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BY THE COMPTROLLER GENERAL

# Report To The Congress

OF THE UNITED STATES

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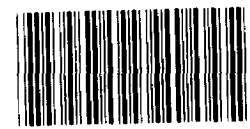
## Employee Standards Of Conduct: Improvements Needed In The Army And Air Force Exchange Service And The Navy Resale System Office

Standards of conduct regulations were established by each Federal agency as a result of Executive Order 11222.

The Army and Air Force Exchange Service and the Navy Resale System Office need to enforce statutes in their standard of conduct programs dealing with Federal workers' employment after they leave Government service. Effective reporting systems to detect and prevent violations are needed.

This report recommends that the Secretary of Defense improve standards of conduct regulations in these agencies and that the new Office of Government Ethics in the Office of Personnel Management improve agency confidential financial disclosure systems.

The report also recommends a thorough review of criminal and civil selling laws to remedy certain shortcomings.



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COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

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To the President of the Senate and the  
Speaker of the House of Representatives

Executive Order 11222 prescribes standards of ethical conduct for Government officials and directs the Civil Service Commission (now the Office of Personnel Management) to establish implementing guidelines. Recently Public Law 95-521 established an executive branch Office of Government Ethics to deal with ethical problems, including Federal financial disclosure systems. This report discusses needed improvements in the standards of conduct programs at the Army and Air Force Exchange Service and the Navy Resale System Office. It also raises issues that need to be addressed by the Office of Government Ethics in the Office of Personnel Management.

We did not obtain formal comments from the Department of Defense. However, we did discuss the report informally with officials of the Department, the Exchange Service, and the Resale System Office and considered their comments in the report.

We are sending copies of this report to the Director, Office of Management and Budget; the Secretary of Defense; the Secretaries of the Army, the Navy, and the Air Force; the Directors, Office of Personnel Management, and Office of Government Ethics; and other interested parties.

*James R. Altsch*  
Comptroller General  
of the United States



COMPTROLLER GENERAL'S  
REPORT TO THE CONGRESS

EMPLOYEE STANDARDS OF CONDUCT:  
IMPROVEMENTS NEEDED IN THE  
ARMY AND AIR FORCE EXCHANGE  
SERVICE AND THE NAVY RESALE  
SYSTEM OFFICE

D I G E S T

*Bckgd:*

*(AAFES)*

*(NAURES)*

The Army and Air Force Exchange Service and the Navy Resale System Office are the largest of the non-appropriated-fund agencies. They were established to provide merchandise and services to military service personnel at the lowest practical price and to contribute to military welfare and recreation programs from operating profits. They employ tens of thousands of personnel in worldwide multibillion dollar operations.

Because of the magnitude of their operations, they must be sure that their employees maintain the highest standards of conduct. ~~Some~~ maintain aspects of the agencies' standards of conduct programs need improvement:

- The enforcement of post-employment statutes.
- The financial disclosure systems.

*FIND/CON*

Although three statutes restrict the post-employment activities of Exchange Service and Resale System Office employees, the Resale System Office has no reporting system to detect and prevent violations. The Exchange Service has a system, but inadequate filing, processing, and review procedures prevent it from being effective.

GAO found <sup>were found</sup> 19 cases of possible violations of post-employment laws restricting selling activities of retired military officers at the Exchange Service and referred them to the Department of Justice and the military finance centers for further inquiry and disposition. (See p. 14.) Because of the mitigating circumstances surrounding the cases referred to the Justice Department

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and the vagueness of the criminal statute, the Department has declined to prosecute.

Weaknesses in the agencies' financial disclosure systems include:

- In many sensitive positions below the grade 13 level, employees ~~do not file~~ <sup>maintain on the part of</sup> annual financial disclosure statements,
- Many employees do not report their spouses' employment.
- Specific supplemental standards of conduct have not been developed for positions and offices in which there is considerable potential for conflicts of interest,
- Not all advisors, consultants, and members of the Exchange Service's Board of Directors are required to file statements.
- Source selection committee members are not required to certify that they have no conflicting interests.
- Agencies do not periodically audit standards of conduct programs for effectiveness. (See p. 3.)

