



United States Office
Of Government Ethics

Report Number 09-023

Highlights

Model Practices

- Holding regularly scheduled meetings between ethics officials and LARC's leadership to discuss ethics-related issues.
- Issuing the LARC Director's Ethics Policy Statement directing employees to hold themselves to the highest ethical standards.
- Providing public and confidential financial disclosure filers with cautionary memorandums.
- Including senior staff in ethics training sessions for public filers.
- Leveraging ethics-training resources and developing focused training for agency leadership.
- Posting periodic ethics-related notices on LARC's Home Page.

OGE Suggests

- That LARC ethics officials follow up with financial disclosure report filers to ensure full disclosure of underlying assets of investments and other financial interests.

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 National Aeronautics and Space Administration Langley Research Center

September 2009 Report

Executive Summary

The United States Office of Government Ethics (OGE) has completed its review of the ethics program at the National Aeronautics and Space Administration's (NASA) Langley Research Center (LARC). 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 as set forth in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures for administering the program.

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

- holding regularly scheduled meetings between ethics officials and LARC's leadership to discuss ethics-related issues,
- issuing the LARC Director's Ethics Policy Statement directing employees to hold themselves to the highest ethical standards,
- providing public and confidential financial disclosure filers with cautionary memorandums,
- including senior staff in ethics training sessions for public filers,
- leveraging ethics-training resources and developing focused training for agency leadership, and
- posting periodic ethics-related notices on LARC's Home Page.

OGE suggests that LARC ethics officials follow-up with financial disclosure report filers to ensure full disclosure of underlying assets of investments and other financial interests.

This report has been sent to LARC's Chief Counsel, NASA's Designated Agency Ethics Official, and NASA's Inspector General.



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Ethics Program Review

National Aeronautics and Space Administration Langley Research Center

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

Ethics Program Review: NASA – LARC

OGE's review of NASA focused on the ethics programs at three NASA Centers: Langley Research Center (LARC), Marshall Space Flight Center (MSFC), and the Lyndon B. Johnson Space Center (JSC). This report details OGE's review of LARC. Reports detailing OGE's review of MSFC and JSC 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.

LARC's Director made clear leadership's expectation that employees will maintain high ethical standards in an Ethics Policy Statement dated September 14, 2007. The Ethics Policy Statement directs that employees hold themselves to the highest ethical standards, be familiar with all applicable ethics regulations, and avoid even the appearance of impropriety. This unequivocal statement of expectations is a model practice. It helps raise the level of awareness not only of the ethics program in general, but also of LARC leadership's support for the ethics program.

The LARC Deputy Director met with the OGE review team during the fieldwork portion of the review of the LARC ethics program. The Deputy Director stated that he and the Director maintained a close and effective relationship with LARC ethics officials. Ethics officials provide the Director and Deputy Director with a list of ethics-related issues on a weekly basis. Face-to-face meetings are held every two or three weeks specifically to discuss ethics-related issues. OGE considers this type of exchange between ethics officials and agency leadership to be a model practice. OGE encourages LARC to publicize these meetings to enhance awareness of LARC's leadership support for the ethics program.

LARC ethics officials and the NASA Office of the Inspector General's local Resident Agent in Charge related that LARC's leadership has shown their support of the ethics program.

PROGRAM STRUCTURE

LARC's Chief Counsel has been designated as a NASA Agency Designee for ethics issues. As an Agency Designee, the Chief Counsel is responsible for administering the ethics program within LARC. The Chief Counsel has delegated authority for carrying out ethics-related functions to eight members of his staff. The Associate Chief Counsel is specifically designated as the approving authority for training materials intended to satisfy ethics training and education requirements. The Associate Chief Counsel and the remaining members of the Chief

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Counsel's staff share responsibility for advice and counseling, financial disclosure-related functions,¹ and other ethics program elements.

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

OGE's examination of the public and confidential financial disclosure systems at LARC found that comprehensive written procedures are in place and allow for the efficient administration of both systems. These procedures are found in Chapter 4 of the NASA Procedural Requirements (NPR).

