



United States Office
Of Government Ethics.

Report Number 09 - 018

Highlights

Model Practices

- NDW leadership provides support for the RLSO NDW ethics program.
- RLSO NDW provides verbal ethics training to all new employees.
- RLSO NDW uses discretionary training to reinforce the importance of ethics.
- RLSO NDW has an organized process for rendering ethics counseling to employees.

OGE Suggests

- RLSO NDW continually monitor the confidential financial disclosure filing process to ensure that all new entrant confidential reports are filed timely.

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 Regional Legal Services Office Naval District of Washington Department of the Navy

June 2009 Report

Executive Summary

The United States Office of Government Ethics (OGE) has completed its review of the ethics program at the Regional Legal Services Office, Naval District of Washington (RLSO NDW). 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 RLSO NDW. These model practices include agency leadership support for the ethics program, an ethics training program that exceeds the minimum training requirements found at subpart G of 5 CFR part 2638, discretionary training that reinforces the importance of ethics, and an organized process for rendering ethics counseling to employees.

In light of the role financial disclosure plays in preventing employees from committing ethics violations, OGE suggests that RLSO NDW continually monitor the confidential financial disclosure filing process to ensure that all new entrant confidential reports are filed timely.

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



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Ethics Program Review

Regional Legal Services Office, Naval District of Washington Department of the Navy

June 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 Regional Legal Services Office, Naval District of Washington (RLSO NDW), 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: RLSO NDW

This report details OGE's review of RLSO NDW located at the Washington Navy Yard in Washington, DC. The on-site fieldwork for this review was conducted intermittently in November and December 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 Systems Command (Headquarters);
- Naval Air Warfare Center, Aircraft Division; and
- Naval Audit Service

Reports detailing OGE's review of these activities and components have been 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. As part of OGE's ethics program review, the OGE review team met with the Commandant, NDW to discuss the scope of the review and the importance of agency leadership in implementing an effective ethics program. OGE considers leadership involvement in an ethics program to be a model practice and noted that the Commandant incorporates personal leadership into the day-to-day management of the NDW ethics program.

PROGRAM STRUCTURE

The ethics program at RLSO NDW is organizationally located within the Staff Judge Advocate's Office, hereafter referred to as the Ethics Office, and is managed by the Staff Judge Advocate (SJA), who serves as the agency's designated Ethics Counselor. The Deputy SJA assists in the day-to-day management of the ethics program and together with the SJA is responsible for carrying out the majority of the ethics functions. These ethics functions include providing legal advice to RLSO NDW military and civilian employees, implementing the requirements for initial and annual ethics training, and managing the RLSO NDW confidential financial disclosure system. In addition to the SJA and Deputy SJA, the RLSO NDW Commanding Officer is also designated as an Ethics Counselor in accordance with the provisions of Department of Defense 5500.7-R, Joint Ethics Regulation (JER).

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Transition within the Ethics Office

Prior to the start of OGE's on-site fieldwork, the former SJA received orders for deployment. In response, OGE delayed its on-site review to allow RLSO NDW to appoint a new SJA. OGE recognizes the challenges that many ethics offices face during a staffing transition and was pleased to find the newly-appointed SJA and Deputy SJA successfully coordinating and managing the ethics program. Many of the systems and procedures that are currently in place at RLSO NDW can likely be attributed to the efforts of these ethics officials.

During discussions with the current SJA and Deputy SJA, OGE was advised that the Ethics Office will again face a staffing turnover as both ethics officials will leave RLSO NDW in July 2009. In anticipation of this upcoming transition, OGE would like to share several strategies that should be considered by the new SJA and Deputy SJA when carrying out the ethics program on behalf of the Commandant. Using the following suggested strategies will not only enhance the ethics program but will also help the new SJA 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 RLSO NDW ethics program.
- Routinely keep records, when appropriate, of counseling 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

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administering their ethics programs in providing counseling to employees. See 5 CFR § 2634.104(b).

