



United States Office
Of Government Ethics

Ethics Program Review

National Aeronautics and Space Administration George C. Marshall Space Flight Center Lyndon B. Johnson Space Center

2010 Report

Executive Summary

The Office of Government Ethics (OGE) has completed its review of the ethics programs at three National Aeronautics and Space Administration (NASA) Centers: George C. Marshall Space Flight Center (MSFC), Langley Research Center (LARC), and Lyndon B. Johnson Space Center (JSC). 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. This report summarizes the results of OGE's review of these three Centers. Reports providing more detailed results of the reviews of LARC, JSC and MSFC have been issued separately.

During its ethics program reviews, OGE identifies model practices that agencies have implemented to enhance their programs. OGE's review of the three Centers' ethics programs identified a number of model practices. The model practices include:

- involving senior management in the administration of the ethics program,
- providing ethics training to new supervisors,
- providing public and confidential financial disclosure filers with cautionary memorandums,
- developing written procedures for administration of the advice and counseling component of the ethics program,
- proactively working with departing senior employees to avoid or resolve potential post-employment issues,
- leveraging ethics-training resources by sharing responsibility for preparing annual ethics training presentations, and
- providing ethics training to employees not required to receive training and to private sector companies likely to seek to do business with NASA.

To enhance NASA's ethics program, OGE suggests that NASA headquarters ethics officials work with all NASA Centers to take steps to ensure all financial disclosure reports, particularly new entrant reports, are filed timely. OGE also suggests that all Centers closely examine all requests related to approval for travel that might be authorized under the authority of either 31 U.S.C. § 1353 or the WAG exception to the gift rules at 5 CFR § 2635.204(g) and ensure that the proper authority is used to allow employees to engage in relevant travel/activities.

This report has been forwarded to NASA's Designated Agency Ethics Official and NASA's 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 as set forth in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures 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 National Aeronautics and Space Administration (NASA) focused on the elements listed below:

- Leadership
- Program structure
- Financial disclosure systems
- Ethics training
- Ethics counseling
- Outside employment

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- Enforcement of ethics laws and regulations
- Travel payments from non-Federal sources

OGE's review of NASA focused on the ethics programs at three NASA Centers: Langley Research Center (LARC), Lyndon B. Johnson Space Center (JSC), and George C. Marshall Space Flight Center (MSFC). This report summarizes the results of OGE's review of these three Centers. Reports providing more detailed results of the reviews of LARC, JSC and MSFC 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. These actions help raise the level of awareness not only of the ethics program in general, but also of leadership's support for the ethics program. We found that leadership's support for the ethics program has been clearly demonstrated at both LARC and MSFC. LARC's Director issued a policy statement clearly expressing that agency leadership expects employees to be aware of ethics-related requirements and maintain high ethical standards. LARC's leadership also meets frequently with ethics officials to discuss ethics-related issues. MSFC's leadership has demonstrated support of the ethics program by taking an active role in emphasizing the importance of timely completion of financial disclosure reports and mandatory ethics training. MSFC's leadership has also incorporated ethics training into its New Supervisor Orientation program. JSC's leadership support for the ethics program was not explicitly evident in documents and materials examined by the review team. While there is no reason to believe that JSC's leadership does not fully support the ethics program, there simply was no evidence of their affirmative action to communicate that support.

PROGRAM STRUCTURE

The ethics programs at all three Centers are similarly organized. Each Center's Chief Counsel has primary responsibility for administering the Centers' respective ethics programs. The Chief Counsels' staffs are designated to perform specific ethics-related functions. The structure appears to provide for the efficient and effective administration of each Center's ethics program.

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

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their personal financial interests (SF 278). Less senior executive branch personnel in certain designated positions demonstrate it by filling out a confidential financial disclosure report. (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).

General Comments

OGE's examination of the public and confidential financial disclosure systems at all three Centers found that comprehensive written procedures are in place and that both systems are administered effectively. Written comments on reports, documentation in files, and conversations with ethics officials indicated that public and confidential financial disclosure reports were thoroughly reviewed by ethics officials at all three Centers.

The three Centers' ethics officials have incorporated model practices into their financial disclosure systems. For example, public and confidential financial disclosure report filers are given cautionary memorandums when interests disclosed on reports indicate the potential for a conflict of interest. This is considered a model practice because it reminds filers to remain vigilant to the possibility that their personal financial interests could potentially conflict with their official duties. Cautionary memorandums also demonstrate to filers that their reports are closely examined and that ethics officials are actively engaged in preventing conflicts of interest. Additionally, cautionary memorandums are another opportunity for ethics officials to have contact with employees, which raises general awareness of the ethics program.

