



United States Office
Of Government Ethics

Report Number 09 - 09

Highlights

Model Practices

- NAWCAD leadership provides significant support for the ethics program.
- NAWCAD uses individualized written procedures to administer its financial disclosure systems.
- NAWCAD uses an electronic database to help track confidential financial disclosure filing information and ethics training dates.
- NAWCAD provides verbal training to all new employees and encourages non-covered employees to take annual ethics training.
- NAWCAD uses discretionary training to reinforce the importance of ethics.
- NAWCAD has an organized process for rendering ethics counseling to employees.

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

Ethics Program Review Naval Air Warfare Center, Aircraft Division Department of the Navy

March 2009 Report

Executive Summary

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

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

This report has been sent to the Department of the Navy's Designated Agency Ethics Official, the NAWCAD Commander, and the Naval Criminal Investigative Service Investigator.



**United States Office
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Ethics Program Review

**Naval Air Warfare Center, Aircraft Division
Department of the Navy**

March 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 Air Warfare Center, Aircraft Division (NAWCAD), Department of the Navy (Navy), focused on the elements listed below.

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

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

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

- Naval Hospital Pensacola,
- Naval Education and Training Command,
- Naval Air Systems Command (Headquarters),
- 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 OGE's review, the OGE review team met with the former Commander, NAWCAD to discuss the scope of the OGE review and the importance of agency leadership involvement in an ethics program, in accordance with 5 CFR § 2638.202(a). OGE found the former Commander significantly involved in supporting NAWCAD's ethics program. For example, the former Commander held ethics discussions during weekly senior leadership and Board of Directors' meetings and reiterated NAWCAD's dedication to maintaining an ethical culture in the NAWCAD Strategic Plan. OGE found the former Commander's support to be a model agency practice.

Change in Leadership Command

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

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- 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 routinely provide “all hands” memoranda that reiterate NAWCAD’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 NAWCAD ethics program.
- Incorporate ethics-related initiatives and accomplishments as part of the NAWCAD strategic plan and annual reports.

PROGRAM STRUCTURE

The ethics program at NAWCAD is organizationally located within the Office of Counsel, hereafter referred to as the Ethics Office. The NAWCAD Counsel serves as the agency’s Designated Ethics Counselor. Assisting the Counsel are seven attorneys who are appointed as Ethics Counselors and serve the NAWCAD ethics program in various capacities. At the time of OGE’s on-site fieldwork, two of the seven Ethics Counselors were principally responsible for managing the day-to-day operation of the ethics program. OGE found all of the Ethics Counselors to have been properly designated in accordance with the provisions of the Department of Defense 5500.7-R, Joint Ethics Regulation (JER).

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).

Written Procedures

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

Public Financial Disclosure System (SF 278)

The public financial disclosure system at NAWCAD is centrally administered and managed by the Ethics Office. Based on NAWCAD's master list of public filers, four employees met the filing criteria found at subpart B of 5 CFR part 2634 for public financial disclosure filing in 2008. However, the Ethics Office has responsibility for reviewing only two of the four public reports, in accordance with NAVAIR written procedures which state that the "Ethics Counselor serving the activity to which the supervisor is attached shall serve as the Ethics Counselor for the filer and supervisor." As a result, the public reports filed by the NAWCAD Commander and the NAWCAD Executive Director are reviewed by Ethics Counselors at NAVAIR and the Naval Air Warfare Center, Weapons Division respectively, and were not subject to OGE's review.

To determine the effectiveness of NAWCAD's public system, OGE examined the two public reports that were required to be filed with the Ethics Office in 2008. OGE evaluated the timeliness of filing, review, and forwarding of the reports to the Navy's DAEO, who is responsible for providing final review and certification. OGE also evaluated the quality of review of the reports by the Ethics Office. The two reports examined consisted of:

Type of Report

- 1 annual report
- 1 new entrant report

2 total

Filing/Initial Review Timeliness

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

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Timeliness of Forwarding to Navy DAEO

- Both reports were forwarded to the Navy DAEO for final review and certification in a timely manner.

Quality of Review

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

Confidential Financial Disclosure (OGE Form 450)

Each year, the Ethics Office notifies competency heads of their responsibility to designate a senior-level individual to serve as their competency's OGE Form 450 Program Representative. These representatives serve as liaisons to the Ethics Office and are responsible for monitoring their competency's overall confidential financial disclosure system process, including notifying filers of their requirement to file, tracking the filing progression of reports, and ensuring that completed reports are timely forwarded to the filers' immediate supervisors for an initial compliance review. Upon completion, reports are forwarded to the Ethics Office for final review and certification.

To evaluate the effectiveness of NAWCAD's confidential system, OGE examined 60 of the 793 reports that were required to be filed in 2008. The 60 reports OGE examined consisted of:

Type of Reports

- 10 new entrant reports
- 50 annual reports

60 total

Filing Timeliness

- All 60 reports were filed in a timely manner.

Review/Certification Timeliness

- All 60 reports were reviewed and certified in a timely manner.

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Quality of Review

All 60 reports appeared to have been thoroughly reviewed for compliance and completeness.