Public Financial Disclosure System (SF 278)

The Commandant, NDW is the only position within RLSO NDW that meets the criteria found at subpart B of 5 CFR part 2634 for public financial disclosure filing. At the time of OGE's on-site fieldwork, OGE did not examine the Commandant's public report because the Commandant was in a "frocked" status and had not been statutorily promoted from a 0-6 to an 0-7 flag officer. OGE confirmed with the Ethics Office prior to the conclusion of its review that the Commandant has since been formally promoted and filed his new entrant public report timely.

Confidential Financial Disclosure System (OGE Form 450)

The Ethics Office is responsible for maintaining the RLSO NDW master list of confidential financial disclosure filers, notifying employees of their requirement to file, and tracking both new entrant and incumbent filers. In accordance with the requirements of Chapter 7 of the JER, completed reports are forwarded to the filers' immediate supervisors who review them for conflicts of interest based on the supervisors' knowledge of the filers' 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.

During the review, OGE noted that the timely filing of new entrant confidential financial disclosure reports required improvement. However, the steps taken by the Ethics Office prior to the review should help RLSO NDW to fully comply with the new entrant filing requirements in the future. Therefore, this report makes no formal recommendation for improvement. OGE reminds ethics officials that late filing/review 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).

Confidential Financial Disclosure - New Entrant System

To evaluate the effectiveness of the confidential system for new entrants, OGE examined 7 new entrant reports filed in 2008.

Filing Timeliness

- 1 report was filed in a timely manner.
- 6 reports were filed late. All were filed during the annual filing cycle.

7 total

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Review Timeliness

- 3 reports were reviewed in a timely manner.
- 4 reports were reviewed late.¹

7 total

Certification Timeliness

- 4 reports were certified in a timely manner.
- 3 reports were certified late.²

7 total

To address the issue of new entrant filing, the Ethics Office established new procedures to 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 two ways: 1) during the quarterly Command Indoctrination classes for new employees or 2) through regular queries with the RLSO NDW Human Resources Office.

Confidential Financial Disclosure -- Annual System

To determine the effectiveness of the confidential system for annual filers, OGE examined all 21 annual confidential reports that were required to be filed in 2008.

Filing Timeliness

- 18 reports were filed timely.
- 3 reports were filed late.

21 total

¹ After discussing the late reviews with the Ethics Office, OGE is not considering this to be an egregious matter. However, the Ethics Office must remain diligent in ensuring that all reports are reviewed timely in view of the role financial disclosure plays in preventing employees from committing ethics violations.

² Although a report is not specifically required to be certified within 60 days, it should be certified immediately following the completion of the review unless the reviewer is awaiting requested additional information or remedial action is being taken.

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Review Timeliness

- 13 reports were reviewed timely.
- 8 reports were reviewed late.³

21 total

Certification Timeliness

- 6 reports were certified in a timely manner.
- 15 reports were certified late. As with the new entrant reports, all were reviewed in June 2008.

21 total

ETHICS 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 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.

RLSO NDW exceeds the minimum IEO requirement by providing new military and civilian employees with an in-person IEO presentation on the key ethics principles as part of each new employee's command indoctrination. For new employees located at the five installation commands, the training is broadcasted live via video teleconference.

³ As with the new entrant system, after discussing this with the Ethics Office, OGE is not considering the late reviews to be an egregious matter. However, the Ethics Office again must remain diligent in ensuring that all reports are reviewed timely in view of the role financial disclosure plays in preventing employees from committing ethics violations.

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The Ethics Office provides new employees with an overview of:

- the basic obligations of public service;
- an Employees' Guide to the Standards of Conduct, which briefly summarizes ethics issues;
- special topics such as misuse of position, gifts, political activities, and fundraising issues; and
- the contact information for RLSO NDW ethics officials.

OGE notes that shortly before its on-site fieldwork, the Ethics Office provided an IEO presentation to 61 new civilian and military employees who began work at RLSO NDW.