<sup>These offices</sup>  
Since the Exchange Service and the Resale System Office operate under Department of Defense standards of conduct regulations, the same problems could exist in other Defense agencies.

The Secretary of Defense should take specific actions to improve the financial disclosure systems and the enforcement of post-employment statutes. (See pp. 10 and 16.)

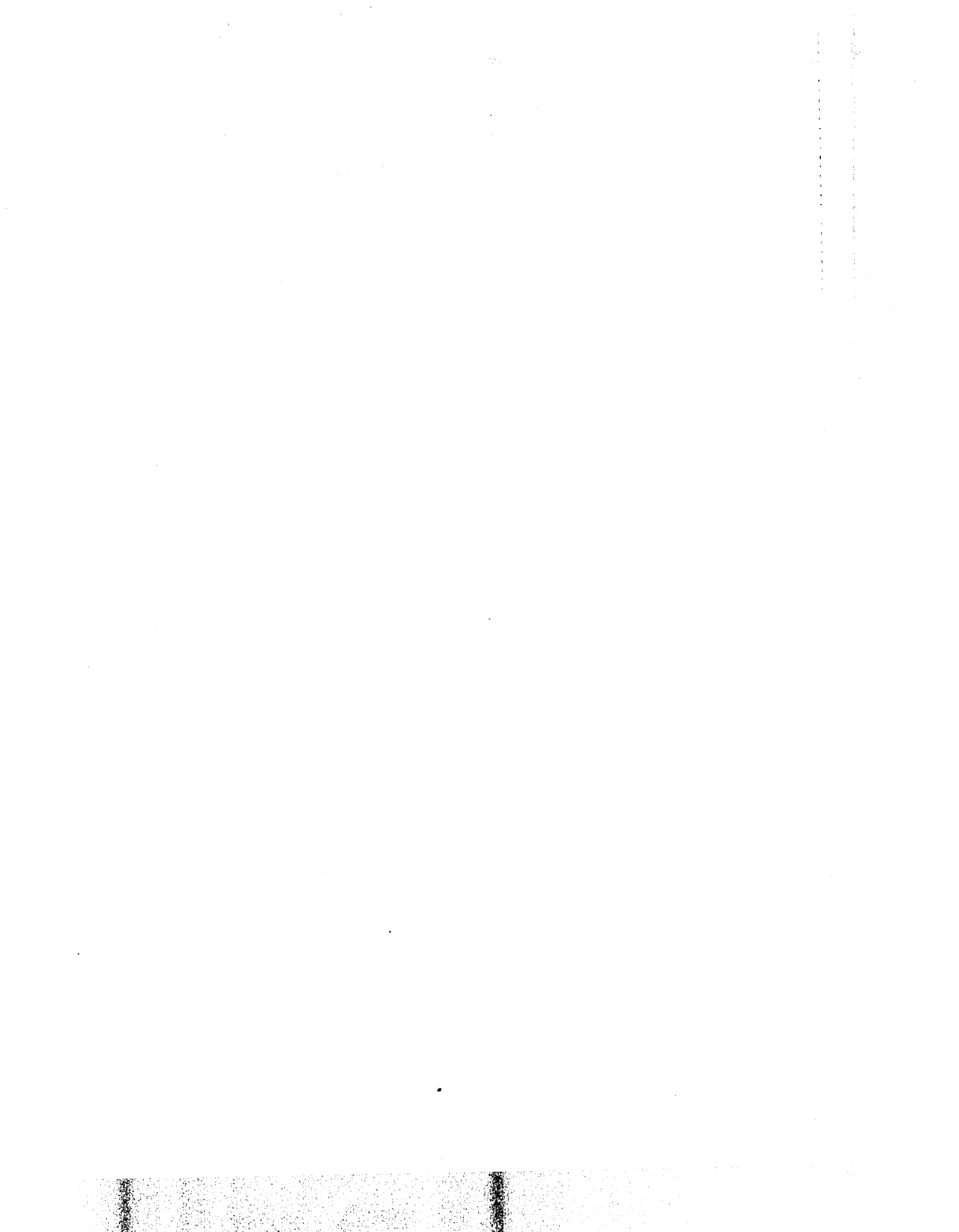
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Public Law 95-521 established an Office of Government Ethics in the Office of Personnel Management to provide leadership and enforcement in the executive branch ethics program. The Director, Office of Personnel Management, should:

--Develop new regulations concerning confidential financial disclosure systems, addressing the problems discussed in this report and in previous GAO reports.

