



United States  
**Office of Government Ethics**

1201 New York Avenue, NW., Suite 500  
Washington, DC 20005-3917

September 15, 2005

Ed

Alberto J. Mora  
Designated Agency Ethics Official  
Department of the Navy  
1000 Navy Pentagon  
Washington, DC 20350

Dear Mr. Mora:

The Office of Government Ethics (OGE) has recently completed a review of the ethics program at the Navy Exchange Service Command (NEXCOM), headquartered in Virginia Beach, Virginia. This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended (Ethics Act). Our objective was to determine the program's compliance with applicable ethics laws and regulations. We also evaluated the systems and procedures for ensuring that ethics violations do not occur. Our current review was conducted in June 2005. The following is a summary of our findings and conclusions.

#### HIGHLIGHTS

Overall, we found NEXCOM's ethics program to be sound and appropriate for its size and mission. Although the timely filing of new entrant confidential financial disclosure reports has remained a challenge for NEXCOM since we last addressed this issue during our August 1995 program review, we endorse the steps that were taken prior to and throughout our review in seeking remedies to elicit full compliance. As one of the most common review findings of our reviews of agencies with large, decentralized systems, we recognize the challenge NEXCOM faces to address this issue and trust the current steps, along with any prospective actions will ensure full compliance with 5 C.F.R § 2634.903(b) in the future. However, we strongly encourage ethics officials to continually monitor this system to ensure that these steps are effective.

#### BACKGROUND AND ETHICS PROGRAM STRUCTURE

NEXCOM is a component of the Department of the Navy (Navy) and a field office of the Naval Supply Systems Command (NAVSUP). Consisting of over 16,000 federal and non-appropriated fund (NAF) employees in over 100 locations worldwide (including seasonal employees), NEXCOM serves as the headquarters element for the worldwide Navy Exchange system, which is comprised of separate and distinct programs. These programs include: the Navy Exchange retail stores and service outlets; the Navy Lodge Program; the Navy Ship Store Program;

the Navy Uniform Program; and the Navy Telecommunication Program.<sup>1</sup> With the exception of the Ship Store Program, NEXCOM operates as a non-appropriated fund instrumentality (NAFI) of the U.S. Government. As such, NEXCOM is generally self-supporting and receives limited appropriated fund support for its operations. Its profits are reinvested in Navy's Morale, Welfare, and Recreation programs and in Navy Exchange buildings and equipment, which focus on the Sailor and the necessity for a good quality of life.<sup>2</sup>

The overall responsibility for the ethics program resides with the Counsel, NEXCOM. One of the Assistant Counsels and a legal technician are responsible for the day-to-day management of the program. While both the Counsel and Assistant Counsel are responsible for carrying out the majority of the ethics functions at NEXCOM, other offices are utilized to handle other aspects of the ethics program. These include NEXCOM's Office of Human Resources, Office of Internal Audit (OIA), and Loss Prevention and Safety (Loss Prevention). Additionally, NAVSUP's Office of Counsel and the Navy's Office of the Judge Advocate General (Navy JAG) are responsible for providing guidance and assistance to NEXCOM as needed.

#### RECENT CHANGES TO THE JOINT ETHICS REGULATION

Recently, three changes to the Joint Ethics Regulation (JER) were made to help preclude violations of the post-employment restrictions.<sup>3</sup> These changes are summarized below:

--*Annual Certification*: New subsection 8-400 now requires DoD employees who file a public financial disclosure report to certify annually that they are aware of the disqualification and employment restrictions of 18 U.S.C. §§ 207 and 208 and 41 U.S.C. § 423 (b) and (c), and that they have not violated those restrictions.

---

<sup>1</sup> More specifically, NEXCOM provides oversight for 109 Navy Exchange retail stores, 1,115 service outlets, and 150 public/private ventures; 41 Navy Lodges and 1 Navy Inn; 104 Uniform shops; and 174 ship stores. As part of transformation initiatives, the NEXCOM Commander serves as NAVSUP's Assistant Chief of Staff for Navy Family Support, overseeing all Navy quality of life services afloat and ashore, including food service programs, disbursing/ATMs-at-Sea, postal operations, and household goods/personal property.

<sup>2</sup> As an instrumentality of the U.S. Government, NEXCOM enjoys the same immunities and privileges as the U.S. Government in the absence of specific Federal statutes and acts in its own name to provide or to assist other Navy organizations in providing programs and services for military personnel and authorized civilians. Although, NAFIs, such as NEXCOM, do not meet the statutory definition of Federal agencies, as Government instrumentalities, they are subject to directives issued by the Department of Defense (DoD) and Navy, in addition to applicable Federal laws.

<sup>3</sup> On October 25, 2004, the Deputy Secretary of Defense signed a directive-type memorandum that established additional procedures to help ensure that DoD personnel are aware of and comply with statutes and regulations applicable to their transition from Federal service to private employment.

