



United States Office  
Of Government Ethics

## Ethics Program Review

# Federal Aviation 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 Aviation Administration (FAA), 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 FAA'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 a judgmental sample of both public and confidential financial disclosure reports that were required to be filed at FAA in 2009, covering calendar year 2008. Prior to the start of the examination, OGE confirmed with ethics officials that FAA had 2,016 public financial disclosure filers and 9,589 confidential filers. Of the 2,016 public reports that were required to be filed, 440 were reviewed, certified, and retained at FAA headquarters while the remaining reports were reviewed, certified, and retained with FAA's Regional/Center Designated Ethics Counselors (DECs) in the respective regions. OGE limited its examination of public reports to the 440 reports that were reviewed and certified at FAA headquarters. These 440 reports consisted of 394 incumbent reports, 30 new entrant reports, and 16 termination reports.<sup>1</sup> Of the 9,589 confidential reports, OGE randomly selected 414. Of these 414 reports, 151 were OGE Form 450 reports, 224 were Optional OGE Form 450 reports (OGE Form 450-A), and 39 were new entrant reports. OGE examined the reports to evaluate the timeliness of filing, review, and certification. OGE's on-site fieldwork was conducted in October 2009.

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<sup>1</sup>OGE did not examine the public reports filed by the FAA Administrator, Deputy Administrator, Chief Counsel, or Deputy Chief Counsel for Policy and Adjudication as these reports are reviewed and certified by DOT's Designated Agency Ethics Official (DAEO).

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### FAA's E-filing System

In 2007, FAA contracted with a private contractor to develop an electronic application of the confidential financial disclosure form, or e-filing system, to help FAA manage OGE's confidential financial disclosure filing requirements. This basic electronic program, which does not allow reviewers to certify the form electronically, was used FAA-wide over the last two filing cycles. Based on that experience, the DEO determined that significant enhancements were needed for continued use. As a result, in 2009, FAA began working with the contractor to help enhance the existing system. OGE was advised that FAA is also considering the development of an e-filing system to help FAA manage OGE's public financial disclosure filing requirements as well.

### RESULTS IN BRIEF

When OGE last reviewed FAA's ethics program in February 2003, several recommendations were made for improvement in the areas of financial disclosure. In that review, OGE recommended that FAA (1) collect missing public reports and collect late filing fees unless filers request and obtain waivers from OGE; (2) establish procedures for the timely identification of new entrant filers; and (3) ensure that confidential filers file an OGE Optional Form 450-A.

OGE is pleased to see in its current examination that most of the recommendations have resulted in improvements to the public financial disclosure program. However, OGE's examination of FAA's confidential system revealed that improvements are still needed. Specifically, OGE found timeliness issues with resolving real or potential conflicts, collecting new entrant reports, and reviewing and certifying confidential reports filed within the FAA regions. Many of these weaknesses identified may be corrected with the planned enhancements to FAA's e-filing system. However, in light of the findings identified within the regions, OGE recommends that FAA conduct routine assessments within its regions to assess the quality and timeliness of reviews of financial disclosure reports. OGE is also recommending that FAA update its written procedures to ensure compliance with the Ethics Act.

Several technical errors were also identified during our examination of financial disclosure reports. Based on assurances received from the Ethics Office, OGE is making no formal recommendations but is making suggestions for improvement regarding these matters.

### BACKGROUND AND ETHICS PROGRAM STRUCTURE

As the largest operating administration within DOT, FAA is comprised of more than 45,000 employees located throughout its headquarters office in Washington, DC and its 11 regional and center level offices across the Nation. Under the direction of the FAA Administrator, a Presidentially appointed and Senate confirmed appointee, FAA's mission is to regulate civil aviation and U.S. commercial space transportation, maintain and operate air traffic control and navigation systems for both civil and military aircrafts, and develop and administer programs relating to aviation safety and the National Airspace System.

