdens.

Majority of Officials are not Currently Concerned About the Number of Designated Filing Positions at their Agencies

- Our analysis of the total number of confidential filers at our selected agencies (as reported to OGE in Questionnaires from 1993 and 1998) showed varying rates of changes in those numbers. At some agencies the number of filers greatly increased, at other agencies the number greatly decreased, while at the remainder, the number of filers remained fairly constant over time. To a certain extent, information collected during our review supports the notion that reductions may be due to direct actions taken by ethics officials that were specifically geared towards reducing those numbers.
- Of the 44 responding ethics officials, 36 (84 percent) indicated that since implementing the current confidential system (OGE Form 450), they have reevaluated the filing designations.
- A majority of ethics officials told us that they are not currently concerned about the number of designated filing positions. However, some did express the concern that the number of covered employees at their agencies remains too high. (4) Interestingly, based on information reported by ethics officials, we found that efforts aimed at ensuring that appropriate employees were designated that worked well at some agencies, apparently did not work as well at others. Efforts to reduce the number of positions included a grade-based system or establishing a dollar procurement or grant authority threshold. Not surprising, based on the limited information we collected, it appears that those agencies that established the highest thresholds are those that are no longer concerned about the number of designated positions.
- Nine ethics officials indicated that they do believe that additional actions can be taken to reduce the number of filers. Some ethics officials recognize that they will have to work closely with management officials before increasing or raising filing thresholds, since management tends to be more cautious (casts a wider net) when designating positions.

Majority of Officials Believe that the Confidential System is Serving its Intended Purpose

- More than half of the 44 ethics officials, 26 (59 percent), told us that they believe that the current confidential system is serving its intended purpose. Three officials reported that they were not sure about this issue, while the remaining 15 stated that they did not believe that the system was useful. (5)
- Of those who do not believe that the system is useful, seven ethics officials suggested that the system be eliminated.
- To enhance the current reporting system, ethics officials suggested a combination of changes, including reducing the filing frequency to every other year or eliminating certain reporting requirements.

- Several ethics officials' comments reflected their overall dissatisfaction with the high administrative costs associated with managing the current system versus the benefits derived. However, officials did not offer an alternative tool to aid in detecting conflicts of interest.

1. DAEOgram issued September 14, 1994 (DO-94-031).

2. A form similar to the OGE Form 450-A was tested by the Department of Education in 1995 and this test yielded highly favorable results. Following that test, OGE obtained comments from ethics officials throughout the executive branch. The general consensus of opinions gathered from these officials was the basis for OGE proposing the new OGE Form 450-A. In proposing this alternative filing system, OGE believed it would help to relieve some of the associated disclosure burdens experienced by both filers and reviewers of confidential reports. We also believed that this alternative (and optional) system would preserve general reporting uniformity and continue to guard against conflicts of interest.

3. These 56 agency Questionnaires represent full department reporting, rather than statistical information from the component level. Our selection of 50 agencies, represents not only major departments, but also bureaus and components of those departments.

4. We did not find any significant correlation between those officials indicating that they are (or are not) concerned with the number of designated filing positions and those using (or not using) the OGE Form 450-A.

5. We did not find any significant correlation between those officials who indicated that they believe (or do not believe) that the confidential system is useful and those using (or not using) the OGE Form 450-A or those who are (or are not) concerned with the number of confidential filers.

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