--Thoroughly study, in coordination with the Departments of Justice and Defense, the criminal and civil selling laws to determine their effectiveness and how they should be amended and enforced. (See p. 20.)

Several key questions concerning the laws warrant further study:

- Should they be consolidated into one overall selling law with specified penalties?
- Should they apply to all former Regular and Reserve officers who have more than a specified period of active service and Defense civilian employees?
- Should they apply to former employees of all Federal agencies and not just Defense?
- Who should enforce the laws, and what is the best method of enforcement?
- For how long should the laws prohibit sales activity?
- Should the laws be rescinded and 18 U.S.C. 207 revised to include specific selling prohibitions in a single statute? (See p. 19.)





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#### ABBREVIATIONS

AAFES	Army and Air Force Exchange System
CSC	Civil Service Commission
DOD	Department of Defense
GAO	General Accounting Office
NAS	Naval Audit Service
NAVRESO	Navy Resale System Office
OPM	Office of Personnel Management

## CHAPTER 1

### INTRODUCTION

Since 1974 we have reported on the effectiveness of financial disclosure systems in many Federal agencies. (See app. I for a list of reports.) Our summary report (FPCD-77-23, Feb. 28, 1977) on these systems recommended that the President of the United States establish an executive branch Office of Ethics with strong administrative and enforcement powers to make the financial disclosure system effective. On October 26, 1978, the President signed the Ethics in Government Act of 1978. This act sets forth new public financial disclosure requirements for high-level officials in the three branches of Government and establishes an executive branch Office of Government Ethics. This act provides the type of organization and authority needed to remedy the administrative and enforcement problems in the disclosure systems.

This report discusses confidential financial disclosure systems and standards of conduct for employees of the Army and Air Force Exchange Service (AAFES) and the Navy Resale System Office (NAVRESO). It also points out inadequacies in the regulations on which the executive branch agency programs are based.

### AGENCIES MISSIONS

AAFES and NAVRESO are the largest of the non-appropriated-fund Federal agencies, operating principally from sales revenues. They have tens of thousands of employees who operate worldwide multibillion dollar activities. Their missions are to

- provide merchandise and services to authorized patrons at the lowest practical cost and
- contribute to welfare and recreation programs for military personnel from operation profits.

AAFES operates Army and Air Force exchanges and is headquartered in Dallas. It is a joint command of the Army and the Air Force, governed by a Board of Directors composed of representatives from the two services. AAFES' purchases for resale totaled about \$2 billion in fiscal year 1978, including over \$50 million from its largest supplier.

NAVRESO operates under the Naval Supply Systems Command and is headquartered in Brooklyn. NAVRESO provides support, administrative and technical guidance, and assistance to, but does not operate, Navy exchanges. It also operates the Navy commissaries. In fiscal year 1977 NAVRESO purchased over \$1 billion of items for resale in exchanges and commissaries.

Because many AAFES and NAVRESO buyers are individually responsible for annual purchases of several million dollars, AAFES and NAVRESO must prevent conflicts of interest and maintain acceptable standards of employee conduct.

CURRENT BASIS FOR STANDARDS  
OF CONDUCT PROGRAMS

Executive Order 11222, dated May 8, 1965, sets forth

- executive branch policy on employee ethical conduct;
- standards concerning acceptance of gifts, entertainment, and favors; and
- requirements for financial disclosure by executive branch personnel, including consultants and other special employees.

The Order also gave the Civil Service Commission (CSC) 1/ the responsibility to implement the Order and to approve and periodically review supplementary agency regulations. In November 1965 CSC issued its implementing regulations.