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The ethics program at FAA is located within the Office of Chief Counsel, hereafter referred to as the Ethics Office. The Deputy Chief Counsel for Policy and Adjudication 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 under the direction of a Senior Managing Attorney for Ethics, hereafter referred to as FAA's primary ethics official, who is devoted to ethics full time. Assisting the primary ethics official are two ethics program analysts who both support the ethics program in varying capacities full time.

Due to FAA's large size and nationally dispersed employees, the Ethics Office uses its 11 Regional and Center counsels who serve the program as Designated Ethics Counselors (DECs) for their respective regions. As ethics counselors they are responsible for reviewing and certifying financial disclosure reports, rendering advice to employees on the standards of conduct and conflict of interest laws, and implementing the requirements for both initial and annual ethics training within their respective regions. The primary ethics official serves as the DEC for FAA Headquarters and provides general oversight and technical guidance to the Regional and Center DECs.

### **SUPPLEMENTAL STANDARDS OF CONDUCT REGULATION**

Part 6001 of 5 CFR prohibits FAA employees, or their spouses or minor children from holding stock or having any other securities interest in an airline or aircraft manufacturing company or in a supplier of components or parts to an airline or aircraft manufacturing company. However, there is an exception to the prohibition for interests in certain publicly traded or available investment funds and there is a provision for a waiver of the prohibition under certain conditions. Employees who acquire a financial interest subject to this regulation, as a result of gift, inheritance, or marriage, are required to divest the interest within a period set by the agency designee. Until divestiture, the employee must remain disqualified from participating in matters that could affect his or her financial interests.

### **PRINCIPAL FINDINGS**

#### **Recommendation: Take Immediate Action To Remedy The 21 Confidential Reports Identified As Having A Real Or Potential Conflict of Interest**

During the examination of the status reports associated with FAA's e-filing system, FAA reviewers identified 75 conflicts and 265 potential conflicts from their review of the confidential reports. OGE selected all 75 reports that identified a conflict for examination to determine what corrective action had been taken to remedy these concerns. OGE found evidence that remedial actions had been taken on 54 of the 75 identified conflicts, which ranged from a filers' recusal to divesting stock or other interests prohibited by DOT's supplemental regulation. However, OGE could not readily ascertain the remedial action taken for the remaining 21 reports identified by DECs in 6 of the 11 regions. In each instance, either remedial action had not yet been taken or OGE found no evidence that remedial action had been taken. The outstanding issues for these 21 reports are as follows:

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- Four filers were ordered to divest of their financial interest(s) but were appealing the decision. Of the four filers who were ordered to divest of their financial interest(s), two were appealing reconsideration to the FAA DEO and two were appealing reconsideration to the DAEO. Of the two appeals pending reconsideration with the DAEO, records indicated that one decision has been pending since 2004. These four filers were identified within the Southern and Eastern regions.
- Eight filers were ordered to divest of their financial interest(s) within 90 days. Of the eight filers who were ordered to divest of their financial interest(s) within 90 days, four of the eight filers were ordered to divest in either 2007 or 2008 but still listed the prohibited holding on their 2009 reports. These eight filers were identified within the Great Lakes, Northwest Mountain, Southern, and Western Pacific regions.
- Nine filers were identified as having a conflict but no evidence of actions taken. For the remaining nine filers evidence was not provided to the review team to reveal what actions were taken to remedy the filer's conflict. These nine filers were identified within the Southern, Western Pacific, and Southwest regions.

Preventing conflicts is the cornerstone of a successful ethics program. Because ethics laws prohibit Government employees from having financial conflicts of interest it is essential that ethics officials resolve all real or potential conflicts of interest or other violations in a timely manner. Therefore, OGE recommends that FAA take immediate action to remedy these 21 confidential reports identified as having a real or potential conflict of interest. As part of this action, FAA must determine whether or not the filers worked on matters that could have been affected by their financial interests.

