



United States Office
Of Government Ethics

Report Number 09 - 08

Highlights

Model Practices

- NAVAIR leadership provides significant support for the ethics program.
- NAVAIR uses individualized written procedures to administer its financial disclosure systems.
- NAVAIR uses an electronic database to help track confidential financial disclosure filing information and ethics training dates.
- NAVAIR shares its electronic database with the Naval Air Warfare Center, Aircraft Division, Office of Counsel.
- NAVAIR provides verbal training to all new employees and encourages non-covered employees to take annual ethics training.
- NAVAIR has an organized process for rendering ethics counseling to employees.

If you have comments or would like to discuss this report, please contact Dale Christopher, Associate Director, Program Review Division, at 202-482-9224.

Ethics Program Review Naval Air Systems Command Department of the Navy

March 2009 Report

Executive Summary

The United States Office of Government Ethics (OGE) has completed its review of the ethics program at the Naval Air Systems Command (NAVAIR), Department of the Navy. The purpose of a review is to identify and report on the strengths and weaknesses of a program by evaluating: (1) agency compliance with ethics requirements found in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures for administering the program.

OGE's review identified several model practices implemented by NAVAIR. These model practices include demonstrating agency leadership support for the ethics program, using individualized written procedures to administer the financial disclosure systems, using an electronic database to help track confidential financial disclosure filing information and ethics training dates, administering an ethics training program that exceeds the minimum training requirements, and having an organized process for rendering ethics counseling to employees.

This report has been sent to the Department of the Navy's Designated Agency Ethics Official, the NAVAIR Commander, and the NAVAIR Inspector General.



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Introduction

OGE MISSION

The United States Office of Government Ethics (OGE) provides leadership for the purpose of promoting an ethical workforce, preventing conflicts of interest, and supporting good governance initiatives.

PURPOSE OF A REVIEW

The purpose of a review is to identify and report on the strengths and weaknesses of an ethics program by evaluating: (1) agency compliance with ethics requirements found in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures in place for administering the program.

REVIEW AUTHORITY AND SCOPE

OGE has the authority to evaluate the effectiveness of executive agency ethics programs. See Title IV of the Ethics in Government Act of 1978, as amended (the Ethics in Government Act), and 5 CFR part 2638. OGE's review of the Naval Air Systems Command (NAVAIR), Department of the Navy (Navy), focused on the elements listed below.

- Leadership involvement in the ethics program
- Program structure
- Financial disclosure systems
- Ethics training
- Ethics counseling services
- Enforcement of ethics laws and regulations
- Travel payments from non-Federal sources

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This report details OGE's review of NAVAIR headquartered in Patuxent River, Maryland. The on-site fieldwork for this review was conducted intermittently in June and July 2008 and focused on calendar years 2007 and 2008.

OGE has also conducted reviews of the semi-autonomous ethics programs at the following Navy activities and components:

- Naval Hospital Pensacola,
- Naval Education and Training Command,
- Naval Air Warfare Center, Aircraft Division (NAWCAD),
- Naval Audit Service, and
- Regional Legal Services Office, Naval District of Washington

Reports detailing OGE's review of these activities and components will be issued separately.

Program Elements

This report consists of descriptions, analyses, and conclusions regarding each program element reviewed.

LEADERSHIP

Commitment and action by agency leadership is the keystone for ensuring the integrity of an agency's ethical culture and for fostering public confidence in the decision-making processes of the Government. In connection with OGE's review, the OGE review team met with the Commander of NAVAIR to discuss the scope of the OGE review and the importance of agency leadership involvement in an ethics program, in accordance with 5 CFR § 2638.202(a). The Commander incorporates specific ethical leadership strategies into the day-to-day management of the ethics program. For example, in the NAVAIR Commander's Guidance for 2007, a document that describes the vision, values, and strategic priorities of NAVAIR, the Commander listed NAVAIR's responsibility to demonstrate "Ethical conduct in every activity" as a core agency value. OGE considers this type of leadership approach in ethics to be a model agency practice.