NASA's confidential financial disclosure system is administered centrally through the NASA Shared Services Center (NSSC). NSSC created an electronic filing system, the Ethics Program Tracking System (EPTS), to administer the system. Ethics officials at NASA headquarters and the three reviewed components noted that there were many problems with the tracking and routing of reports through EPTS in 2007, the first year in which reports were centrally filed using the system. However, ethics officials were also universal in stating that the electronic filing of reports through NSSC during the 2008 annual filing cycle was vastly improved over 2007. Weekly teleconferences with headquarters and component ethics officials and NSSC representatives were instituted and are still being held to discuss potential improvements and resolve any technical issues.

Even with the improvements that have been made, the OGE review team found that 27 (18%) of the 147 confidential financial disclosure reports examined were filed late. Timely filing of reports is important because it allows ethics officials to more quickly identify and prevent real or potential conflicts of interest. OGE suggests that NASA headquarters ethics officials work with all NASA Centers to take steps to ensure all reports, particularly new entrant reports, are filed timely. These steps could include making the determination of an employee's filing status (either by a supervisor or an ethics official) a part of general in-processing procedures. Periodic reminders to supervisors to review employee's filing status when duties and responsibilities change or an employee is newly assigned or promoted may also be effective.

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Ethics officials may also want to consider issuing notices to employees via bulletin boards and newsletters stating filing deadlines, the general criteria used to determine filing status, and asking employees to discuss their filing status with supervisors or ethics officials, if appropriate.

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.

The three Centers met the requirements for providing initial ethics orientation to all new employees. Methods for meeting those requirements varied from giving new employees written materials and one hour of official time to review them, web-based training, and conducting in-person briefings.

Each year, one NASA Center is designated to develop a web-based training module to be used throughout NASA to meet annual training requirements. Kennedy Space Center developed the training module used in 2007 with input from other NASA Centers. The leveraging of ethics-training resources is a model practice because it allows ethics officials to devote more time and effort to other elements of the ethics program without compromising the quality of ethics training provided to employees.

In 2007, 3,781 employees at LARC, JSC, and MSFC were required to receive annual ethics training. Almost all 3,781 completed the training by attending in-person training sessions or by completing a web-based training module. Their attendance was verified through sign in sheets, NASA's System for Administration, Training and Educational Resources, or EPTS. Based on examination of the materials used to provide annual ethics training in both in-person instructor-led training and web-based training, OGE concluded that the training met the relevant requirements.

In addition to the 3,781 employees required to receive annual training, many more federal and contractor employees completed the training. Ethics officials used a variety of materials to extend ethics training:

- developing training specifically for agency leadership to familiarize new leaders and re-familiarize existing leaders with key leadership challenges and focus attention on the legal and ethical implications of leaders' decisions,
- posting ethics-related notices on intranet home pages and periodically distributing relevant information via internal email systems, and
- educating private companies that are doing business or may seek to do business with NASA to educate them regarding ethics-related issues.

Making ethics training available to all employees, including contractor employees, is a model practice strongly endorsed by OGE. It serves to educate employees who might not

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otherwise be exposed to ethics-related guidance and instruction. It is also a means of raising awareness of the ethics program throughout an agency.

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. Based on the review of a sample of advice and counseling and the Center's procedures, OGE concluded that MSFC's ethics officials are providing advice in a manner that is transparent, accountable and consistent.

NASA has established an agency-wide internal policy for administering the ethics advice and counseling component of the ethics program. The policy stipulates, among other things, when advice must be requested and provided in writing, which office within NASA (either at headquarters or within each Center) is responsible for providing advice to specified groups of employees (e.g., SES versus non-SES), who shall be responsible for approving outside activity requests, and the process for seeking and approving statutory waivers. Establishing a written policy is an important model practice because it provides for succession planning and serves to inform all ethics officials responsible for providing advice to employees of the relevant requirements. If followed, NASA's internal procedures should help ensure that ethics-related advice is transparent and consistent. Requiring advice to be provided in writing also helps ensure accountability on the part of ethics officials who render such advice. Transparency, consistency, and accountability help to ensure confidence in Government processes and credibility for the ethics program throughout NASA.

