



United States Office
Of Government Ethics

Report Number 09 - 001

Highlights

OGE Suggests

- The NH Pensacola Ethics Office continually monitor the confidential financial disclosure system to ensure compliance with the new entrant confidential filing requirements of 5 CFR § 2634.903(b).

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

Ethics Program Review Naval Hospital Pensacola Department of the Navy

January 2009 Report

Executive Summary

The United States Office of Government Ethics (OGE) has completed its review of the ethics program at the Naval Hospital Pensacola (NH Pensacola), Department of the Navy (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 identified the timely filing of new entrant confidential financial disclosure reports as a challenge for NH Pensacola. OGE noted that steps were taken by the NH Pensacola Ethics Office prior to and during OGE's review to ensure that new entrant confidential reports are filed timely.

OGE suggests that the NH Pensacola Ethics Office continually monitor the confidential financial disclosure system to ensure compliance with the new entrant confidential filing requirements of 5 CFR § 2634.903(b).

This report has been sent to the Department of the Navy's Designated Agency Ethics Official, the NH Pensacola Commanding Officer, and the NH Pensacola Command Evaluation Officer.



**United States Office
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Report Number 09-001

Ethics Program Review

**Naval Hospital Pensacola
Department of the Navy**

January 2009 Report

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 Hospital Pensacola (NH Pensacola), 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

Ethics Program Review: NH Pensacola

This report details OGE's review of NH Pensacola. The on-site fieldwork for this review was conducted in March 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 Education and Training Command;
- Naval Air Systems Command (Headquarters);
- Naval Air Warfare Center, Aircraft Division;
- 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 Government. In connection with this review, the OGE review team met with the former Commanding Officer of NH Pensacola to discuss the scope of the OGE review and the importance of agency leadership involvement in an ethics program. OGE considers leadership involvement in an ethics program to be a model practice and was pleased to see ethical leadership strategies incorporated into the day-to-day management of the NH Pensacola ethics program. For example, the former Commanding Officer held ethics discussions during senior staff meetings and provided occasional "all hands" memoranda that reiterated NH Pensacola's dedication to maintaining an ethical culture.

Change in Leadership Command

OGE notes that in June 2008, shortly after its on-site visit, NH Pensacola experienced a change in leadership command. OGE is confident that the new Commanding Officer will continue to incorporate specific ethical leadership strategies into the day-to-day management of the NH Pensacola ethics program. OGE sees this change in leadership as an opportunity to suggest several leadership strategies for the new Commanding Officer to consider. OGE considers the implementation of the following ethical leadership strategies as model agency practices.

- Support the ethics program (e.g., make announcements and speeches in support of the activities of the Ethics Office, include ethics discussions in senior staff meetings, and

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routinely provide “all hands” memoranda that reiterate NH Pensacola’s dedication to maintaining an ethical culture).

- Attend ethics education and training classes with employees to highlight the importance of ethics training to the agency.
- Ensure that appropriate administrative action is taken in cases of ethics violations or delinquency of filing financial disclosure reports.
- Contribute personally to ethics program policies.
- Publicly recognize ethics officials for their efforts on behalf of the NH Pensacola ethics program.
- Incorporate ethics-related initiatives and accomplishments as part of the NH Pensacola strategic plan and annual reports.

PROGRAM STRUCTURE

The ethics program at NH Pensacola is organizationally located within the Staff Judge Advocate’s Office, hereafter referred to as the Ethics Office, and is managed by the Counsel for NH Pensacola, who serves as the agency’s designated Ethics Counselor. A Legal Assistant helps the Counsel in the day-to-day management of the ethics program and together they are responsible for carrying out the majority of the ethics functions. These ethics functions include providing legal advice to military and civilian employees agency-wide, implementing the requirements for annual ethics training, and managing the NH Pensacola confidential financial disclosure system. To help implement the requirements for initial ethics orientation, the Ethics Office utilizes the services of the NH Pensacola Command Education Department.

