



U.S. Office of Government Ethics
Program Review Division

Ethics Program Review

Department of the Navy

Report No. 12-05
November 2011

Results in Brief

The United States Office of Government Ethics (OGE) conducted a review of the Department of the Navy's (Navy) headquarters ethics program between July and August, 2011. The results of the review indicated that Navy's headquarters ethics program is effectively administered and in compliance with applicable laws, regulations, and policies. The improvements proposed in this report relate to a few isolated matters.

Highlights

- Navy Assistant General Counsel (Ethics) incorporates various ways to ensure that communication exists among ethics counselors, such as use of an ethics e-mail distribution list and ethics roundtables.
- Navy conducts robust internal reviews of the ethics program.
- Navy makes annual ethics training available to all employees.
- Navy runs an ethics official certification program.

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Objectives, Scope, and Methodology

OGE provides leadership for the purpose of promoting an ethical workforce, preventing conflicts of interest, and supporting good governance. 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. OGE has the authority to evaluate the effectiveness of executive agency ethics programs. See Title IV of the Ethics in Government Act and 5 CFR part 2638.

OGE's review of Navy focused on the headquarters components of the Department. Specifically, the review focused on the headquarters components of the Office of the Secretary, the Office of the Judge Advocate General, the Office of the Chief of Naval Operations, and the Marine Corps. The Office of the Secretary includes the Office of the Under Secretary, the offices of the four Assistant Secretaries, and the Office of the General Counsel (collectively known as the Secretariat).

To assess Navy's ethics program, OGE examined a variety of documents provided by the various offices under review, such as training materials and policies and procedures governing elements of the program. OGE also examined a sample of public financial disclosure reports, confidential financial disclosure reports, and ethics advice and counsel. In addition, the OGE review team met with several officials to obtain additional information on Navy's ethics program, seek clarification on issues, and verify data collected. These officials included the Designated Agency Ethics Official (DAEO), the alternate DAEO (ADAEO), the Assistant General Counsel (Ethics) (AGC(E)), Deputy DAEOs, the Head of the Executive Personnel Branch and Supervisory Human Resources Specialist, the Inspector General, and the Counsel of the Naval Criminal Investigative Service.

Program Administration

The General Counsel of the Navy serves as the DAEO and the Judge Advocate General of the Navy serves as the Alternate DAEO. The AGC(E) provides overall management of the ethics program and is one of six Deputy DAEOs who have responsibility for the administration of the ethics program within their respective areas. The AGC(E) is assisted by a staff attorney and is co-located with another Deputy DAEO, the Deputy Assistant Judge Advocate General (Administrative Law), who supports the ADAEO. Navy credits this co-location with facilitating consistency in the administration of the ethics program between uniformed and civilian communities within the Department.

The Navy's ethics program is decentralized. Deputy DAEOs are assisted by approximately 600 attorneys department-wide, who serve as ethics counselors. Additionally, first line supervisors who serve as "agency designees" also carry out ethics-related tasks, including review of financial disclosure reports and approval of outside activity requests.

While Navy's ethics program is highly decentralized and dispersed, ethics officials have incorporated various ways to ensure that effective lines of communication exist among the

DAEO and headquarters ethics counselors and their counterparts at regional offices. Consequently, the AGC(E) meets with the DAEO at least once a month to discuss ethics issues and to provide updates on ethics developments. Furthermore, an ethics e-mail distribution list (listserv) is utilized to issue advisories to Navy ethics counselors to disseminate information about ethics related issues and advisories. The AGC(E) also conducts quarterly 90-minute ethics roundtables via phone with ethics counselors world-wide to discuss ethics-related issues. Additionally, a website is available to Navy's legal community which includes ethics counselors and support staff, to disseminate ethics information.

Navy provides substantial oversight of its ethics program. The Naval Audit Service and the Naval Inspector General conduct periodic reviews of the ethics program throughout the Department. The reviews are integrated as part of larger reviews and focus on compliance with ethics laws, regulations, and policies as well as effectiveness in preventing ethics violations. The results of these reviews are shared with ethics officials and other high-level agency leadership, including the Secretary of the Navy.

During the review, OGE learned of the efforts the Secretary of the Navy is taking to instill a values-based approach to ethics within the Department. The Secretary has reinforced with senior leaders the importance of cultivating an ethical culture, maintaining personal accountability, and applying values of honor, courage, and commitment in the decision-making process. Navy told us it upholds this values-based approach through its willingness to take quick, decisive personnel action against officials who breach the trust of command.

