



Highlights

Model Practice

- Ethics duties are included in the DAEO's position description and performance evaluations.

OGE Suggests

- Public filers be provided training in completing their public financial disclosure reports.

OGE Recommends

- AFRH conduct a thorough review of all public and confidential reports for technical compliance and conflicts of interest in accordance with 5 CFR § 2634.605.
- AFRH annotate public and confidential reports to reflect any clarifications or corrections made to the reports based on follow-up discussions with filers as discussed in 5 CFR § 2634.605(b)(3).
- AFRH ensure that all termination public reports are timely filed in accordance with 5 CFR § 2634.201(e).
- AFRH make a formal determination as to the status of the civilian members of the Local Board of Trustees based on the provisions of 18 U.S.C. § 202(a).

Ethics Program Review Armed Forces Retirement Home

May 2008 Report

Executive Summary

The Office of Government Ethics (OGE) has completed its review of the ethics program at the Armed Forces Retirement Home (AFRH). 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 in place for administering the program. OGE determined that there is reasonable assurance that the performance and management of AFRH's ethics program is effective.

OGE's review identified as a model practice that the ethics duties of AFRH's Designated Agency Ethics Official (DAEO) are included in her position description and performance evaluations.

OGE suggests that AFRH provide training to public filers in completing public financial disclosure reports.

OGE makes four recommendations to enhance AFRH's ethics program:

- AFRH conduct a thorough review of all public and confidential reports for technical compliance and conflicts of interest in accordance with 5 CFR § 2634.605(b),
- AFRH annotate public and confidential reports to reflect any clarifications or corrections made to the reports based on follow-up discussions with filers as discussed in 5 CFR § 2634.605(b)(3),
- AFRH ensure that all termination public reports are timely filed in accordance with 5 CFR § 2634.201(e), and
- AFRH make a formal determination as to the status of the civilian members of the Local Board of Trustees based on the provisions of 18 U.S.C. § 202(a).

This report has been forwarded to AFRH's Designated Agency Ethics Official and AFRH's Inspector General. OGE will follow-up with AFRH within six months from the date of this report's issuance on the status of OGE's suggestion and recommendations.



**United States Office
Of Government Ethics**

Report Number 08-007

Ethics Program Review

Armed Forces Retirement Home

May 2008 Report

Introduction

OGE MISSION

The 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 Armed Forces Retirement Home (AFRH) focused on the elements listed below.

- Program structure
- Financial disclosure systems
- Ethics education and training
- Ethics counseling
- Special Government Employees
- Enforcement of ethics laws and regulations
- Travel payments from non-Federal sources

OGE's review focused on the ethics program at AFRH headquarters and was conducted in February 2008.

Program Elements

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

PROGRAM STRUCTURE

AFRH's ethics program is administered almost exclusively by a Public Affairs Specialist who was appointed as the Designated Agency Ethics Official (DAEO) in July 2006. The Alternate DAEO and the Deputy DAEO have a limited role in the administration of AFRH's ethics program. The DAEO did not have experience in Federal ethics prior to her appointment. Although administering the ethics program is a collateral responsibility for the DAEO, OGE found that ethics duties were included in her position description. The DAEO's annual performance appraisal also includes an evaluation of the execution of her ethics duties.

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).

OGE found that AFRH's financial disclosure system has room for improvement. AFRH ethics officials do not conduct a thorough review of the public and confidential financial disclosure reports for technical compliance or conflicts of interest. Additionally, one filer failed to file a termination public financial disclosure report. OGE advised the DAEO that the filer is required to file a termination report. Subsequently, the DAEO notified the termination filer via certified letter about the requirement to file a termination report. As a result, the former employee submitted his termination report.

AFRH's written procedures for the administration of the public and confidential financial disclosure systems are documented in a draft directive that is currently under review by AFRH's Office of General Counsel.

Public Financial Disclosure System (SF 278)

The administration of the public financial disclosure system is primarily the responsibility of the DAEO. The DAEO reviews and certifies all reports, excluding her own.

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Her report is reviewed by the Chief Operating Officer. The DAEO does not use a list of contractors/prohibited sources, position descriptions, or any other resources to conduct a substantive review of the reports for conflicts of interest. The DAEO was not aware that a filer's position description, a list of agency prohibited sources, and other resources are commonly used by ethics officials to identify actual or potential conflicts of interest for filers.