PROGRAM STRUCTURE

The ethics program at NAVAIR is organizationally located within the Office of Counsel. The NAVAIR Counsel serves as the agency's Designated Ethics Counselor and has oversight responsibility for the overall ethics program. The day-to-day operation of the ethics program is carried out by the Office of Counsel's Command Support Division, hereafter referred to as the Ethics Office, under direction of a Senior Associate Counsel. Assisting the Senior Associate Counsel is an ethics staff that consists of nine attorneys and specialists who serve the ethics program in varying capacities. OGE found all ethics officials to have been properly designated as

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Ethics Counselors in accordance with the provisions of Department of Defense 5500.7-R, Joint Ethics Regulation (JER).

Memorandum of Understanding

OGE notes that in May 1998, the NAVAIR Counsel and the assigned Staff Judge Advocate (SJA) entered into a Memorandum of Understanding (MOU) in which the NAVAIR Counsel assumed full responsibility for NAVAIR's ethics program. Under this agreement, the NAVAIR Counsel is responsible for all ethics-related matters, while the SJA serves as the primary ethics official to military service members with respect to providing post-employment advice. During current discussions with both the Ethics Office and the current SJA, OGE confirmed that this MOU still remains in effect.

FINANCIAL DISCLOSURE SYSTEMS

Title I of the Ethics in Government Act requires that agencies ensure confidence in the integrity of the Federal Government by demonstrating that officials are able to carry out their duties without compromising the public trust. High-level Federal officials demonstrate that they are able to carry out their duties without compromising the public trust by disclosing publicly their personal financial interests (SF 278). Title I also authorizes OGE to establish a confidential financial disclosure system for less senior executive branch personnel in certain designated positions, to facilitate internal agency conflict of interest review (OGE Form 450).

Financial disclosure serves to prevent conflicts of interest and to identify potential conflicts by providing for a systematic review of the financial interests of both current and prospective officers and employees. The financial disclosure reports also assist agencies in administering their ethics programs in providing counseling to employees. See 5 CFR § 2634.104(b).

Written Procedures

NAVAIR has established written procedures for administering the public and confidential financial disclosures systems that are tailored to the needs of the agency. In view of the fact that the JER serves as the written procedures for all of DoD and the requirement in the Ethics Act for written procedures is not clearly applicable to a subunit of an agency, OGE considers NAVAIR's individualized procedures to be a model practice and a valuable resource to both employees and ethics officials.

Public Financial Disclosure System (SF 278)

The procedures in place at NAVAIR to administer its public financial disclosure system appear to be consistent with 5 CFR part 2634 as implemented by Chapter 7 of the JER. In accordance with the procedures completed public reports must be forwarded to the filers' immediate supervisors for an initial review. Upon completion of the supervisory review, reports are forwarded to the Ethics Office which conducts a follow-up review for both technical and

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conflict-of-interest compliance. If no problems are found, reports filed by NAVAIR civilian employees are forwarded to the Navy's Office of the General Counsel (OGC) while reports filed by NAVAIR military officers are forwarded to the Navy's Office of the Judge Advocate General (JAG) for final review and certification. All completed NAVAIR public reports are retained at these respective offices.

At the time of OGE's fieldwork the Ethics Office was at the halfway point of reviewing the public financial disclosure reports filed in 2008. Therefore, to evaluate the effectiveness of NAVAIR's public financial disclosure system, OGE examined a sample of 22 of the 51 public reports that were required to be filed with the Ethics Office.¹ OGE evaluated these reports for timeliness of filing, review, and forwarding to the Navy's OGC or JAG. OGE also evaluated the quality of review of the reports by the Ethics Office. The 22 reports examined consisted of:

Type of Report

- All 22 were annual reports

Filing/Initial Review Timeliness

- All 22 reports were filed and initially reviewed by the Ethics Office in a timely manner.

Timeliness of Forwarding to Navy OGC and the JAG

- All 22 reports were forwarded to the Navy OGC and the JAG for final review and certification in a timely manner.