Financial Disclosure

Public financial disclosure

The DAEO serves as the certifying official for Presidentially Appointed, Senate Confirmed (PAS) filers. The AGC(E) serves as the initial reviewing official for PAS filers. Initial review of other public reports is conducted by ethics counselors. The reports are then forwarded to Deputy DAEOs for certification and retention: the Deputy Assistant Judge Advocate General (Administrative Law) for uniformed filers, the Counsel to the Commandant of the Marine Corps for Marine Corps civilian filers and selected senior uniformed filers, the Staff Judge Advocate to the Commandant of the Marine Corps for the remaining Marine Corps uniformed filers, and the AGC(E) for all other civilian filers. Navy uses the Department of the Army's electronic Financial Disclosure Management system (FDM) and encourages filers to submit reports through the system.

OGE reviewed a 13 percent sample of public financial disclosure reports reviewed at Navy headquarters in 2011. We found that Navy conducts a thorough conflict of interest analysis of public financial disclosure reports. Most financial disclosure files include a conflicts analysis results sheet. Additionally, Navy uses the filer's billet/position description in the review of public reports, which is also included in financial disclosure files. OGE found that ethics officials provided memos to filers summarizing the results of the review.

Overall, public financial disclosure reports were submitted by filers in a timely manner. OGE noticed that files of civilian public filers included personnel transaction sheets, signaling coordination with the human resources function regarding new entrant and termination public filers. The Head of the Executive Personnel Branch also communicates with the AGC(E) regularly with regard to executives.

OGE requires that final certification of public financial disclosure reports occur within 60 days of report receipt when the reports do not require additional information or remedial action. (See OGE Program Management Advisory PA-11-04). OGE found that 39 percent of its sample of public reports was certified beyond 60 days. The impact of this finding is minimal because OGE found that Navy ethics counselors provide a timely and substantive intermediary review of public financial disclosure reports prior to final certification. Additionally, in most cases the ethics counselors sent cautionary memos to filers when warranted. Because the impact is nominal, OGE is not making a recommendation in this area, but reminds ethics officials that final certification should occur within 60 days when no follow up information is requested or remedial action is required. Since ethics counselors perform a substantive review of non-PAS public financial disclosure reports at the intermediary stage, the DAEO could alternatively choose to designate ethics counselors as the final reviewing official.

Confidential financial disclosure

Management and review of confidential financial disclosure reports are conducted by local ethics counselors. However, the AGC(E) is responsible for collecting, reviewing, and maintaining confidential reports for select General Counsel attorneys and personnel assigned to the central office and for several Secretariat personnel who are not served by an ethics counselor. Generally, supervisors conduct an intermediate review of confidential financial disclosure reports. As in the case of public filers, confidential filers are encouraged to use the FDM system.

OGE reviewed a 48 percent sample of confidential reports reviewed at Navy headquarters in 2011. We found that the Navy conducts a thorough conflict of interest analysis of confidential financial disclosure reports.

In its sample, OGE captured a small number of new entrant confidential reports. We found that 69 percent of our sample of new entrant filers filed their reports late. The AGC(E) stated that there are generally few new entrant confidential filers at headquarters. While the sample was small, there was also some anecdotal indication that identification of some new entrant filers in such a large organization can be a challenge. Responses from ethics officials indicate difficulty in identifying current employees who assume duties requiring them to file. Ethics officials mostly rely on supervisors for such notifications. During the course of the review, Navy developed a detailed plan of action to improve the timeliness of new entrant confidential filers at headquarters. Based on assurances received from ethics officials regarding implementation of the plan, OGE is not making a formal recommendation in this area but suggests that Navy assess the impact of its action plan on timely submission of new entrant confidential reports at headquarters within six months of this report's issuance.

OGE found that confidential filers generally submitted annual financial disclosure reports in a timely manner. The few late reports were mostly only tardy by a matter of days. OGE is satisfied that adequate procedures are in place for follow-up with delinquent annual filers.

Overall, OGE found that certification of confidential financial disclosure reports were conducted in a timely manner. The General Counsel of the Navy's Litigation Office appeared to have late certification of confidential financial disclosure reports. However, Navy indicated that the SES level reviewer in this office had not documented the initial conflict of interest review of each report that was conducted within days of submission. Per OGE Advisory PA-04-11, certification of the OGE Form 450 by either the DAEO or reviewing official must be indicated by a signature in either the "Supervisor/Intermediate Reviewer" or "Final Reviewing Official" block. Navy indicated that going forward, this reviewer will either sign the "Supervisor/Other Intermediate Reviewer" signature block on the OGE Form 450, or otherwise document the review. Navy explained that late final certification in this office was an aberration in 2011 due to transition to a new Director. The DAEO should consider whether to delegate to the SES level supervisor the authority to certify the OGE Form 450 through signature in the "Supervisor/Other Intermediate Reviewer" signature block, given the reliance on the supervisor's conflicts analysis.