Public Financial Disclosure System (SF 278)

To evaluate the filing, review, and certification of public reports filed by LARC employees, OGE examined 25 of the 75 public reports required to be filed by LARC employees in 2007. The following is a summary of OGE's examination.

Type of Report

- 16 incumbent reports
- 3 new entrant reports
- 3 termination reports
- 3 combination incumbent/termination report

25 total

¹Confidential financial disclosure reports filed throughout NASA are centrally processed by the NASA Shared Services Center.

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Filing Timeliness

- 22 reports were filed timely.
- 2 reports were filed late, but within 30 days of the filing deadline.
- 1 report was filed by a new entrant who did not indicate a date of appointment, therefore; the timeliness of filing could not be determined.

25 total

Review Timeliness

- All 25 reports were reviewed in a timely manner.

Certification Timeliness

- 24 reports were certified in a timely manner.
- 1 report had not been certified at the time of OGE's review.

Quality of Review

Written comments on reports, documentation in files, and conversations with ethics officials indicated that the public financial disclosure reports were adequately reviewed by LARC ethics officials. However, the results of OGE's examination of certain reports indicate that additional steps need to be taken in some instances.

OGE found two instances where the filers' apparent interests in employee benefit plans from former employers were not fully disclosed. In neither case were the plans listed on Schedule C, Part II of the filers' public financial disclosure reports, as required. No follow up was conducted by the reviewing official to determine the underlying assets or arrangements upon which the plans were based. OGE suggests that reviewers follow up with filers in such cases to ensure full disclosure of assets so that a conflict of interest analysis can be conducted.

LARC ethics officials provide public financial disclosure report filers with 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 LARC is 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.

Confidential Financial Disclosure System

The confidential financial disclosure system within NASA is administered centrally through the NASA Shared Services Center (NSSC), as noted above. NSSC created an electronic filing system, the Ethics Program Tracking System (EPTS), to administer the system. Ethics

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officials at NASA headquarters and the three reviewed components noted that there were many problems with 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 and resolve issues.

To evaluate the filing, review, and certification of confidential reports at LARC, OGE examined 48 out of the approximately 1,034 confidential reports required to be filed by LARC employees in 2007. The following is a summary of OGE's examination.

Type of Report

- 38 incumbent reports
- 10 new entrant reports

48 total

Filing Timeliness

- 43 reports were filed timely.
- 5 reports were filed late.

48 total

Review Timeliness

- all 48 reports were reviewed in a timely manner.

Certification Timeliness

- all 48 reports were certified in a timely manner.

Quality of Review

Written comments on reports, documentation in files, and conversations with ethics officials indicated that the confidential financial disclosure reports underwent a thorough review by LARC ethics officials.

LARC ethics officials provide confidential financial disclosure filers with cautionary memorandums when interests disclosed on reports indicate the potential for a conflict of interest, just as they do for public financial disclosure filers. OGE considers this model practice to be as appropriate for confidential filers as it is for public filers.

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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.

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. An initial ethics orientation must include:

- the Standards of Ethical Conduct for Employees of the Executive Branch (Standards);
- 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.

Each new LARC employee is provided with materials which meet the content requirements for initial ethics orientation. New employees are given an hour of official duty time to review the provided materials.

In February and March of 2008, LARC ethics officials were able to meet in person with new employees within a few days of the employees' entrance into service to discuss the written materials provided. While ethics officials acknowledged that they are not always able to arrange in-person meetings with new employees, they stated they often receive calls from new employees with questions once the employees have had an opportunity to review the orientation materials they have been given.

Annual Ethics Training

Public financial disclosure filers are required to receive verbal annual ethics training each year. *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 annual ethics training at least once every three years and written annual 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,

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- 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).

The vast majority of the approximately 1,012 employees required to receive annual ethics training in 2007 appear to have received the training. Training was provided through either an interactive computer-based training module or in-person instructor-led training. Automatically-generated computer tracking records (for those receiving computer-based training) and sign-in sheets from in-person instructor-led training indicate that very few covered employees failed to receive the appropriate training. Based on an examination of the materials used to provide annual ethics training in both computer-based and instructor-led formats, OGE concluded that the training met the relevant content requirements.