In addition to establishing policies and procedures for the overall operation of the NH Pensacola ethics program, the Ethics Office is also responsible for providing general oversight and technical guidance on ethics to the legal office at the Naval Health Clinic in Corpus Christi, Texas (NHCCC). This oversight and guidance includes providing and coordinating ethics and military legal advice/guidance, coordinating ethics training, and administering and monitoring the NHCCC confidential financial disclosure system.

Transition within the Ethics Office

At the time of the onsite fieldwork, OGE was advised that the position of Counsel would soon transition from the current military attorney position to a civilian attorney position. OGE was also advised that the Legal Assistant position would remain a civilian position. In anticipation of this upcoming transition, OGE would like to share several strategies that the new Counsel may want to consider when carrying out the ethics program on behalf of the Commanding Officer. Using the following suggested strategies will not only enhance the ethics

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program but will also help the new Counsel effectively oversee the program by regularly monitoring all elements and responding to issues and problems in a timely manner.

- Periodically assess the state of the ethics program.
- Regularly update ethics policies and procedures, including written procedures required for various program elements.
- Regularly disseminate OGE, DoD, and other pertinent ethics-related guidance with advice on how the guidance applies to the NH Pensacola ethics program.
- Routinely keep records, when appropriate, of advice that is rendered on ethics and standards of conduct matters, including post-employment and conflict of interest matters.
- Annually assess agency training needs.

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).

Public Financial Disclosure System (SF 278)

NH Pensacola has no employees that meet the filing criteria found at subpart B of 5 CFR part 2634 for public financial disclosure filing. Therefore, OGE's review focused only on the Ethics Office's administration of the confidential financial disclosure system.

Confidential Financial Disclosure System(OGE Form 450)

The Ethics Office is responsible for administering and monitoring the confidential financial disclosure systems for both NH Pensacola and NHCCC. While both systems appear effective in preventing and detecting possible ethics violations, the one area that OGE identified as a weakness in both systems is the timely identification of new entrant filers.

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Though OGE recognizes the challenges that ethics officials face in addressing the issue of timely new entrant filing, OGE reminds the Ethics Office that late filing diminishes an agency's ability to provide timely and specific conflict of interest advice to help prevent employees from committing ethics violations. The Ethics Office must continually monitor the confidential financial disclosure system to ensure that new entrant confidential filers are identified timely and, in turn, file confidential reports no later than 30 days after assuming a covered position, in accordance with 5 CFR § 2634.903(b).

OGE believes that the steps taken by the Ethics Office prior to and during OGE's review should help to timely identify new entrants and provide them with a blank OGE Form 450. As a result, this report makes no formal recommendation for improvement.

Highlighted below are the findings from OGE's review of the confidential system for both NH Pensacola and NHCCC.

Confidential System at NH Pensacola

The confidential financial disclosure system at NH Pensacola is centrally administered by the Ethics Office, which is responsible for maintaining the master list of confidential filers, notifying employees of their requirement to file, and tracking new entrant and incumbent filers. In accordance with the requirements of Chapter 7 of the JER, completed reports are forwarded to the filer's immediate supervisor who reviews them for conflicts of interest based on the supervisor's personal knowledge of the filer's duties and responsibilities. Upon completion of their review, supervisors forward the signed reports to the Ethics Office, which is responsible for the final review and certification of the reports. The one exception to this process is the report filed by the Commanding Officer, whose report is sent to NME for final review and certification.

To evaluate the effectiveness of the NH Pensacola confidential system, OGE examined 34 of the 35 confidential reports that were required to be filed in 2008.¹ These 34 reports consisted of:

Type of Report

- 27 annual reports
- 7 new entrant reports

34 total

¹ At the time of fieldwork, one confidential report was not examined by OGE because it had not yet been filed with the Ethics Office. However, OGE confirmed prior to issuing this report that the report had been filed timely and reviewed and certified timely by the Ethics Office.

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Filing Timeliness

- All 27 annual reports were filed timely.
- All 7 new entrant reports were filed late; all were captured during the annual filing cycle.