Financial Disclosure System for Advisory Committee Members

Navy has two advisory committees at headquarters: The Secretary of the Navy Advisory Panel (SNAP) and the Chief of Naval Operations (CNO) Advisory Panel. The members of these committees are special Government employees and are generally required to file confidential financial disclosure reports.

OGE reviewed the most recent financial disclosure reports filed by members of these two advisory committees and found no issues with the agency's review of these reports.

Suggestions

- OGE reminds ethics officials that final certification of public financial reports should occur within 60 days when no follow up information is requested or remedial action is required. The DAEO may elect to designate ethics counselors as the final reviewing official for non-PAS public reports.
- The DAEO should consider whether the SES level supervisor, who currently conducts an initial review of confidential financial disclosure reports within the Navy Litigation Office, should have delegated authority to sign in the "Supervisor/Other Intermediate Reviewer" signature block on the OGE Form 450.
- Within six months of this report's issuance, Navy should assess the impact of its efforts to improve the timely submission of new entrant confidential reports at headquarters.

Ethics Agreements

At this time, Navy has seven PAS officials. All PAS officials that have ethics agreements in place have satisfied the terms of their agreements.

Education & Training

Effective mechanisms are in place to track the completion of initial ethics orientation and annual training. The Secretariat/Headquarters Human Resources Office (S/HHRO) provides initial ethics orientation materials to all required employees via the Navy's website or during in-processing. The AGC(E) also provides in-person initial ethics training to new employees in-processing through S/HHRO. The Navy website is accessible to all employees which permits the submission of questions to ethics counselors and provides basic ethics information. Additionally, many new employees also receive in-person initial ethics orientation when they report to their assigned activity. OGE reviewed the initial ethics orientation materials and found them compliant with all relevant requirements.

Each organization develops annual ethics training and delivers it to its employees. The AGC(E) provides in-person annual training to PAS filers. An on-line annual ethics training module, prepared by the AGC(E), is also available to satisfy this training requirement. OGE reviewed Navy's training materials and found them compliant with all relevant requirements. OGE also examined Navy's 2011 annual training plans and found that they met relevant requirements.

In 2008, the DAEO established the Navy Ethics Counselor Certification Program to ensure that ethics counselors receive adequate training to successfully perform their ethics duties. Initial certification requires a minimum of eight hours of training in the core standards of conduct and government ethics subject areas or extensive on the job experience. Additionally, maintenance of the certification requires ethics counselors to receive one hour of annual refresher training. The AGC(E) and the Deputy Judge Advocate General (Administrative Law) track compliance with these requirements and maintain databases of certified ethics counselors.

Advice & Counsel

The Secretariat, Office of the Judge Advocate General, Office of the Chief of Naval Operations, and the Marine Corps provide ethics advice and counsel on a daily basis. Ethics advice covers the full spectrum of standards of conduct issues, including financial disclosure, gifts, use of Government resources, conflicts of interest, post-Government employment, support to non-Federal entities, travel, and outside activities.

Advice and counsel is primarily given by the Deputy DAEOs and ethics counselors. Employees go to their ethics counselors for advice and counsel. According to the Deputy DAEOs, advice is provided by phone, email, or formal memo. Storage of advice varies by office. For example, the Office of the General Counsel within the Secretariat utilizes a shared drive accessible to ethics staff within that office. The Office of the Judge Advocate General uses an online repository that archives ethics advice.

When ethics counselors encounter a complex or novel issue, they contact the AGC(E) who serves as an ethics subject matter expert for the Department. The AGC(E) also communicates with other Deputy DAEOs regarding ethics advice and counsel. Consistent advice and counsel is ensured by the use of the ethics listserv, which reaches all Deputy DAEOs and ethics counselors throughout the Navy. Additionally, quarterly roundtable sessions with ethics counselors allow for live discussions of issues and topic presentations. A collaborative approach is taken with respect to providing advice and counsel. The Navy regularly coordinates ethics issues with the Department of Defense's Standards of Conduct Office, and, as appropriate, the other military services. Written advice and counsel samples reviewed by OGE were consistently accurate, timely, and complete.

Agency-Specific Ethics Rules

Financial disclosure filers are required to seek approval of outside employment and activities with a prohibited source, in accordance with DOD supplemental regulations at 5 CFR § 3601.107 and the Joint Ethics Regulation (JER). Employees must obtain written approval from their supervisors. Supervisors often consult ethics counselors when approving outside activities of subordinates.

Enforcement

Navy follows the guidance in Chapter 10 sections 1 and 2 of the JER on enforcement of ethics laws and regulations, which includes prescribed penalties and reporting requirements. The Memorandum of Understanding between the Department of Justice (DOJ) and the Department of Defense, DOD instructions 5525.07, 7050.01 and Secretary of the Navy instructions 5800.12B and 5370.5B provide additional guidance.