--*Annual Ethics Training*: New paragraph 11-301(d) now requires DoD components to include training on relevant Federal and DoD disqualification and employment restrictions during annual ethics trainings. Although current regulations at 5 C.F.R. § 2638.704(c) already require inclusion of the conflict of interest statutes, the JER requirement envisions including an enhanced discussion of the restrictions.

--*Guidance for all Departing DoD Personnel*: New subsection 9-502 requires DoD components to provide guidance on relevant Federal and DoD post-Government service employment restrictions, as part of out-processing procedures, to all DoD personnel who are leaving Federal service.

During our review we found NEXCOM to be complying with each of the three new requirements.

## FINANCIAL DISCLOSURE

Overall, we found NEXCOM's public and confidential financial disclosure systems effective in preventing potential conflicts of interest and to generally accord with statutory and regulatory requirements. Although the timely filing of new entrant confidential financial disclosure reports has remained a challenge for NEXCOM since we last addressed this issue in August 1995, we endorse the steps that were taken prior to and throughout our review in seeking remedies to elicit full compliance.

Additionally, we commend NEXCOM for having its own written procedures found in NEXCOM Instruction 5370.2P, which also includes procedures for rendering ethics education and training, to meet their individual needs in administering both the public and confidential financial disclosure systems. 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 are not clearly applicable to a subunit of an agency, such as a component, bureau, field location, etc., we consider this to be an agency best practice. Although we identified areas within these procedures that we felt could be strengthened, we are pleased to report that once this was brought to the attention of NEXCOM ethics officials swift action was taken to address our concerns.

### Confidential Financial Disclosure System- New Entrant System

When we last reviewed NEXCOM's ethics program in August 1995, our examination found none of the new entrant confidential reports we examined to have been filed within 30 days of the employee's assumption of the position requiring the filing of a confidential report. Accordingly, we recommended that NEXCOM ensure that all new entrant confidential filers timely submit their reports in accordance with 5 C.F.R. § 2634.903(b). To address this issue and improve the ethics program, each servicing Human Resources Office at NEXCOM was given the responsibility for notifying new entrant confidential filers of the filing requirement and for providing them with a blank OGE Form 450 as part of the new employee in-processing.

While our current review found five of seven new entrant confidential filers to have been identified and their reports filed in a timely manner, ethics officials acknowledged that the timely filing of new entrant reports has remained challenging due to the large employee turnover that occurs at widely dispersed NEXCOM locations. Late filing diminishes an agency's ability to provide timely and specific conflict of interest advice, which is the fundamental purpose of any ethics program. Therefore, we strongly encourage ethics officials to continually monitor this system to ensure that the current steps described below are effective in meeting the requirements of 5 C.F.R § 2634.903(b) in the future.

Accordingly, to help ensure that new entrant confidential filers submit their reports in a timely manner, filers will now be identified and/or provided with a blank OGE Form 450 in one of the following three ways: 1) during the in-processing of new hires provided by each servicing Human Resources Office; 2) during the Welcome Aboard or new "associate" indoctrination training (also, see Education and Training section below); and 3) through increased monitoring and oversight by NEXCOM ethics officials. As part of increased monitoring and oversight, the legal technician assigned to the ethics program will now query the Human Resources personnel database twice a month to ensure that all new employees entering and transferring into covered positions timely submit their confidential reports. If a report is not filed by the due date, a reminder will be sent to both the new entrant and their supervisor. If a report is not filed two days after the due date, a reminder will be sent to the next supervisory level and daily thereafter further up the chain of command until the report is filed.

#### Confidential Financial Disclosure System- Annual System

To determine the effectiveness of NEXCOM's confidential disclosure system for annual filers, we reviewed the master list of annual confidential filers and examined a sample of 100 of the approximately 829 annual confidential reports that were required to be filed in 2004. Although we found the majority of the reports we examined to have been filed timely in accordance with Chapter 7 of the JER, ten reports were filed late.<sup>4</sup> While we do not consider these ten late reports to be egregious, we encouraged ethics officials during our exit conference to be diligent in ensuring that all annual reports are filed timely. All annual reports were reviewed thoroughly, as evidenced by the number of reports that were sent back to the filers for additional clarification or corrections regarding technical deficiencies. Additionally, we examined a sample of the accompanying cautionary memoranda attached to these reports and found them very useful in keeping filers apprised of potential conflicts.