Quality of Review

OGE determined that Ethics Office reviewing officials executed a thorough conflict of interest analysis on all reports as evidenced by the annotations and/or other documentation associated with the review.

Confidential Financial Disclosure (OGE Form 450)

Much like the public system, the procedures in place to administer the confidential financial disclosure system at NAVAIR appear to be consistent with the requirements of the JER and help to ensure the systemic integrity of the confidential system.

To help facilitate the confidential financial disclosure process, the Ethics Office uses the services of administrative coordinators assigned to the various NAVAIR competencies. These coordinators serve as liaisons to the Ethics Office and are responsible for monitoring their

¹ Regarding the reports OGE did not examine, OGE later confirmed that they all had been reviewed and forwarded timely to the Navy's OGC or the JAG for final review and certification.

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competency's overall confidential financial disclosure system process, including notifying filers of their requirement to file, tracking the filing progression of reports, and ensuring that completed reports are timely forwarded to their immediate supervisor for an initial compliance review. Upon completion, reports are forwarded to the Ethics Office for final review and certification. All completed NAVAIR confidential reports are retained with the Ethics Office.

To evaluate the effectiveness of NAVAIR's confidential system, OGE examined 50 of the 974 reports that were required to be filed in 2008. The 50 reports OGE examined consisted of:

Type of Reports

- 17 new entrant reports
- 33 annual reports

50 total

Filing Timeliness

- All 50 reports were filed in a timely manner.

Review/Certification Timeliness

- All 50 reports were reviewed and certified in a timely manner.

Quality of Review

All 50 reports appeared to have been thoroughly reviewed for compliance and completeness.

Office of Counsel Ethics Database

OGE acknowledges the Ethics Office's development and implementation of an electronic database, known as the Office of Counsel Ethics Database (OCED), to track confidential financial disclosure filing information and ethics training dates for confidential filers. OGE found several useful features in the OCED that assist ethics officials with entering and updating information related to the filing progression of confidential reports and assigned training dates. These features include the ability to:

- Create various fields for entering data
- Conduct queries or searches for specific data located in separate fields. For example, the OCED allows the user to search for employees that have not filed reports as well as to identify other potential problems, such as incomplete reports.

OGE considers the OCED to be a valuable resource to ethics officials and a model

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agency practice. OGE also noted that the Ethics Office shares the OCED with the NAWCAD Office of Counsel. OGE considers the sharing of resources to be a valuable agency practice.

EDUCATION AND TRAINING

An ethics education and training program is essential to raising awareness among employees about ethics laws and rules and informing them that an agency ethics official is available to provide ethics counseling. Each agency's ethics training program must include at least an initial ethics orientation for all employees and annual ethics training for covered employees.

Initial Ethics Orientation

Within 90 days from the time an employee begins work for an agency, the agency must provide the employee with an initial ethics orientation (IEO). An IEO must include:

- the Standards of Ethical Conduct for Executive Branch Employees (Standards) and any agency supplemental standards;
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials; and
- at least one hour of official duty time to review the items described above. *See 5 CFR § 2638.703.*

NAVAIR exceeds the minimum IEO requirement by providing new employees with an in-person IEO presentation on the key ethics principles within the first week of employees starting work at NAVAIR. The presentation is divided between the Ethics Office and NAWCAD ethics officials who rotate the training responsibility on a monthly basis. Training completion is tracked through the collection of an IEO certification form, which is maintained by the Ethics Office.

In addition to the presentation, new employees are directed to read and become familiar with the following written materials:

- the Principles of Ethical Conduct for Government Officers and Employees;
- the Standards;
- a fact sheet on the confidential financial disclosure report filing requirements;
- an internet link to the DoD Standards of Conduct Office (SOCO) Web site, which contains additional information and resources, including the JER;
- the names, titles, office addresses, and phone numbers of the Ethics Office and other ethics officials within NAWCAD; and
- at least one hour of official duty time to review the items described above. *See 5 CFR § 2638.703.*

OGE verified that all 21 NAVAIR Headquarter employees who began work at NAVAIR during the period covered by OGE's review received the required IEO.