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 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, RLSO NDW requires all covered employees to complete the DoD Standards of Conduct Office (SOCO) online ethics training module. The 2008 training focused on "Ethics in a Transition Year," which covered topics including political activities, public speaking, job seeking, conflicts of interest, and post-Government service restrictions. Upon the completion of training, covered employees were required to file certificates of completion with the Ethics Office, which are retained in each filer's report folder. During discussions with RLSO NDW ethics officials, OGE was assured that all covered employees completed annual ethics training in 2008.

Discretionary Training

In addition to the formal training highlighted above, RLSO NDW provides discretionary training throughout the year to both financial disclosure filers and non-filers to help keep employees knowledgeable of ethics laws and regulations. For example, the Ethics Office keeps employees abreast of the latest ethics developments with periodic articles in the agency's

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newsletter entitled Legal Eagle. OGE considers the use of discretionary training to help keep employees aware of ethics-related issues to be a model practice.

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.

RLSO NDW has complied with 5 CFR § 2638.203(b)(7) and (8) by developing and conducting a counseling program for employees concerning all ethics matters, including post employment, with records being kept, when appropriate, on the counseling rendered. OGE examined a sample of the ethics-related counseling dispensed by the Ethics Office in 2008 on various ethics-related issues and found the counseling to have been responsive to the needs of RLSO NDW employees. OGE notes that responses from RLSO NDW ethics officials were generally rendered promptly and were consistent with applicable laws, regulations, and OGE guidance.

OGE also found RLSO NDW 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 employees. As part of RLSO NDW departure procedures, employees are given a post-employment brief, Post-Government Service Employment Considerations, which outlines the basic post-employment restrictions, and a post-Government service ethics questionnaire, which is used by the Ethics Office to provide written counseling on the post-Government service restrictions. In addition to the aforementioned guidance, departing NDW employees also have opportunities to receive post-employment counseling at pre-retirement and transition seminars conducted by the Navy's Office of the Staff Judge Advocate and the Transition Assistance Program.⁴

⁴ The law creating the Transition Assistance Program established a partnership among the Department of Defense and several other agencies to give employment and training information to armed services members within 180 days of separation or retirement.

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General Observation

OGE found that the Ethics Office keeps written ethics counseling files in an electronic database organized according to topic. Having an organized process for rendering and maintaining ethics counseling helps facilitate timely, uniform responses to employees' questions and concerns, particularly when counseling is rendered by more than one ethics official. OGE considers the Ethics Office's organized approach to be a model practice.

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).

It appears that an effective working relationship has been established between the Ethics Office and the Navy Inspector General, as evidenced by their regular communication on matters of mutual interest, including ethics issues. Both parties consider their coordination with one another fundamental to their respective missions.

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 determined that the Ethics Office is aware of the requirements 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 to be taken relating to any such alleged violations. OGE was advised that, in the event a referral had been made, the Naval Criminal Investigative Service (NCIS)⁵ would be responsible for concurrently notifying OGE of the referral as well as reporting the disposition, in accordance with the procedures prescribed in 5 CFR § 2638.603 and Chapter 10 of the JER.

OGE was also advised that there were no violations of the Standards during the period covered by OGE's review.

⁵ NCIS is the primary law enforcement and counterintelligence arm of the Navy. All suspected criminal matters, including violations of the conflict of interest statutes, are referred to NCIS for investigation.

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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.

RLSO NDW permits employees to accept travel payments on its behalf 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 the Navy and RLSO NDW.

OGE examined the one travel payment accepted by RLSO NDW under § 1353 during the period of October 1, 2007 through September 30, 2008. OGE concluded that this payment was accepted in compliance with relevant requirements.

Summary

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

- demonstrating agency leadership support for the RLSO NDW ethics program,
- administering an ethics training program that exceeds the minimum training requirements found at subpart G of 5 CFR part 2638,
- using discretionary training to help keep employees aware of ethics-related issues, and
- having an organized process for rendering ethics counseling to employees.

Suggestion

OGE suggests that:

- RLSO NDW continually monitor the confidential financial disclosure filing process to ensure that all new entrant confidential reports are filed timely.

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