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. Once the training module is prepared in “draft” form, it is shared with NASA ethics officials at headquarters and other Centers for comment. Changes are made based on comments that are received.

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.

The training module prepared by Kennedy Space Center and used at LARC was interactive. The module presented likely scenarios, asked what the appropriate action would be in a multiple choice answer format, and provided a link to the underlying rules from which the correct answers were derived. The substantive content was general enough to be relevant to all NASA employees yet still address the ethics-related issues which LARC employees are most likely to encounter.

The receipt of training is tracked in two ways. In order to receive credit for completing computer-based annual training, employees must complete the entire training module. Computer-based training is automatically tracked through EPTS which provides documentation that training was completed. Employees attending in-person instructor-led training are required to sign in to receive credit for completing training. Ethics officials retain sign-in sheets to document the completion of annual training for those who attend live instructor-led training.

The LARC Director, Deputy Director, and senior staff all attend one of the in-person instructor-led training sessions provided to public financial disclosure filers. This is an excellent leadership practice in that it demonstrates support for the program and underscores the importance of making time to complete annual ethics training.

LARC ethics officials have also participated in the development of a facilitator-led module titled, “NASA Legal Orientation Training for Leaders.” NASA proposes to present this course as an integral part of its internal agency leadership training program. The stated objective of the course is to “familiarize new leaders, or re-familiarize existing leaders, with key leadership

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challenges that exist within the intersection of the NASA legal practice and mission accomplishment.” The course focuses on the legal and ethical implications of leaders’ decisions and discusses how the legal staff can assist leadership in identifying those implications so that decisions are fully informed. In the “Human Resources and Ethics Law” section of the module, the topics include financial disclosure, the Standards, NASA supplemental regulations, and the criminal conflict of interest statutes.

LARC’s collaboration in development of the NASA Legal Orientation Training for Leaders module is an example of two model practices. These include leveraging ethics training resources and developing ethics training specifically designed to focus on the needs of discrete groups of employees. OGE considers ethics training focusing on the needs of an agency’s leadership to be particularly important.

Additionally, LARC periodically posts ethics-related notices on LARC’s Home Page. The Home Page is the default page that appears when a LARC employee logs into his/her computer. When a new notice is posted, an email is sent to all LARC employees announcing the new posting. Notices are posted once or twice a month. This is a model practice because it adds to employees’ awareness of the ethics program and to the high ethical standards to which Federal employees are expected to adhere.

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 counseling to assess whether processes and written procedures are effective.

NASA has established an agency-wide internal policy for administering the ethics advice and counseling component of the ethics program. This policy is found in Chapter 3 of the NPR. 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 important 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.

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Transparency, consistency, and accountability help to ensure confidence in Government processes and credibility for the ethics program at NASA.

Two attorneys within LARC's Office of Chief Counsel are responsible for providing the majority of the ethics advice. All written ethics advice is filed within a tracking system. Ethics officials also provide copies to other ethics attorneys when providing advice in writing. Oral advice is usually logged into the system if only to indicate when someone has asked a question and the Office of Chief Counsel has given a response.

OGE examined approximately 30 pieces of advice in the areas of conflicts of interest, gifts, misuse of position, endorsement, post employment, and teaching, speaking, and writing. The advice was timely and accurate.

In addition, it appears that LARC's ethics officials are providing advice and counseling in a manner consistent with the NPR. For example, all advice in the sample provides a discussion of the facts, as known to the ethics official, as well as a thorough explanation of the relevant laws and regulations as they apply to those facts. Questions involving the LARC Director appear to be coordinated with NASA headquarters. Questions involving personnel from multiple Centers are coordinated among those Centers and headquarters. Standard policies have been established and are followed to deal with recurring situations, such as requests for NASA personnel to sit on the boards of outside organizations. Consequently, advice provided by LARC's ethics officials appears not only to be accurate, but transparent and consistent as well.