34 total

Review/Certification Timeliness

- All 34 reports were reviewed and certified in a timely manner.

Quality of Review

- All 34 reports appeared to have been reviewed properly for potential conflicts of interest.

To address the timeliness issue of new entrant filing, the Ethics Office established new procedures prior to and throughout the review to help timely identify new entrants and to provide them with a blank OGE Form 450. New entrants will now be identified in one of the following ways: 1) during the monthly Command Indoctrination classes for new employees or 2) through regular queries with the Comptroller, Material Management, and Administration personnel offices to ensure that all new NH Pensacola employees who enter into a covered position timely submit a confidential report.

Confidential System at NHCCC

The NHCCC legal office is responsible for maintaining the NHCCC master list of confidential filers, notifying employees of their requirement to file, ensuring that the filers' immediate supervisor reviews the report for conflicts of interest, and forwarding completed reports to the Ethics Office. The Ethics Office is responsible for conducting the final review and certification of each NHCCC report.

To determine the effectiveness of the confidential system at NHCCC, OGE examined all 16 confidential reports that were required to be filed in 2008. These 16 reports consisted of:

Type of Report

- 10 annual reports
- 6 new entrant reports

16 total

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Filing Timeliness

- All 10 annual reports were filed timely.
- All 6 new entrant reports were filed late; all were captured during the annual filing cycle.

16 total

Review/Certification Timeliness

- 15 reports were reviewed and certified in a timely manner.
- 1 report had not been reviewed and certified at the time of OGE's fieldwork. See the "General Observation" section below for more detail.

16 total

Quality of Review

- 15 reports appeared to have been reviewed properly for potential conflicts of interest.

General Observation

At the time of OGE's fieldwork, OGE noticed that the annual report filed by the Commanding Officer for NHCCC had not been reviewed and certified. When OGE brought this to the attention of the Ethics Office, it became clear that there was some confusion as to who was responsible for certifying this report—NME or the Ethics Office. After a series of discussions between the Ethics Office and NME, the matter was resolved with NME certifying the report for 2008. However, effective next year, the Ethics Office will be responsible for certifying all future reports filed by the Commanding Officer, NHCCC.

ETHICS TRAINING

An ethics 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 (IEO)

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

- the Standards of Ethical Conduct for Executive Branch Employees (Standards) and any agency supplemental standards;

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- the names, titles, office addresses, and phone numbers of the Designated Agency Ethics Official (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.

Initial ethics orientations (IEO) for new employees at NH Pensacola are administered by the Command Education Department (CED) as part of new employee orientation. To help satisfy IEO, new employees are instructed to view a computer-based training module entitled Ethical Business Practices - Doing the Right Thing, which focuses on the importance of ethical decision-making. New employees also attend a Command Indoctrination class which is held monthly. While OGE found evidence that IEO is provided to new employees of NH Pensacola as required, two concerns were raised with the Ethics Office.

- OGE found that neither the Standards (or summaries of the Standards) nor the DoD supplemental regulation were being provided to new employees to keep or review as required by 5 CFR § 2638.703. OGE also found that the contact information for the Ethics Office was not routinely provided.
- OGE found that a representative from the Ethics Office did not routinely attend the monthly Command Indoctrination classes for new employees, which could contribute to the challenges of timely new entrant confidential filing.

To address these concerns, the Ethics Office met with CED officials to develop an informational pamphlet for the purposes of IEO. OGE was advised that to satisfy the IEO requirement all new NH Pensacola employees, including military, civilian, and contractor support personnel, will be given this pamphlet during the orientation classes. The pamphlet will include a summary of the Standards, a copy of the principles of ethical conduct, the DoD supplemental regulation, contact information for NH Pensacola ethics officials, and as appropriate, a reminder notice to file a confidential report within 30 days of assuming a covered position. Additionally, the Ethics Office will now attend the monthly indoctrination classes. OGE acknowledged the swift action taken by the Ethics Office to resolve its concerns and as a result is making no formal recommendation for improvement.