To evaluate the filing, review, and certification of public reports at AFRH, OGE examined seven out of the eight¹ public reports required to be filed by AFRH employees in 2007. The seven reports consisted of:

Type of Report

- 7 annual reports

Filing Timeliness

- All 7 reports were filed timely.

Review/Certification Timeliness

- All 7 reports were reviewed and certified timely.

Quality of Review

AFRH public financial disclosure files reflected that the reports had not been systematically reviewed for technical compliance and for a conflict of interest analysis. OGE noted that the majority of the reports lacked information such as the calendar year of the covered period. Additionally, filers failed to disclose information in Schedules A, B, and C when the "none" boxes were unchecked. Furthermore, several filers over-reported some assets, e.g., personal residence. Moreover, OGE did not find any annotations on the reports that reflected whether any clarifications and corrections had been made to the reports based on follow-up discussions with filers.

The purpose of a technical review is to ensure that all required details are disclosed for each entry on the public report in order to facilitate a comprehensive conflict of interest analysis. The conflict of interest analysis is fundamental in any ethics program. The purpose of the conflict of interest analysis is to ensure that filers do not have interests that conflict with their official duties. Accordingly, OGE recommends that AFRH take steps to ensure that all public reports are thoroughly reviewed for technical compliance and for conflicts of interest in accordance with 5 CFR § 2634.605(b). Additionally, OGE recommends that AFRH annotate the reports to reflect any clarifications or corrections made to the reports based on follow-up discussions with filers. OGE suggests that public filers are given training on completing the public reports to ensure that all the required information is appropriately reported on the form.

¹One termination report was not filed at the time of OGE's on-site fieldwork.

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OGE also recommends that AFRH take steps to ensure all termination reports are timely filed.

OGE offered the DAEO the opportunity to receive additional training on reviewing financial disclosure reports. The DAEO has agreed to attend financial disclosure training and will attend the OGE course "Certifying Public Financial Disclosure Reports (SF 278)" in May 2008.

Confidential Financial Disclosure System (OGE Form 450)

The administration of the confidential financial disclosure system is primarily the responsibility of the DAEO. The DAEO does not use a list of contractors/prohibited sources or position descriptions to conduct a substantive review of the reports for conflicts of interest.

To evaluate the confidential financial disclosure system at AFRH, OGE examined all four confidential reports required to be filed by AFRH headquarters' employees in 2007. These four reports consisted of:

Type of Report

- 4 annual reports

Filing Timeliness

- All 4 reports were filed timely.

Review/Certification Timeliness

- All 4 reports were reviewed and certified timely.

Quality of Review

OGE did not find any annotations on the reports that reflected that a thorough review had been performed for technical compliance or conflict of interest. Accordingly, OGE recommends that AFRH take steps to ensure all confidential reports are thoroughly reviewed for technical compliance and conflicts of interest in accordance with 5 CFR § 2634.605(b). OGE also recommends that AFRH annotate the reports to reflect any clarifications or corrections made to the reports based on follow-up discussions with filers.

ETHICS 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.

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AFRH drafts an annual training plan that documents and describes the topics to be covered in the upcoming year. AFRH provides ethics training sessions monthly and encourages all employees to attend the sessions.

Initial Ethics Orientation

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

- the Standards of Ethical Conduct for Employees of the Executive Branch (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.*

As part of AFRH's in-processing, all AFRH employees are given an initial ethics orientation in the form of written materials and an in-person ethics briefing. The written materials consist of the Standards along with the names, titles, and office addresses and telephone numbers of the ethics officials.

Initial ethics orientation is usually conducted every month. The completion of the initial ethics orientation is tracked by attendance rosters. The information from the attendance rosters is then transferred to *In Service Tracker* software that tracks all types of training received by AFRH employees.

According to the DAEO, all new employees received the initial ethics orientation in 2007.

Annual Ethics Training

Public financial disclosure filers are required to receive verbal annual ethics training each year. *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 annual ethics training at least once every three years and may receive written annual 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 (Principles);
- 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)*.

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Annual training at AFRH is provided by the DAEO. In 2007, the annual training consisted of the DAEO providing employees with a PowerPoint presentation covering the Principles, the Federal conflict of interest statutes, gifts, misuse of position, outside activities, and fundraising.