Advice and counseling are provided by the Centers' Chief Counsels and their staffs. Ethics officials generally provide ethics advice in writing. Complex questions, especially those involving the application of a criminal statute, result in a formal written response to the requesting employee. Responses to simpler questions are sometimes provided via email. OGE reviewed approximately 105 pieces of advice and counseling in the areas of post-employment, gifts, misuse of position, impartiality, and representational bars. The advice was timely and accurate.

It appears that the ethics officials are providing advice and counseling in a manner consistent with the NPR. For example, all advice and counseling in the sample provides a discussion of the facts, as known to the ethics official, as well as a thorough explanation of the relevant law or regulation as it applies to those facts. Standard policies have been established and are followed to deal with recurring situations, such as requests for post-employment determinations and impartiality determinations.

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Of special note are some of the procedures and documents that LARC, JSC, and MSFC have developed to address post-employment counseling and other issues:

- LARC ethics officials identify and screen personnel who are negotiating for employment. Employees have been counseled to notify their supervisors or ethics officials when they begin a job search, both for purposes of identifying any real or apparent conflicts of interest, as well as for discussing any possible post-employment restrictions.
- JSC has developed what appears to be a “standard response” letter for purposes of returning otherwise prohibited gifts to donors. The letter explains to the donor the Government-wide restrictions on gift acceptance. Similarly, JSC sends a standard response letter to organizations requesting support from NASA for charitable fundraising events.
- MSFC has created a post-employment advisory package that is given to its senior employees as part of a “check-out” process when leaving Government service. The package includes a brief outline of the conflict-of-interest and post-employment restrictions and a model “disqualification letter.”

OGE did note that some widely attended gathering (WAG) determinations were problematic. Specifically, NASA employees from various Centers are being given WAG determinations to attend events associated with Shuttle launches at Kennedy Space Center in Florida. It appears that the events in question are the events for which the employee has been placed in travel status by NASA. Accordingly, it is likely that NASA should be accepting the free attendance at some, if not all, of these launch-related events under the authority of 31 USC § 1353 rather than under the WAG provisions. OGE suggests that all NASA Centers closely examine all related requests and ensure that the proper authority is used to allow employees to attend these events.

Outside Employment

NASA’s supplemental standards prohibit NASA employees, other than special Government employees, from engaging in certain types of outside employment activities and require employees to seek prior approval before engaging in other types of outside employment activities. *See* 5 CFR part 6901. The supplemental standards also prescribe an approval process designed to prevent employees from engaging in outside employment activities that would create a conflict of interest with their official duties. LARC, JSC, and MSFC ethics officials each maintain a database of current approvals to engage in outside employment activities for their respective Center’s employees. Approvals may be granted for a period of up to 3 years. OGE examined 17 requests for approval to engage in a variety of outside employment activities. All 17 requests appear to have included sufficient information for ethics officials to conduct a conflict of interest analysis and 16 were approved.

ENFORCEMENT

The DAEO is required to ensure that (1) information developed by internal audit and review staff, the Office of Inspector General, or other audit groups is reviewed to determine

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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).

Ethics officials and the NASA Office of the Inspector General local Resident Agent in Charge at each Center indicated that there is an effective working relationship between their respective offices. This relationship allows for coordination to ensure that information developed by a Resident Agent in Charge and their staff regarding alleged ethics-related violations is shared with ethics officials. The Resident Agent in Charge at JSC reported making two referrals to the U.S. Attorney's Office for the Southern District of Texas in 2006. Both employees plead guilty and were convicted. Neither LARC or MSFC reported any referrals. While there are occasional violations of the Standards at each Center, they are not separately tracked as ethics violations.

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.

All three Centers accept travel payments from non-Federal sources under the authority of 31 U.S.C. § 1353. The procedures for requesting and receiving authorization for acceptance of travel payments from a non-Federal source are detailed in NASA Policy Directive NPD 9710.1T and local guidance. Requests for acceptance of travel payments from non-Federal sources under the authority of 31 U.S.C. § 1353 are made by completing NASA Form 1167. The form is an efficient tool for gathering the information required to conduct a conflict of interest analysis.

OGE examined 18 payments that were approved under the authority of 31 U.S.C. § 1353 for travel that was to occur in 2007 and 2008 and the related supporting documentation. In each case a conflict of interest analysis was conducted and approval was granted prior to the travel taking place and to the acceptance of payment from the non-Federal source.