Office of Counsel Ethics Database

OGE noted that the Ethics Office uses an electronic database, known as the Office of Counsel Ethics Database (OCED), to track confidential financial disclosure filing information and ethics training dates for confidential filers. Developed and implemented by NAVAIR's Office of Counsel, the OCED is shared with the Ethics Office. During OGE's examination of the OCED, OGE found several useful features in the OCED that assist ethics officials with entering and updating information related to the filing progression of confidential reports and assigned training dates. These features include the ability to:

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

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

EDUCATION AND TRAINING

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

Initial Ethics Orientation

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

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

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

OGE was advised that in cases when a new employee is unable to attend an IEO presentation, a copy of the presentation slides is provided for them to read. Upon completion, new employees are required to certify their receipt of an IEO using the certification training form which is forwarded to the Ethics Office for retention.

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

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

According to training records provided by the Ethics Office, 137 NAWCAD employees received the required IEO during the first quarter of 2008.

General Observation

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

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

While this additional information is not required to carry out IEO, OGE notes that requiring such information helps to ensure that, as appropriate, new employees entering a

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covered position are identified. It also helps to verify compliance with the IEO requirement. OGE encourages both offices to continue these efforts.

Annual Ethics Training

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

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

To satisfy the annual training requirement for 2008, annual ethics training was made available through a narrated PowerPoint presentation hosted by NAVAIR's Career Development Office. (OGE notes that the training content used was a modified version of the DoD SOCO online ethics training module.) Upon the completion of training, covered employees were required to file a certification of completion with the Ethics Office, which is retained in each filer's report folder. (Annual training is tracked and monitored by the Ethics Office using the OCED system.) After examining the master list of NAWCAD public and confidential filers and cross-referencing the names with the training certifications on file, it appeared that all covered employees completed annual ethics training in 2008.

In light of the importance of ethics education and training in preventing employees from committing ethics violations, OGE notes that the Ethics Office, along with a large number of supervisors, encourages all NAWCAD employees to complete the online training which is made available to employees throughout the year. According to documents provided to OGE, 339 non-covered employees completed the annual training. OGE acknowledges the provision of ethics training to non-covered employees as a model agency practice and encourages the Ethics Office to continue this effort.

Additional NAWCAD Training Efforts

In addition to the formal training requirements highlighted above, NAWCAD 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 Good Counsel. Furthermore, the Ethics Office provides specialized in-person ethics training several times a year to NAWCAD Contracting Officer Representatives and Contracting Officer's Technical Representatives (COR/COTR) and to new NAWCAD science and technology hires that focuses on their ethics responsibilities. OGE considers the use of discretionary training to help keep employees aware of ethics-related issues to be a model practice.

ETHICS COUNSELING

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

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

OGE found the counseling program at NAWCAD to be responsive to the needs of its employees and to comply with the requirements of 5 CFR § 2638.203(b)(7) and (8). OGE examined a sample of the ethics-related counseling dispensed by the Ethics Office on varying ethics-related issues and found the counseling to have been accurate and consistent with applicable laws and regulations. OGE also notes that the counseling was generally rendered promptly.

NAWCAD also appeared to be meeting the requirements of subsection 9-502 of the JER with regard to providing guidance on the relevant Federal and DoD post-Government service employment restrictions to departing military and civilian employees. The Ethics Office provides in-person, post-employment briefings to those departing from Federal service as part of NAWCAD's employee check-out process. In addition to the briefing, employees are provided with written materials that outline the basic post-employment restrictions. These post-employment reference guides include the: Reference Guide to Post-Government Service Employment Activities of the Department of the Navy Personnel, the Post-Federal Government Service Employment Restrictions (for Civilian Personnel), and the Post-Federal Government Service Employment Restrictions (for Military Personnel). Should an employee have specific questions or request a formal ethics opinion, a post-Government service ethics questionnaire is required to be used. The questionnaire provides the Ethics Office with the pertinent information needed to provide written counseling to the employee on the post-Government service restrictions.

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General Observation

OGE found that the Ethics Office keeps written ethics counseling files in a notebook system 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 DABO 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 notes the close working relationships that the Ethics Office has established with the Office of Command Evaluation and Control, the Acquisition Integrity Office, and the Naval Criminal Investigative Service. OGE is satisfied that procedures are in place to effectively exchange ethics-related information among these offices and to resolve ethics issues.

During the period covered by OGE's review, two administrative actions were taken against NAWCAD employees for violations of the Standards in 2007. Both of the violations involved misuse of Government property. After reviewing the documentation provided, it appears that in both cases appropriate steps were taken to remedy the violation.

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.

NAWCAD accepts travel payments from non-Federal sources under the authority of 31 U.S.C. § 1353. The procedures for accepting payments are specified in Chapter 4 of the JER. They are also detailed in an internal instruction developed by the Navy and NAVAIR.

Though NAWCAD allows its employees to accept payments under § 1353, payments were not offered during the timeframe of OGE's review. OGE notes that if a travel payment had been accepted, the Ethics Office would be responsible for collecting the information to be reported, drafting the semiannual report of payments of more than \$250 per event, and forwarding the report to NAVAIR. In turn, NAVAIR would be responsible for reviewing the report and forwarding it for inclusion in the Navy's semiannual report to OGE.

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Summary

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

- demonstrating agency leadership support for the NAWCAD ethics program;
- using individualized written procedures to administer its financial disclosure systems;
- using an electronic database to help track confidential financial disclosure filing information and ethics training dates;
- administering an ethics training program that exceeds the minimum training requirements 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.

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