



July 28, 2021

To: Finance and Administration Committee

From: Darrell E. Johnson, Chief Executive Officer

A handwritten signature in blue ink, appearing to read "DEJ", with the word "For" written in smaller letters above the signature.

Janet Sutter, Executive Director Internal Audit Department

Subject: Administrative Controls Related to Conflict of Interest Code and California Form 700 Statement of Economic Interests, Internal Audit Report No. 21-510

Overview

The Internal Audit Department of the Orange County Transportation Authority has completed an audit of administrative controls related to the Conflict of Interest Code and California Form 700 Statement of Economic Interests filing process. Based on the audit, internal controls related to coordination of California Form 700 Statement of Economic Interests by designated employees are in place; however, the Internal Audit Department recommended a process be established for evaluation and identification of contractors as designated filers, and improvements be made in the identification and reporting of designated positions and notification of leaving office filing requirements.

Recommendation

Direct staff to implement three recommendations provided in Administrative Controls Related to Conflict of Interest Code and California Form 700 Statement of Economic Interests, Internal Audit Report No. 21-510.

Background

The Political Reform Act prohibits a public official from using his or her official position to influence a governmental decision in which he or she has a financial interest. Every state and local agency must adopt a Conflict of Interest (COI) Code that identifies all officials and employees within the agency who make governmental decisions based on the positions they hold. To help identify potential conflicts of interest, the law requires public officials and employees in

designated positions in a COI Code to report their financial interests on a California Form 700 Statement of Economic Interests (Form 700 statement).

The Clerk of the Board utilizes the eDisclosure system to electronically notify designated filers. Once notified, filers are provided a link through which they may file.

Discussion

OCTA does not currently have a process for evaluating whether certain contractors should be required to file Form 700 statements. Currently, general counsel, Transit Police Services, and Real Property consultants are the only consultant groups on the designated positions list; however, none of the Transit Police Services staff or Real Property consultant staff are identified in the eDisclosure system and requested to file. In addition, the COI designated positions list includes several positions that appear equivalent to contracted positions provided by program management consulting firms, as well as Information Systems staff provided under a personnel contract. The Internal Audit Department (Internal Audit) also noted that contracted investment managers and financial advisors are not included. Internal Audit recommended management implement a procedure to identify contractors that should be included in the designated positions list and identify which specific Transit Police Services and Real Property consultant staff should be filing. Management responded that, in coordination with legal counsel and the Contracts Administration and Materials Management Department, a process will be developed.

The designated positions list that is provided to the Board of Directors (Board) each year identifies designated employees at the position title; however, in the Human Resources (HR) system, some position codes with the same position title are associated with different filing requirements. In addition, a Financial Analyst in the Treasury and Public Finance Department, who has the authority to direct investments, is not included as a designated filer. Internal Audit recommended that the designated positions list provided to the Board be reconciled and updated to reflect actual filing requirements, as reflected in the HR system, and that the Financial Analyst be included as a designated filer. Management agreed to review designated position titles, deactivate unused position codes, or add the COI coding requirement, to be consistent with the designated positions list. Management also agreed to attach the COI coding requirement to the entire Financial Analyst job family within Treasury and Public Finance.

Employees terminated involuntarily or without notice are not given notification to file leaving office forms. Notification was also not provided to several voluntarily separated employees. Internal Audit recommended development of a procedure to provide leaving office notifications to employees terminated involuntarily or without notice, as well as enhancement of existing controls for voluntary separations. Management agreed to adjust procedures as necessary, using the separating employee's email and forwarding address from the electronic employee exit form and mailing paper Form 700 statements when notified of the separation after departure.

Summary

Internal Audit made three recommendations to establish a process for evaluation and identification of contractors as designated filers, improve the identification and reporting of designated positions, and improve the notification of leaving office filing requirements.