AFRH also makes annual ethics training available to non-covered employees. At AFRH, all 11 employees required to receive annual ethics training in 2007 received it.

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 whether processes and written procedures are effective.

To evaluate the ethics counseling provided, OGE reviewed AFRH's only sample of memorialized counseling, which was rendered in August 2006. The counseling involved a post-employment issue. OGE found the counseling to be accurate and consistent with applicable statutes and regulations.

The DAEO consults with the OGE Desk Officer as needed. However, according to the AFRH DAEO, ethics issues arise infrequently for a number of reasons, including: AFRH's small number of executive branch employees; its strict policy on employees accepting gifts; and its adequate ethics training program.

ENFORCEMENT

The DAEO is 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).

There have been no ethics violations identified at AFRH. Ethics officials and AFRH's Inspector General indicated that there is an effective working relationship between their two offices. This relationship allows for coordination to ensure that information developed by the AFRH Inspector General's office regarding alleged ethics violations could be shared with ethics

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officials. If an ethics violation was alleged, AFRH's Inspector General would notify the Department of Defense Inspector General (DOD-IG). In turn, the DOD-IG would make any required referrals to the Department of Justice and concurrently notify OGE of the referral.

LOCAL BOARD OF TRUSTEES

AFRH has an advisory board for each of its facilities, the Local Board of Trustees (Board). The National Defense Authorization Act of 2002 changed the role of the Boards from supervisory to advisory boards. Currently the AFRH-Gulfport facility is undergoing major reconstruction. Therefore, only one Board, for the AFRH-Washington facility, is active.

Each board consists of at least 11 members appointed by the Secretary of Defense. The majority of the Board members are representatives from several military branches. However, the National Defense Authorization Act of 2002 also provides for the inclusion of at least three civilian experts as members of the Board. AFRH has not made a determination of whether the civilian members of the Board are considered special Government employees (SGEs) or representatives.

An SGE is defined in 18 U.S.C § 202(a) as "an *officer or employee*... who is retained, designated, appointed, or employed" by the Government to perform temporary duties, with or without compensation, for not more than 130 days during any period of 365 consecutive days. Accordingly, SGEs are Government employees for purposes of the conflict of interest laws.

Representatives typically serve on advisory bodies representing specific interest groups, such as an industry or consumers. Representatives can provide only advice. Moreover, unlike SGEs and other Federal employees, representatives are not expected to render disinterested advice to the Government. Therefore, representatives are not deemed Government employees, and thus are not subject to Federal ethics laws and regulations.

OGE recommends that AFRH make a formal determination as to the civilian Board members' status based on the provisions of 18 U.S.C. §202(a). OGE would be pleased to assist AFRH in this endeavor.

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 to OGE of travel payments from non-Federal sources in excess of \$250. *See* 31 U.S.C. § 1353.

AFRH did not accept any travel payments from non-Federal sources in 2007. AFRH is currently drafting a directive to not accept payments under 31 U.S.C. § 1353.

Summary

OGE's review determined that there is reasonable assurance that the performance and management of AFRH's ethics program is effective. However, OGE found that AFRH's

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financial disclosure system has room for improvement. Additionally, OGE found that AFRH has not addressed the status of the civilian members of the Local Board of Trustees.

Recommendations

To enhance AFRH's ethics program, OGE recommends that AFRH:

- (1) Conduct a thorough review of all public and confidential reports for technical compliance and conflicts of interest in accordance with 5 CFR § 2634.605(b).
- (2) Annotate public and confidential reports to reflect any clarifications or corrections made to the reports based on follow-up discussions with filers as discussed in 5 CFR § 2634.605(b)(3).
- (3) Ensure that all termination public reports are timely filed in accordance with 5 CFR § 2634.201(e).
- (4) Make a formal determination as to the status of the civilian members of the Local Board of Trustees based on the provisions of 18 U.S.C §202(a).

AFRH's DAEO is to advise OGE within 60 days of the specific actions AFRH has taken or plans to take on OGE's recommendations. OGE stands ready to assist AFRH in implementing these recommendations, as well as other program initiatives that AFRH may choose to undertake. OGE will formally follow-up with AFRH in six months.

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