The Department of Defense (DOD) standards of conduct directive (DOD Directive 5500.7) prescribes regulations concerning conflicts of interest, financial disclosure, outside employment, acceptance of gifts, personal conduct, gambling, use of Government facilities, and statutory post-employment restrictions. Army, Air Force, and Navy regulations basically restate the DOD directive.

AAFES complies with both the Army and the Air Force regulations and has also issued supplementary regulations for its personnel in procurement and related positions. NAVRESO uses the Navy standards as issued.

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1/Now the Office of Personnel Management (OPM).

## CHAPTER 2

### AAFES' AND NAVRESO'S STANDARDS

#### OF CONDUCT PROGRAMS CAN BE IMPROVED

AAFES' and NAVRESO's standards of conduct regulations generally comply with CSC and DOD regulations under Executive Order 11222. However, the financial disclosure systems and the standards of conduct programs could be improved. These improvements include

- requiring many employees in sensitive positions below the grade 13 level to file annual financial disclosure statements;
- clarifying instructions to assure reporting of employment of spouses;
- issuing supplemental standards of conduct for positions or offices in which there is considerable potential for conflicts of interest;
- requiring financial disclosure statements from advisors, consultants, and all members of the AAFES Board of Directors;
- requiring certification from source selection committee members that they have no conflicting interests; and
- periodically auditing the standards of conduct programs for effectiveness.

Many problems in the AAFES and NAVRESO programs are attributable to inadequacies in the regulations implementing Executive Order 11222 and the lack of executive branch leadership in monitoring and improving the programs.

#### MORE EMPLOYEES SHOULD FILE STATEMENTS

CSC requires each agency to obtain confidential financial disclosure statements (listing financial assets, debts, real estate, and outside employment) from:

- Employees paid at a level of the Executive Schedule.
- Employees classified at grade 13 or above who are in decisionmaking positions or have duties which could involve conflicts of interest.

--Employees classified below grade 13 who occupy positions otherwise meeting the above criteria. An agency must obtain CSC approval to require such employees to file.

The CSC regulations require DOD components to issue their own standards of conduct regulations. The armed services must regulate the conduct of their members and implement financial disclosure systems in a manner consistent with the Executive order and CSC regulations.

Until January 1977 the DOD directive did not provide for obtaining disclosure statements from personnel in positions below the GS-13 level. The current directive requires statements from employees in any positions below the GS-13 level which have been specifically approved by CSC. However, the directive does not require management to review the duties of positions below the GS-13 level to determine if incumbents should be filing statements. In accordance with DOD and implementing departmental regulations, AAFES and NAVRESO require statements only from civilian employees in designated positions in grades 13 and above and lieutenant colonels and commanders and above.

Our review of selected position descriptions at AAFES and NAVRESO disclosed that many more employees, perhaps as many as 1,500 at AAFES and 760 at NAVRESO and the Navy exchange system, should be required to file statements. All these positions are below the GS-13 level, but the positions are particularly sensitive to potential conflicts, such as buyers, contracting officers, exchange managers, lodge managers, and employees who develop equipment specifications. These employees have responsibilities which significantly affect AAFES and NAVRESO vendors. For example

- a grade 12 AAFES employee annually buys about \$58 million of drug items,
- a grade 9 AAFES buyer selects sources and negotiates prices for nearly \$7 million of children's wear annually, and
- a grade 7 Navy commissary store employee buys produce from local sources totaling about \$3.4 million annually.

In 1970 AAFES requested permission from the Secretary of Defense to obtain disclosure statements from an estimated 2,500 personnel below the grade 13 level because

their decisions or actions could significantly affect the economic interests of non-Federal enterprises. AAFES stated that the request had been denied, but AAFES did not retain a record of the reason.

AAFES, NAVRESO, and DOD officials agreed that, regardless of grade level, an employee should be required to file a statement if management determines that his position normally provides opportunities for conflicts of interest or for the appearance of conflicts.

#### Advisory groups should also file statements

AAFES and NAVRESO periodically obtain guidance from retail industry consultants and advisors. AAFES also receives overall direction from a military Board of Directors and often uses exchange customers on committees to evaluate competing brands for sale in the exchanges. Many of these are not required to file financial disclosure statements.