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General Observation

The Ethics Office and the NAWCAD Ethics Office both use the same IEO certification form to track IEO completion. OGE found the form useful in verifying that ongoing IEO is provided to new employees of NAVAIR. In particular, OGE noted that the certification form:

- required useful information such as the employee's entrance on duty date, name, grade level, telephone number, email address, reporting agency and code, and supervisor's name and contact information; and
- included a checkbox to indicate whether the new employee was entering into a covered financial disclosure filing position.

While this additional information is not required to carry out IEO, OGE notes that filing such information helps to ensure that, as appropriate, new employees entering a covered position are identified. It also helps to verify compliance with the IEO requirement.

Annual Ethics Training

Public financial disclosure filers are required to receive verbal annual ethics training. *See* 5 CFR § 2638.704(a). Verbal training includes training prepared by a qualified instructor and presented by telecommunications, computer, audiotape, or videotape. *See* 5 CFR § 2638.704(c)(2). Other covered employees (e.g., confidential filers) are required to receive verbal ethics training at least once every three years and may receive written training in the intervening years. *See* 5 CFR § 2638.705(c). The content requirements for both public filers and other covered employees are the same. Agencies are encouraged to vary the content of annual training from year to year but the training must include, at least, a review of:

- the 14 Principles of Ethical Conduct,
- the Standards,
- any agency supplemental standards,
- the Federal conflict of interest statutes, and
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials. *See* 5 CFR § 2638.704(b).

To satisfy the annual training requirement for 2008, annual ethics training was made available through a narrated PowerPoint presentation hosted by NAVAIR's Career Development Office. (The training content used was a modified version of the DoD SOCO online ethics training module.) Upon the completion of training, covered employees were required to file a certification of completion with the Ethics Office, which is retained in each employees' financial disclosure report folder.

After examining the master list of NAVAIR public and confidential filers and cross-referencing the names with the training certifications on file, it appeared that all covered employees completed annual ethics training in 2008.

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In light of the importance of ethics training in preventing employees from committing ethics violations, OGE notes that the Ethics Office encourages all NAVAIR employees to complete the online training which is made available to employees throughout the year. According to documents provided to OGE, 288 non-covered employees had completed the annual training by June 2008. OGE acknowledges the provision of ethics training to non-covered employees as a model agency practice and encourages the Ethics Office to continue this effort.

ETHICS COUNSELING

The DAEO is required to ensure that a counseling program for agency employees concerning ethics and standards of conduct matters, including post-employment matters, is developed and conducted. *See* 5 CFR § 2638.203. The DAEO may delegate to one or more deputy ethics officials the responsibility for developing and conducting the counseling program. *See* 5 CFR § 2638.204.

OGE's assessment of an ethics counseling program focuses on five factors: (1) accuracy, (2) timeliness, (3) transparency, (4) accountability, and (5) consistency. To determine whether an agency's counseling program successfully addresses these factors, OGE reviews and assesses the program's processes and written procedures. Further, OGE reviews selected samples of advice to assess the effectiveness of processes and written procedures.

OGE's review of a sample of ethics-related counseling dispensed by the Ethics Office on varying ethics-related issues found the counseling to have been responsive to the needs of NAVAIR employees and to have been generally rendered promptly.

NAVAIR also appeared to be meeting the requirements of subsection 9-502 of the JER with regard to providing guidance on the relevant Federal and DoD post-Government service employment restrictions to departing military and civilian employees. The Ethics Office provides in-person, post-employment briefings to those departing from Federal service as part of NAVAIR's employee check-out process. In addition to the briefing, employees are provided with written materials that outline the basic post-employment restrictions. Depending upon the situation, the following materials are provided to employees seeking post-employment counseling: OGE pamphlets Rules for the Road, Understanding the Revolving Door, Working with Government Contractors, and Ethics & Procurement Integrity, and OGE's Summary of Post-Employment Restrictions of 18 U.S.C. § 207. Should an employee have specific questions or request a formal ethics opinion, a post-Government service ethics questionnaire is required to be used. The questionnaire provides the Ethics Office with pertinent information needed to provide written counseling to the employee on the applicable post-Government service restrictions.