Although we found no substantive issues with these reports we did discuss with NEXCOM ethics officials two procedural issues, which we have been assured will be addressed during the next filing cycle. These included: 1) ensuring that all confidential reports are consistently date stamped and 2) applying the general reviewer's rule when amending reports. Regarding the latter, we noticed

---

<sup>4</sup>The JER states that an automatic filing deadline extension is granted to all confidential reports from October 31 to November 30.

that a few of the reports were sent back to filers to make relatively minor technical corrections. We reminded NEXCOM ethics officials that as a general rule, when it is necessary to amend a report based on additional information provided by the filer, it is acceptable for the reviewing official to do so. In addition, reviewers should annotate the report with the date the information was provided, how it was provided (e.g., telephone, e-mail, etc.), and his or her initials. This can be done on the report in the box marked "Comments of Reviewing Officials."

#### Public Financial Disclosure System

NEXCOM has six employees who meet the filing criteria found at subpart B of 5 C.F.R. part 2634 for public financial disclosure filing, which include the NEXCOM Commander and 5 NAF-Senior Executive Service (SES) equivalent employees. We examined five of the seven public reports required to be filed in 2005 and of the reports we examined, one was a new entrant, one was a termination, and three were annual reports. Of the two reports we did not examine, one was a new entrant report and the other was the Commander's annual report.

We found all to comply with the timeliness requirements for submission and initial review.<sup>5</sup> We determined that ethics officials at NEXCOM executed a thorough conflict-of-interest analysis, as our examination found no technical and/or substantive deficiencies. Although both unexamined reports, at the time of our review, were still being reviewed by NEXCOM ethics officials, we later confirmed that both reports had been timely submitted and initially reviewed. As an aside, we found that each public filer completed the annual certification required by subsection 8-400 of the JER. The certificates were obtained coincident with the annual public filing cycle.

#### EDUCATION AND TRAINING

We are pleased to report that our current review found NEXCOM's education and training system, and more specifically its annual ethics training program, to satisfy the requirements found at 5 C.F.R. part 2638, since our 1995 review found lapses where annual ethics training was not being provided to all covered NEXCOM employees. In addition, we also found NEXCOM's intranet Web site to be a helpful ethics resource tool for all NEXCOM employees. Although we were advised at the time of our fieldwork that the Web site was in the process of being further developed and refined, our examination of the site's content found the ethics coverage to be useful and informative and our suggestions for further enhancement were well-received.

---

<sup>5</sup> All public reports are initially reviewed by both ethics officials at NEXCOM and are then forwarded to NAVSUP for further review. With the exception of the Commander's report, upon the completion of NAVSUP's review, the reports are forwarded to the Assistant General Counsel for Ethics on your staff, for final review and certification. The Commander's report, however, is forwarded to the Navy JAG for final review and certification.

### Initial Ethics Orientation

NEXCOM's initial ethics orientation (IEO) process routinely satisfies the basic requirements of the training requirement for all new employees. IEO is accomplished primarily through the servicing Human Resources Office as part of each employee's Welcome Aboard or new "associate" indoctrination training. We were advised that generally all IEO training includes a discussion of the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) in general and a more specific review of Chapter 2 of the JER, which includes the DOD supplemental standards of conduct regulation. In addition, a brief overview on ethics is provided in NEXCOM's employee handbook and is also discussed. Training completion is tracked by each office through the completion of a new hire orientation checklist that is placed in the individual's personnel file.

While we found evidence that ongoing IEO training is provided to new employees of NEXCOM, as required, two concerns were raised with ethics officials.

- We found no uniformity as to what/how each servicing Human Resources Office was providing IEO training to new employees. For example, in addition to what is generally covered, some locations incorporate OGE- and NEXCOM-produced ethics training videotapes into their IEO presentations while others do not.
- We found no indication as to whether ethics officials, or more directly the servicing Human Resources Offices, were aware during IEO training whether any attendees were required to file a confidential report. As we discussed with ethics officials this could be contributing to the challenges of timely new entrant confidential filing.

To address these concerns, NEXCOM ethics officials met with Human Resources personnel to develop a self-study booklet for the purposes of IEO training. To satisfy the IEO training requirement, we were advised that all new NEXCOM employees will be given this booklet, which will include a summary of the Standards; a copy of the principles of ethical conduct; the DoD supplemental regulation; contact information for NEXCOM ethics officials; and, as required, a reminder notice to file a confidential report within 30 days of assuming a covered position. The booklet will also feature a pre- and post-test.<sup>6</sup> Additionally, NEXCOM ethics officials will now begin rendering live IEO presentations at various times throughout the year. We commend NEXCOM ethics officials for creatively resolving our concerns and believe this format along with the live presentations will not only engage employees but will ensure timeliness of new entrant filing.

### Annual Ethics Training

To satisfy the annual training requirement, NEXCOM requires all covered employees to complete the DoD Standards of Conduct Office (SOCO) online ethics training module, which in

---

<sup>6</sup> The post-test will be signed, dated, and returned to the servicing Human Resources Office for retention in each employee's official personnel file as proof of IEO completion.