Attachment

- A. Administrative Controls Related to Conflict of Interest Code and California Form 700 Statement of Economic Interests, Internal Audit Report No. 21-510

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Administrative Controls Related to Conflict of Interest Code and California Form 700 Statement of Economic Interests

Internal Audit Report No. 21-510

July 15, 2021



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Conclusion

The Internal Audit Department (Internal Audit) of the Orange County Transportation Authority (OCTA) has completed an audit of administrative controls related to OCTA's Conflict of Interest Code and California Form 700 Statement of Economic Interests (Form 700 statement) filing process. Based on the audit, internal controls related to coordination of Form 700 statements by designated employees are in place; however, Internal Audit recommended a process be established for evaluation and identification of contractors as designated filers, and improvements be made in the identification and reporting of designated positions and notification of leaving office filing requirements.

Background

The Political Reform Act prohibits a public official from using his or her official position to influence a governmental decision in which he or she has a financial interest. Every state and local agency must adopt a Conflict of Interest Code (COI Code) that identifies all officials and employees within the agency who make governmental decisions based on the positions they hold. The individuals in the designated positions must disclose their financial interests as specified in the agency's COI Code. To help identify potential conflicts of interest, the law requires public officials and employees in designated positions in a COI Code to report their financial interests on a Form 700 statement. OCTA has developed a Statement of Economic Interest Policy (Policy) stating that it is the policy of OCTA, pursuant to OCTA's COI Code, that members of the Board of Directors (Board) and all officers, employees, and/or consultants designated in the COI Code are required to file a Form 700 statement disclosing all applicable interests, as prescribed by the Political Reform Act.

The three components of the COI Code are the incorporation section that designates where the Form 700 statements are filed and retained, the list of designated positions that list all agency positions that involve the making or participation in making of decisions that may foreseeably have a material effect on any financial interest, and the detailed disclosure categories. Designated employees in the OC-02 disclosure category are required to file the Form 700 statements disclosing reportable investments, business positions, and income within 30 days after assuming office, annually, and within 30 days of leaving office. Designated employees in the OC-01 disclosure category are required to disclose interests in real property in addition to requirements for OC-02 disclosure category. Consultants included in the designated positions list are categorized as OC-30.

Around July of every year, Human Resources (HR) updates the designated positions list, obtains general counsel's review of the list, and then submits the list to the Clerk of the Board (COB). The COB updates the listing of designated filers in the eDisclosure system in August. The COI Code is reviewed in October and presented to the Board for approval in November, and the COI Code amendments are presented to the County of Orange Board of Supervisors, the code reviewing body, in January. In February, the COB initiates

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notification of annual filings to employees and consultants with an April 1st deadline. When notified, filers are provided a link to the eDisclosure system where the Form 700 can be filed.

On a weekly basis, HR emails the COB a Position Changes Requiring Form 700 report (weekly report) that identifies employees with their disclosure category with hire, promotion, and termination activity.

The COB reviews all late Form 700 statements and 20 percent of Form 700 statements filed on time by designated employees, at least half of which are selected on a random basis, to determine whether: summary page is completed correctly and all schedules applicable to the filer are either attached or checked "no reportable interests"; attached schedules include all required descriptive information for each financial interest; and information contained on one schedule suggests that required information is omitted on either that schedule or another schedule. The COB notifies the designated employee if the review indicates that the Form 700 statement is incomplete or incorrect in any material aspect or does not satisfy the California Fair Political Practices Commission (FPPC) requirements.

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Objectives, Scope, and Methodology

The objectives were to assess and test controls in place related to designating employees and coordination of Form 700 statements by designated employees.