It is also important to note that these 21 reports had been certified by reviewing officials despite the fact that remedial action had not been taken. OGE reminds ethics officials that 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. Therefore, any lack of completeness or accuracy detected on a report should be resolved prior to a report being certified by the reviewing official. Knowing a report is complete and accurate is absolutely essential to carrying out an effective and substantive review of a report. To ensure that in the future reports are certified appropriately, OGE recommends that the DEO establish a process for periodically sampling confidential financial disclosure reports and that the DEO ensure that certifiers understand their responsibilities.

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### Recommendation: Timely Resolve All Divestiture Appeals

Where a confidential report reveals a violation, apparent violation, or potential violation of the applicable statutes and regulations and the Executive Order, the filer generally must take the remedial action within 3 months of being notified of the need to take action (except for cases of unusual hardship). *See* 5 CFR § 2634.605. To resolve actual or potential conflicts of interest on the part of confidential reporting individuals, these employees may be required to enter into a written ethics agreement in which they promise to undertake, as appropriate, a specific action to avoid or alleviate a conflict of interest. As interpreted by OGE, an appeal of divestiture invoked by FAA's supplemental regulation prohibition meets the definition of an ethics agreement and should be completed in accordance with 5 CFR § 2634.803(d).

As noted, of the four filers who were ordered to divest of their financial interest(s), two were appealing reconsideration to the DAEO. However, records indicated that one of the two appeals has been pending since 2004. This is very troubling and raises concerns that this matter may not have been otherwise resolved if not identified during the course of this review. OGE recommends that the DAEO establish formal procedures, in collaboration with the FAA DEO, to address the process for ensuring that divestiture appeals made by FAA employees are timely resolved. The procedures should also include a process for ensuring that employees remain disqualified from participating in matters that could affect their financial interests until a decision about divestiture is made.

### Recommendation: Improve The Timeliness Issues That Exist Throughout FAA's Confidential Financial Disclosure Process

During the review, OGE selected 39 new entrant and 151 annual confidential financial disclosure reports that were required to be filed in 2009. OGE found that the vast majority of these reports were not filed or reviewed timely. For example, of the 39 new entrant reports, 21 were filed late, and of the 151 annual reports, 55 were either reviewed late or certification appeared late even though there was no evidence that additional information was being sought from the filer. Furthermore, OGE noticed that these timeliness issues were associated with its review of the reports filed within the FAA regions. For example, in one region, review and certification did not occur until 180 days after the report had been filed.

In view of the importance that financial disclosure plays in preventing employees from committing ethics violations, this lack of timeliness raises concerns because untimely reviews or the lack of any review diminishes an agency's ability to provide timely and specific conflict-of-interest advice. Therefore, OGE recommends that the Ethics Office institute the practice of routinely conducting "ethics assistance reviews" as it relates to the confidential financial disclosure system outside of FAA headquarters to help ensure proper management focus and attention within each region. OGE also suggests that part of this review include checking OGE Form 450s for completeness, accuracy and compliance with both FAA and OGE requirements. Consistent monitoring of an agencies financial disclosure system operations and, when necessary, making adjustments to address any weaknesses, is essential in administering an effective decentralized confidential system.

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### Recommendation: Update 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. During the examination of FAA's written procedures for administering both its public and confidential financial disclosure systems, OGE noticed that the last update made to them was in October 1998. Since that time, however, FAA has made significant changes in how it administers its financial disclosure program. OGE recommends that FAA update these procedures to more fully comply with the prescribed requirement. 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. When properly used and updated, written procedures provide ethics officials with the opportunity to plan for system improvement.

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 FAA's ethics program as well. OGE considers an agency's use of individualized written procedures to be a model agency practice and a valuable resource to both employees and ethics officials.

### TECHINCAL ISSUES IDENTIFIED

In addition to the findings noted above, OGE also identified two recurring technical issues that the Ethics Office must be mindful of during future filing cycles. Based on assurances received from the Ethics Office, OGE is making no formal recommendations but is making suggestions for improvement regarding these matters.