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,

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- 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, NH Pensacola requires all covered employees to complete the DoD Standards of Conduct Office's (SOCO) online ethics training module. The 2007 training focused on conflicting financial interests, outside employment and activities, fundraising, gifts between employees, contractors and holiday parties, post-Government service restrictions, and supervisor responsibilities. Upon the completion of training, covered employees are required to file a certificate of completion with the Ethics Office, which is tracked simultaneously with the annual confidential reports and retained in each filer's report folder. OGE's examination of the certifications on file confirmed that all covered employees completed annual ethics training for 2007.

ETHICS COUNSELING

The Navy 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 counseling to assess whether processes and written procedures are effective.

OGE found that the Ethics Office provides useful ethics counseling to NH Pensacola employees on a wide range of issues. Employees are encouraged to contact the Ethics Office via all forms of communication, including e-mail, telephone, and in-person. However, most inquiries are made and counseling is rendered via e-mail. OGE examined a sample of the e-mail counseling dispensed to NH Pensacola employees on issues such as gift acceptance, fundraising, post-employment restrictions, and outside employment. OGE found the counseling to be consistent with appropriate laws and regulations. Additionally, OGE noted that the counseling was generally rendered promptly.

While OGE's sample did not include ethics-related counseling rendered by the Ethics Office to NHCCC employees, the Ethics Office advised OGE that counseling to NHCCC employees, through the NHCCC Legal Office, covers ethics-related issues ranging from gift questions to conflict of interest matters.

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ENFORCEMENT

The Navy 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 that the Ethics Office and the NH Pensacola Command Evaluation Officer share a good working relationship that results in regular communication on matters of mutual interest. Based on OGE's discussions with both parties, both offices considered their coordination with one another fundamental to their respective missions. OGE is satisfied that procedures are in place to effectively exchange ethics-related information and to resolve ethics issues.

During the period covered by OGE's review, there were no matters referred by NH Pensacola for prosecution to the Department of Justice (DOJ) involving alleged violations of the criminal conflict of interest statutes.

ACCEPTANCE OF 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 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.

NH Pensacola permits employees to accept travel payments from non-Federal sources under the authority of 31 U.S.C. § 1353. While the procedures for accepting these payments are specified in Chapter 4 of the JER, they are also detailed in internal written travel procedures developed by NH Pensacola. In accordance with the NH Pensacola policy, employees who seek approval under this authority are required to complete a Gifts of Travel and Related Expenses Request Form and submit it to the Ethics Office. Additionally, employees are to submit a copy of the invitation letter from the non-Federal source, a detailed itinerary/agenda, and cost orders. The Ethics Office is responsible for reviewing these documents, ensuring that the acceptances are free from conflict of interest concerns, briefing the Commanding Officer on each request, and forwarding the documents (upon the Commanding Officer's approval) to NME for final approval.

To satisfy the semiannual reporting requirement, NH Pensacola is responsible for collecting the information to be reported, drafting its semiannual report of payments of more than \$250 per event using the required General Services Administration (GSA) standard form (SF) 326, and forwarding it to NME for inclusion in Navy's semiannual report to OGE.

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To assess NH Pensacola's compliance with the requirements of § 1353, OGE examined NH Pensacola's last three semiannual reports submitted to OGE covering the time period from October 1, 2006 through March 31, 2008. OGE found that NH Pensacola accepted two payments during the period of October 1, 2006 through March 31, 2007 and none during the period of April 1, 2007 through September 30, 2007. Based on OGE's examination of the written authorizations and other supporting documentation, OGE concluded that both payments were approved and accepted in compliance with relevant requirements.

Summary

OGE identified the timely filing of new entrant confidential financial disclosure reports as a challenge for NH Pensacola. OGE noted that steps were taken by the Ethics Office prior to and during OGE's review to ensure that new entrant confidential reports are filed timely.

OGE suggests that the Ethics Office continually monitor the confidential financial disclosure system to ensure compliance with the new entrant confidential filing requirements of 5 CFR § 2634.903(b).

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