According to generally accepted government auditing standards, internal control is the system of processes that an entity's oversight body, management, and other personnel implement to provide reasonable assurance that the organization will achieve its operational, reporting, and compliance objectives. The five components are control environment, risk assessment, control activities, information and communication, and monitoring.¹ The components and principles that were evaluated as part of this audit are:

- Control Environment
 - OCTA demonstrates a commitment to attract, develop, and retain competent individuals in alignment with objectives.
- Control Activities
 - OCTA selects and develops control activities that contribute to the mitigation of risks to the achievement of objectives to acceptable levels.
 - OCTA deploys control activities through policies that establish what is expected and procedures that put policies into action.
- Information and Communication
 - OCTA internally communicates information, including objectives and responsibilities for internal control, necessary to support the functioning of other components of internal control.
- Monitoring
 - OCTA evaluates and communicates internal control deficiencies in a timely manner to those parties responsible for taking corrective action, including senior management and the Board, as appropriate.

The methodology consisted of review of the Policy to confirm assignment of responsibility and consistency with law, reconciliation of employees with designated position titles in the employee roster to the eDisclosure system, testing the preparation, review, and approval of the COI Code, and assessing the process for determining which contractors are consultants that must file the Form 700 statements as designated employees. The methodology also included testing of the COB's annual review of Form 700 statements for compliance with the Policy and samples of annual filings reviewed, and not reviewed, by the COB. Additionally, Internal Audit tested evidence of HR's weekly reports to confirm timely notification to the COB and a sample of new hires, promotions, transfers, and terminations to determine if assuming office and leaving office Form 700 statements were filed.

¹ See U.S. Government Accountability Office publication, "Standards for Internal Control in the Federal Government," available at <http://www.gao.gov/products/GAO-14-704G>, for more information.

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The scope was limited to internal controls in place related to the coordination of Form 700 statements by designated employees. The audit excluded County of Orange Board of Supervisors' procedures. The scope included the COI in 2019 and 2020, HR's weekly reports in 2020 and the first quarter of 2021, and the COB's annual reviews of 2019 and 2018 filings. The scope included a judgmental sample of 60 new hires, promotions, transfers, and terminations. The scope also included judgmental samples of 20 annual 2019 filings reviewed by the COB and 20 designated employees not reviewed by the COB. The judgmental samples were selected to provide coverage throughout the scope period. Since the samples were non-statistical, any conclusions are limited to the sample items tested.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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Audit Comments, Recommendations, and Management Responses

Identification and Notification of Consultants Required to File

OCTA lacks a process for evaluating whether certain contractors, based on their position capacity, should be required to file Form 700 statements. Currently, the designated positions list includes only three consultant groups: general counsel, Transit Police Services, and Real Property consultants; however, only general counsel staff are identified by name and included in the eDisclosure system for notification and filing purposes.

A designated employee is an officer, employee, member, or consultant whose employment position is designated in the COI Code because their position entails the making or participation in the making of governmental decisions which may foreseeably have a material effect on any financial interest. Under FPPC Regulation 18700.3, a consultant means an individual who, pursuant to a contract with a state or local government agency:

1. Makes a government decision whether to:
 - a. Approve a rate, rule, or regulation;
 - b. Adopt or enforce a law;
 - c. Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
 - d. Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract that requires agency approval;
 - e. Grant agency approval to a contract that requires agency approval and to which the agency is a party, or to the specifications for such a contract;
 - f. Grant agency approval to a plan, design, report, study, or similar item;
 - g. Adopt, or grant agency approval of, policies, standards, or guidelines for the agency, or for any subdivision thereof; or

2. Serves in a staff capacity with the agency, and in that capacity participates in making a governmental decision or performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's COI Code. A public official makes a governmental decision if the official authorizes or directs any action, votes, appoints a person, obligates, or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency. A public official participates in a governmental decision if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review. In advice letters, FPPC has interpreted "significant intervening substantive review" to require more than the mere review of the

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recommendations by superiors, but rather the independent checking of the results without solely relying on the data of the official.

The COI designated positions list includes project controls analyst positions, project manager positions, and Information Systems (IS) project manager positions. These designated employee positions appear equivalent to contracted project managers and project controls staff provided by program management consulting firms working for OCTA, as well as IS project managers provided under an IS Department personnel contract. In addition, management should evaluate whether contracted investment managers and financial advisors should be designated based on their responsibilities.