2004 focused primarily on working with contractors. Upon the completion of training, covered employees are required to file a certification of completion with NEXCOM ethics officials, which is tracked simultaneously with the tracking of the annual public and confidential reports and retained in each filer's report folder. According to SOCO instruction the online training satisfied the JER's new training requirement at paragraph 11-301(d) for 2004.

After examining NEXCOM's master lists of both public and confidential filers and cross-referencing the names to the training certifications on file, it appeared that all covered employees completed annual ethics training in 2004. Although all high-level public and certain confidential filers are also required to annually complete the SOCO online ethics training, we were advised that periodic ethics briefings are also provided to them throughout the year.

#### ACCEPTANCE OF TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

NEXCOM accepts travel payments from non-Federal sources for travel, subsistence, and related expenses incurred by agency employees on official travel under the authority of 31 U.S.C. § 1353. The procedures for accepting payments are specified in Chapter 4 of the JER. NEXCOM is responsible for collecting the information to be reported, drafting its semiannual report of payments of more than \$250 per event, and forwarding its reports to NAVSUP for further processing. NAVSUP is responsible for reviewing these acceptances and forwarding them for inclusion in the Navy's semiannual report to OGE.

In NEXCOM's two most recent semiannual reports covering the periods from April 1, 2004 - September 30, 2004 and October 1, 2004 - March 31, 2005, there were 56 and 48 payments, respectively. Based on our examination of selected written authorizations and other supporting documentation, we concluded that the examined acceptances were in compliance with the relevant requirements. During our examination of the October 1, 2004 - March 31, 2005 semiannual report, however, we noticed there were five instances of travel acceptances totaling less than \$250 included on the report. Accordingly, we reminded ethics officials and a NAVSUP official that semiannual reports forwarded to OGE must only include travel payments totaling more than \$250 per event. As these reports are available for public inspection, they should contain no more information than what is required. We were provided assurances that only payments meeting the required reporting threshold would hereafter be included on future NEXCOM semiannual travel reports.

#### ADVICE AND COUNSELING

We are pleased to find the advice and counseling program to be responsive to the needs of NEXCOM employees and to comply with the requirements of 5 C.F.R. § 2638.203 (b)(7) and (8). We examined a sample of the e-mail advice dispensed by ethics officials on varying ethics-related issues ranging from minor gift questions to complex seeking and post-employment matters and found the advice provided to be thorough, timely, and consistent with applicable laws and

regulations. Moreover, we found the advice to fully document the specific issue(s) at question and the basis for the advice being rendered.

In addition, we found NEXCOM's approach to providing guidance on the relevant Federal and DoD post-Government service employment restrictions to all departing DoD personnel to exceed the new requirement at subsection 9-502 of the JER. Not only were we pleased to see NEXCOM provide in-person, post-employment counseling to all departing military employees, we were also thoroughly impressed to see the level of creativity used to ensure that all other departing employees at NEXCOM are apprised of the relevant restrictions. For example, written notice is provided on the stub of the departing employees last paycheck to inform them that they may be subject to certain seeking and/or post-employment restrictions upon leaving NEXCOM. The notice directs these employees to a link on the Web site where they can download a summary of NEXCOM's 13 Basic Rules for Personnel Leaving NEXCOM and a post-Government service ethics questionnaire. The questionnaire is used to provide NEXCOM ethics officials with pertinent information needed to provide written counseling on the post-Government service restrictions. We consider NEXCOM's approach to be an agency best practice.

## ENFORCEMENT

In the absence of its own office of inspector general, NEXCOM utilizes the services, when appropriate, of both OIA and Loss Prevention to fulfill the typical inspector general-related functions. While OIA is responsible for conducting internal audits that assist in improving efficiency, accountability, and program effectiveness at NEXCOM, Loss Prevention is responsible for conducting internal investigations relating to allegations of misconduct, impropriety, conflicts of interest, or other violations of Federal statutes and regulations. Based on our discussions with all parties, we are satisfied that procedures are in place to effectively exchange ethics-related information and to resolve ethics issues.

While 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 this review, ethics officials are aware of the procedures prescribed in 5 C.F.R. § 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. Additionally, although there were no detected violations of the Standards during the period covered by this review, we were advised of two investigations that were conducted in 2001 and 2002 of two employees for alleged violations of the Standards. After examining the documentation related to the final actions in both cases, it appears the appropriate steps were taken in remedying the violation.

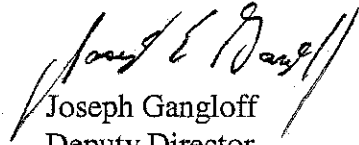
-----



Mr. Alberto J. Mora  
Page 9

In closing, I wish to thank NEXCOM ethics officials for their effort on behalf of the ethics program. Please contact David A. Meyers at 202-482-9263, if we can be of further assistance.

Sincerely,



Joseph Gangloff  
Deputy Director  
Office of Agency Programs

Report number 05- 021