Of specific mention is a practice instituted at LARC for identifying and screening 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 discussing any possible post-employment restrictions. One piece of advice and counseling among those OGE sampled demonstrated this practice in action. One employee (Employee A) mentioned to another employee (Employee B) (the relationship between the two employees cannot be ascertained from the sample) that he was seeking employment with an entity that was interested in doing business with NASA. Employee B notified the ethics office. The ethics official sent an email to the Employee A outlining the steps he should take to avoid a conflict. The ethics official also provided Employee A with a standard memorandum titled, "Disqualification—Employment Discussions," which outlines the employees disqualification from certain matters, discusses any screening arrangements that have been established, and commits the employee to inform his subordinates and co-workers of his disqualification. The memorandum is signed by the employee and a copy provided to the employee's supervisor and to the ethics office. This is a laudable example of pro-active advice and counseling.

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

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designed to prevent employees from engaging in outside employment activities which would create a conflict of interest with their official duties. LARC ethics officials maintain a list of current approvals to engage in outside employment activities. Approvals may be granted for a period of up to three years.

OGE examined five requests for approval to engage in a variety of outside employment activities. All five requests appear to have included sufficient information for ethics officials to conduct a conflict of interest analysis. Four requests were approved and one was disapproved, all in accordance with 5 CFR part 6901.

In addition to the five requests examined by OGE, the list of current approvals included a number of instances in which employees requested and were granted approval to work as “consultants.” These employees listed “self” as their employer but did not provide the names of potential clients. The approvals were granted after it was either made clear that the consulting was unrelated to NASA or the employee seeking approval was advised of the relevant prohibitions and was provided constructive notice of what was permissible under the approval.

ENFORCEMENT

The DAEO is required to ensure that (1) information developed by internal audit and review staff, the Office of the Inspector General, or other audit groups is reviewed to determine whether such information discloses a need for revising agency standards of conduct or for taking prompt corrective action to remedy actual or potential conflict of interest situations and (2) the services of the agency’s Office of the Inspector General are utilized when appropriate, including the referral of matters to and acceptance of matters from that Office. *See* 5 CFR § 2638.203(b)(11) and (12).

Ethics officials and the NASA Office of the Inspector General’s Resident Agent in Charge indicated that there is an effective working relationship between their two offices. This relationship allows for coordination to ensure that information developed by the Resident Agent in Charge and his staff regarding alleged ethics-related violations is shared with ethics officials. Representatives of the two offices meet regularly to discuss relevant issues.

There were no reported violations of the criminal conflict of interest statutes in 2007. There are approximately 12 alleged violations of the Standards in any given year.

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.

LARC accepts 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

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travel payments from a non-Federal source are detailed in NASA Policy Directive NPD 9710.1T and Langley Policy Directive 9700.3.

Requests for acceptance of travel payments from non-Federal sources under the authority of 31 U.S.C. §1353 are made by completing either the NASA Langley Form 92 (Rev. Feb. 2008) - for domestic travel - or NASA Form 93 (Rev. Feb 2008) - for foreign travel. The forms are efficient tools for gathering the information required to conduct a conflict of interest analysis. However, they both include a citation to an outdated provision of the governing regulation. The forms include a note stating, "In accordance with 41 C.F.R. § 304-1.4, an agency may accept reimbursable travel only when authorization to accept payment is issued **in advance of the travel.**" Section 304-1.4 was rescinded in 1993 and under limited circumstances after-the-fact acceptance of payments may be authorized (*see* 41 C.F.R. § 304-3.13). OGE suggests that Langley remove the outdated citation.

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

Summary

OGE's review identified a number of model practices which have been incorporated into the LARC ethics program. The model practices include:

- holding regularly scheduled meetings between ethics officials and LARC's leadership to discuss ethics-related issues,
- issuing the LARC Director's Ethics Policy Statement directing employees to hold themselves to the highest ethical standards,
- providing public and confidential financial disclosure filers with cautionary memorandums,
- including senior staff in ethics training sessions for public filers,
- leveraging ethics-training resources and developing focused training for agency leadership, and
- posting periodic ethics-related notices on LARC's Home Page.

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