Tasks and responsibilities in the program management contracts include: assistance in preparation of policies, procedures, and reports required to manage the overall program of projects; preparation and management of consultant agreements and amendments and cooperative agreements; review of construction change orders for schedule and cost impact; and/or preparation of staff reports and briefing materials for the Board and presentations, as required. Tasks for the investment manager contracts include managing, on a daily basis, the investment of funds pursuant to the specific investment objectives and assisting OCTA in the formulation and execution of an investment strategy for each investment portfolio. Tasks for the financial advisory services include providing advice, written analysis, and assistance regarding the annual adoption of the Investment Policy and assisting staff in soliciting and/or reviewing proposals for bond counsel, underwriters, letter of credit providers, trustees, etc.

Recommendation 1:

Internal Audit recommends management establish and implement a procedure for evaluating and identifying contractors, including those in the roles identified above, that should be included in the designated positions list. Management should also identify those Transit Police Services and Real Property consultant staff that should be filing and include them, by name, in the eDisclosure system so that they may file, as required.

Management Response (Executive Office):

Management agrees and will work with legal counsel and the Contracts Administration and Materials Management Department to develop a process for evaluating and identifying contractors that should be on the designated positions list. Both Transit Police Services and Real Property consultant staff will be included in this process.

Reporting of Designated Positions

Management provides the Board with a designated positions list as part of the annual COI Code adoption. In the HR system, each position title may be associated with multiple

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position codes, some of which have different COI filing requirements. Consequently, there are several position codes in the HR system that are not required to file, even though the position title is a “designated position” in the designated positions list presented to the Board.

Additionally, Internal Audit identified a Financial Analyst position in the Treasury and Public Finance section that has authority to direct investments and is not currently on the designated positions list.

Recommendation 2:

Internal Audit recommends that management reconcile the designated positions list with the COI filing requirements in the HR system.

Additionally, management should consider adding the Financial Analyst in Treasury and Public Finance as a designated position.

Management Response (HR):

There are position codes in the HR system that are not being used but are still active. Some of these are older and do not have COI codes assigned to them. HR will review the active designated position titles and deactivate the position codes when possible or add the COI code identified in the designated positions list.

At the time the audit was conducted, the position in Treasury was at the Financial Analyst, Associate level. COI codes are generally not assigned to the associate positions as they are considered trainee levels and not intended to make any independent decisions or have direct access to affect business operations. The incumbent was reclassified in April 2021 (retroactive back to January) to Financial Analyst. HR will create new position codes for the Financial Analyst job series in Treasury and Public Finance and attach the COI code for the entire job family.

Notification of Leaving Office Filing Requirement

The COB does not send leaving office notifications to employees terminated involuntarily or without notice. Testing also identified several voluntarily separated employees that were not notified of the leaving office filing requirement.

Recommendation 3:

Internal Audit recommends that the COB implement a procedure to send leaving office letter notifications to employees terminated involuntarily or without notice and enhance controls over leaving office notifications for voluntarily separated employees.

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Management Response (COB):

Management agrees and will review and alter as necessary the procedure to send and track leaving office notifications. When an employee separates from OCTA and has previously filed a Form 700, they are required by law to file a Leaving Office Form 700 within 30 days of their last day of work.

Initial review of the existing process is currently underway in coordination with HR. Through this initial review, it is agreed that HR will notify the COB of the employee's leaving date by sending a workflow notification email. The notification email will state an action is required by the COB on an Employee Exit Process Form and include the employee's email and forwarding address.

In the instance that the COB is not notified in time of the employee's departure, COB staff will log a note in eDisclosure and scan a copy of the notification from HR into the employee's file in eDisclosure. COB staff will mail a manual Form 700 along with a self-addressed stamped envelope to the employee.