#### Ensure That Public Filers Are Made 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. In reviewing the public financial disclosure reports, OGE found two technical errors: filers either disclosing more information than is 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. Regarding the latter, OGE identified 35 new entrant and annual public reports that did not include either the filer's date of appointment or reporting status on the cover page. To ensure that reports are technically complete, OGE suggests that the Ethics Office annotate reports that require correction and remind filers (perhaps at the start of the filing season) about what constitutes complete and correct filing.

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### Continue To Improve The Financial Disclosure Tracking Systems

Financial disclosure tracking systems aid in the timely collection, review, and certification of financial disclosure reports. During the examination of FAA's tracking system for both public and confidential filers, OGE found both tracking systems useful in tracking the following elements: (1) the filer's name, position, and office; (2) the filer's reporting status; (3) the year the filer filed his/her report; and (4) the status of review. OGE also found the Ethics Office simultaneously tracks when public filers will receive annual ethics training. In addition, during the examination of the tracking feature associated within FAA's e-filing system for confidential filers, OGE found the status reports to be useful in determining the total number of confidential filers FAA-wide, the number of confidential reports that were filed, the number of reports that revealed real or potential conflicts, and the number of reports that revealed no conflicts. Despite the useful tracking elements identified on both tracking systems, however, OGE found it difficult to independently track the timeliness of both public and confidential reports using the tracking systems since dates of filing progression were not being recorded.

An effective tracking system should track the filing progression of each financial disclosure filer and should include the following dates: (1) the filer was notified of the filing requirement; (2) the filer was provided with the financial disclosure report; (3) the report was filed; (4) intermediate review commenced; (5) intermediate reviewer signed and dated the report; (6) the final review commenced; and (7) the reviewing official certified the report. OGE notes that the planned enhancements to FAA's e-filing system for confidential filers may incorporate these additional trackable items. However, until the system is enhanced, OGE strongly suggests that the Ethics Office expand the elements it tracks to include the progress of both public and confidential reports. Incorporating these additional elements into the tracking systems will help identify covered employees who have not filed their reports and may also help improve the timeliness of review and certification.

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

OGE recommends that FAA take the following actions:

1. Take immediate action to remedy the 21 confidential reports identified as having a real or potential conflict of interest. As part of this action, FAA must determine whether or not these filers worked on matters that could have been affected by their financial interests. Also, since these reports had been certified by reviewing officials despite the fact that remedial action had not been taken, OGE recommends that the FAA DEO establish a process for periodically sampling confidential financial disclosure reports and that the DEO ensure that certifiers understand their

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responsibilities to ensure that confidential reports are certified appropriately in the future.

2. In collaboration with the DAEO, establish formal procedures to address the process for ensuring that divestiture appeals made by FAA employees are timely resolved.
3. Institute the practice of routinely conducting “ethics assistance reviews” as it relates to the confidential financial disclosure system outside of FAA headquarters to help ensure proper management focus and attention within the FAA regions.
4. Update FAA’s written procedures for administering both its public and confidential financial disclosure systems to more fully comply with the requirements of section 402(d)(1) of the Ethics Act.

### **AGENCY COMMENTS**

A draft of this report was provided to FAA for its review and comment. In a memorandum from FAA’s Senior Managing Attorney for Ethics dated on April 22, 2010, FAA concurred with our recommendations and indicated that it will implement procedures to address all recommendations within a timetable set between 60 to 90 days.

Responses to the technical issues identified during the review were also provided. In its comments, FAA indicated that an Ethics Focus Group was tasked to provide recommendations on how the Ethics Office can communicate to public filers certain reporting errors and omissions. During the current filing cycle, the Ethics Office will provide individual guidance, when necessary, to ensure that public reports are completed consistent with OGE and FAA financial disclosure filing regulations. FAA will also continue to develop its electronic financial disclosure program with enhancements to the reviewer features of the program.