General Observation

The Ethics Office has an organized process for rendering ethics counseling to its employees to help facilitate timely, uniform responses, particularly when ethics counseling is

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rendered by more than one ethics official. Written counseling files are stored by ethics topic on a shared electronic drive to which all ethics officials within NAVAIR have access. (The Ethics Office also maintains hard copy files by year and topic).

By storing written counseling files electronically, the Ethics Office can easily access data, including:

- the date the question was received in the ethics office,
- the employee's name and office phone number,
- the question asked by the employee,
- the response given by the ethics official,
- the name and telephone number of the ethics official who provided the response, and
- any relevant notes or comments about the issue.

OGE considers the organized process for rendering ethics counseling to be a valuable resource to ethics officials and a model agency practice.

ENFORCEMENT

The DAEO is required to ensure that (1) information developed by internal audit and review staff, the Office of the Inspector General, or other audit groups is reviewed to determine whether such information discloses a need for revising agency standards of conduct or for taking prompt corrective action to remedy actual or potential conflict of interest situations and (2) the services of the agency's Office of the Inspector General are utilized when appropriate, including the referral of matters to and acceptance of matters from that Office. *See* 5 CFR § 2638.203(b)(11) and (12).

OGE found the Ethics Office to have a good working relationship with the NAVAIR Inspector General to effectively exchange ethics-related information and to resolve ethics issues. Both parties meet bi-weekly to facilitate discussions on items of mutual interest, including ethics-related issues.

There were no referrals for prosecution to the Department of Justice involving alleged violations of the criminal conflict-of-interest statutes during the period covered by OGE's review. Nonetheless, OGE found the Ethics Office to be aware of the requirement prescribed in 5 CFR § 2638.603 and Chapter 10 of the JER to ensure that OGE is concurrently notified of all referrals, declinations to prosecute, and disciplinary or corrective action initiated, taken, or planned.

TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

An employee may accept payment of travel expenses from non-Federal sources on behalf of the employee's agency for official travel to a meeting or similar function when specifically

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authorized to do so by the agency. Agencies must submit semiannual reports of travel payments from non-Federal sources in excess of \$250 to OGE. *See* 31 U.S.C. § 1353.

NAVAIR permits its employees to accept travel payments from non-Federal sources under the authority of § 1353. The procedures for accepting payments are specified in Chapter 4 of the JER. They are also detailed in an internal instruction developed by the Navy and NAVAIR. To meet the semiannual reporting requirement, NAVAIR is responsible for collecting the information to be reported, drafting the semiannual report of payments of more than \$250 per event, and forwarding the report for inclusion in the Navy's semiannual report to OGE.

During the semiannual periods covering April 1, 2007 through March 31, 2008, OGE determined that 11 travel payments from non-Federal sources were accepted by NAVAIR. Based on OGE's examination of selected written authorizations and other supporting documentation, OGE found that whenever payments of travel from non-Federal sources were offered to NAVAIR employees, the Ethics Office performed a thorough conflict-of-interest analysis. As noted in OGE's last review of the NAVAIR ethics program in 1999, NAVAIR continues to exceed the requirements of the JER by vesting approval authority for the acceptance of such offers at the NAVAIR Commander level.

Additionally, OGE found that all payments were reported to OGE using the appropriate General Services Administration Standard Form 326.

Summary

OGE's review identified several model practices that have been implemented at NAVAIR. The model practices include:

- demonstrating agency leadership support for the NAVAIR ethics program,
- using individualized written procedures to administer the financial disclosure systems,
- using an electronic database to help track confidential financial disclosure filing information and ethics training dates,
- administering an ethics training program that exceeds the minimum training requirements, and
- developing an organized process for rendering ethics counseling to employees.

If you have comments or would like to discuss this report, please contact Dale Christopher, Associate Director, Program Review Division, at 202-482-9224.