In practice, the roles of the Navy Inspector General (IG), the Navy Criminal Investigative Service (NCIS), and the ethics office are clearly defined and a good working relationship exists between the offices. Either the IG or NCIS may receive allegations of suspected violations. The IG addresses violations of the Standards of Conduct. NCIS investigates matters involving violations of title 18 and conflicts of interest statutes. NCIS keeps the AGC(E) and the DAEO informed of any investigation related to the conflicts of interest statutes. NCIS also initiates referrals to the DOJ and concurrently notifies OGE of such referrals.

In 2010, Navy reported 114 disciplinary actions based wholly or in part upon violations of the standards of conduct provisions and seven violations of the criminal conflict of interest statutes. NCIS made seven referrals to the DOJ of potential violations of the criminal conflict of interest statutes.

1353 Travel Acceptances

The Navy submitted to OGE in a timely manner the required semi-annual reports of payments accepted from non-Federal sources. Navy has detailed procedures regarding the acceptance of such gifts. SECNAV Instruction 4001.2J, Acceptance of Gifts, is the primary reference within Navy for acceptance of gifts of travel from non-Federal sources. This guidance includes

designation of gift acceptance authorities as well as Navy policy regarding acceptances. Gifts from outside sources are coordinated with the Assistant for Administration, Office of the Secretary of the Navy, who serves as the principal point of contact for gifts requiring Secretariat-level action. Acceptance authority has been further delegated within the Navy and the Marine Corps.

Agency Comments

Navy provided comments on the draft version of this report. Navy's comments in their entirety are attached to this report as an appendix.

Ms. Rashmi Bartlett
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Dear Ms. Bartlett:

Thank you for the opportunity to review and comment on the final draft report concerning the United States Office of Government Ethics (OGE) program review of the Department of the Navy's (DON's) headquarters ethics program. We are pleased that OGE found the DON's headquarters ethics program to be effectively administered and in compliance with applicable laws, regulations, and policies. The report contains several suggestions regarding the DON's headquarters public and confidential financial disclosure systems. These suggestions are addressed below.

In order to meet the 60-day final certification requirement for public financial disclosure reports, OGE has suggested that the Designated Agency Ethics Official (DAEO) consider designating ethics counselors as the final reviewing authority for non-PAS public reports. As noted in the report, OGE found that DON ethics counselors were providing a timely and substantive intermediate review prior to final certification. While DON will continue to make every effort to meet the 60-day final certification requirement for public financial disclosure reports, we believe that it is important to retain final certification authority at the Deputy DAEO level. Retaining final certification authority at the Deputy DAEO level ensures that the final review of all DON public financial disclosure reports is conducted by an experienced ethics official, thereby maintaining the quality and consistency of the conflicts review. DON will emphasize to ethics counselors in training and guidance the need for timely intermediate reviews and forwarding of reports in order to enable Deputy DAEOs to meet the 60-day final certification requirement.

To address timely review of confidential public financial disclosure reports within the Navy Litigation Office, OGE suggests that the DAEO consider whether the Senior Executive

Service (SES) level supervisor, who currently conducts an initial review of the financial disclosure reports within the Navy Litigation Office, should be delegated authority to certify the OGE Form 450 through signature in the "Supervisor/Other Intermediate Reviewer" signature block on the OGE Form 450. As noted by OGE, while DON believes that the late final certification of confidential reports in the Navy Litigation Office was an aberration in 2011 due to a vacancy in the Director's position, the Navy Litigation Office has, nevertheless, re-examined its OGE Form 450 review procedures. As a result, the filer's immediate supervisor will now conduct the initial review and sign in the "Supervisor/Other Intermediate Reviewer" signature block. The SES-level Deputy Director will then conduct the final agency review and sign in the "Agency's Final Reviewing Official" block. Delegating final certification authority to the Deputy Director should help ensure timely certification without negatively impacting the quality of the conflicts review.

OGE notes that the DON has developed a detailed plan of action to improve the timeliness of new entrant confidential filers at headquarters DON and suggests that the DON assess the impact of its action plan on timely submission of new entrant confidential reports at headquarters within six months of the report's issuance. DON concurs and will conduct the suggested assessment within six months of the report.

We appreciate the opportunity to review OGE's final draft report and provide comments. The DON continually seeks to improve its headquarters ethics program, and the OGE program review provided us with another opportunity to do so. We would also like to thank the OGE program review team for their professionalism and patience throughout the review process. If there are any follow-up questions, please do not hesitate to contact me or Mr. David LaCroix, Assistant General Counsel (Ethics) at (703) 614-7425.

Sincerely,

Paul L. Oostburg Sanz