Summary

OGE's review identified a number of model practices that have been incorporated into the ethics programs at LARC, JSC, and MSFC. The model practices include the following:

- involving senior management in the administration of the ethics program,
- providing ethics training to new supervisors,
- providing public and confidential financial disclosure filers with cautionary memorandums,
- developing written procedures for administration of the advice and counseling component of the ethics program,

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- proactively working with departing senior employees' to avoid or resolve potential post-employment issues,
- leveraging ethics-training resources by sharing responsibility for preparing annual ethics training presentations, and
- providing ethics training to employees not required to receive training and to private sector companies likely to seek to do business with NASA.

Suggestions

To enhance NASA's ethics program, OGE suggests that NASA headquarters ethics officials work with all NASA Centers to take steps to ensure all financial disclosure reports, particularly new entrant reports, are filed timely. OGE also suggests that all Centers closely examine all requests related to approval for travel that might be authorized under the authority of either 31 U.S.C. § 1353 or the WAG exception to the gift rules at 5 CFR § 2635.204(g) and ensure that the proper authority is used to allow employees to engage in relevant travel/activities.

If you have comments or would like to discuss this report, please contact Trish Zemple, Associate Director, Program Review Division, at 202-482-9286.

Agency Comments

Each of the separately issued reports focusing specifically on LARC, JSC, and MSFC were released in draft to the respective Centers and NASA's Alternate DAEO. Comments were provided and addressed by OGE either through appropriate changes incorporated into the relevant sections of the final reports or as appended material in the reports' Agency Comments section.

Both MSFC and JSC provided extensive comments regarding OGE's concerns about WAG determinations at those and other NASA Centers. The comments from MSFC and JSC were substantively identical. For brevity, only the comments received in response to the MSFC report are provided.

The draft report specifically indicated that it appeared that several NASA centers, including MSFC, were issuing WAG determinations to attend events associated with shuttle launches at Kennedy Space Center (KSC) in Florida. The draft report noted that "It appears that the events in question are the events for which the employee has been placed in a travel status by NASA. Accordingly, it is likely that NASA should be accepting the free attendance at some, if not all, of these launch related events under the authority of 31 U.S.C. § 1353 rather than under the WAG provisions."

The relevant MSFC WAG determinations reviewed by OGE during the program review involved pre-launch receptions. These WAGs involved ancillary events that occurred in the days preceding launches. Although MSFC generally does use 31 U.S.C. § 1353 authority to accept free attendance where appropriate for employees attending events while in a travel status, our practice has been to rely

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on WAG authority to accept free attendance for most pre- and post- launch receptions for the following reasons:

Generally, the justification for MSFC employees to travel to KSC is for mission related work at the launch site and not attendance at an ancillary event, such as a launch reception. Employees are usually on official NASA mission travel to support the launch of the Space Shuttle or other vehicle, and most of these employees travel days or weeks prior to the launch as part of their NASA duties.

Due to the unpredictable nature of the launch schedule, most of the receptions at issue are scheduled on a last minute basis. Typically, invitees have already traveled to KSC for launch duties by the time they receive invitations to these events. This makes it impractical to use the reimbursable travel process, which requires procedures to be followed prior to the initiation of travel. Additionally, the pertinent GSA regulations also exclude mission travel from the definition of the types of events where the use of reimbursable travel might be appropriate. (See 41 CFR 304-2.1).

Generally, MSFC employees attend these launch receptions in their personal capacities, and not as part of their official NASA duties.

For these reasons, we feel it is appropriate to continue to follow the practice of relying on WAG authority to approve attendance at pre or post launch receptions where appropriate. MSFC is committed to having the best ethics program possible. We will continue to examine all requests related to approval for travel that might be authorized under the authority of either 31 U.S.C. § 1353 or the WAG exception to the gift rules at 5 CFR Part 2635.[2]04(g), to ensure that the proper authority is used to allow employees to engage in relevant activities.

OGE appreciates NASA's comments and recognizes that WAG determinations are within the purview of the agency making the determination. However, OGE continues to suggest that the Centers closely examine all requests related to approval for travel that might be authorized under the authority of either 31 U.S.C. § 1353 or the WAG exception to the gift rules at 5 CFR § 2635.204(g) and ensure that the proper authority is used to allow employees to engage in relevant travel or activities. Both MSFC and JSC, as stated in their comments on their respective reports, have agreed to do so. OGE, as always, is available for consultation regarding these issues.