AAFES and NAVRESO commanders periodically meet with high level executives from the retail and merchandising industries to discuss mutual retailing issues. These consultants and advisors do not file statements. Because of their access to AAFES and NAVRESO information, these consultants and advisors should be required to file statements.

AAFES has a 13-member military Board of Directors which provides overall direction to AAFES, including approving basic policies, plans, and programs and reviewing operating results. Three of the members are below the rank of lieutenant colonel and do not file statements. Because of their access to AAFES information and their overall responsibilities, they should be required to file statements.

Exchange customers sometimes serve on AAFES source selection panels to evaluate competing brands and determine which should be stocked in the exchanges. They do not submit statements and may have a personal interest in the competing brands. As panel members they influence source selection decisions. We believe they should be required, at a minimum, to certify that they do not have any conflicts of interest.

#### DOD INSTRUCTIONS SHOULD CLEARLY REQUIRE REPORTING EMPLOYMENT OF SPOUSES AND HOUSEHOLD MEMBERS

The employment of other household members, usually spouses, is not being reported on the financial disclosure

statements. At AAFES only 5 of 491 employees reported working spouses; at NAVRESO, only 1 of 87. AAFES and NAVRESO officials stated they knew of instances when the employment of spouses was not being reported.

CSC regulations, the DOD directive, and the three services' regulations contain instructions similar to the following, which appear on the DOD disclosure statement. (See app. II.)

"5. NON-FEDERAL AFFILIATIONS AND FINANCIAL INTERESTS. The interest of a spouse, minor child, and any member of your household shall be reported in the same manner as your interests. List the names of all corporations, firms, partnerships, and other business enterprises, nonprofit organizations, and educational, or other institutions: (a) with which you are (or since last filing were) affiliated as an employee, officer, owner, director, member, trustee, partner, adviser, agent, representative, or consultant, or as a person on leave from or having any understanding or plans for future affiliation; (b) in which you have any continuing financial interests, such as through a pension or retirement plan, shared income, continuing termination payments, or other arrangements as a result of any current or prior employment or business or professional association; or (c) in which you have any financial interest through the legal or beneficial ownership of stock, stock options, bonds, securities, or other arrangements including trusts. Identify any financial interests in commodities which you have had since last filing." (Underscoring supplied.)

Many employees and supervisors interpret "interests" as not including "employment" or "affiliation." AAFES, NAVRESO, and DOD officials stated that the CSC and DOD regulations clearly required reporting the employment as well as other financial interests of spouses, minor children, and other household members. DOD officials agreed that the instructions on the DOD disclosure form should be clarified.

#### MORE SPECIFIC STANDARDS NEEDED

AAFES developed supplemental standards of conduct regulations for buyers and employees in related positions. These address some ethical situations that personnel may



encounter, including the offering of gifts, appearances of favoritism, and collusive bidding. NAVRESO has not developed supplemental standards for its buyers.

We believe both the AAFES and NAVRESO standards of conduct programs should specify to employees and supervisors the types of interests that should be avoided. AAFES and NAVRESO have business contacts with about 48,000 and 25,000 firms, respectively. While developing one set of overall standards tailored for each agency may be difficult, each agency could tailor individual standards to the activities of each division or office. We raised questions about the sufficiency of their guidance, such as:

- Should buyers in any given product line, such as clothing or luggage, be allowed to have any interests in firms which sell that line?
- Should military retail store managers be allowed to have any interests in, or be concurrently employed by, private retail stores?
- Should employees or their spouses or minor children be allowed to work for vendors?
- Should employees who develop equipment standards and specifications be allowed to own any interests in firms which could be affected by their duties?
- Should top AAFES and NAVRESO officials be allowed to have any interests in major vendors?

Our concern is not with the legality of these questions, which is covered in 18 U.S.C. 208 ("Acts Affecting a Personal Financial Interest"), but with situations that could create (or lead to) improprieties or the appearance of conflicts of interest.

AAFES and NAVRESO stated that such questions were best solved on a case-by-case basis. We believe these questions should be addressed in their standards for employees.

Such cases would be easier to resolve if criteria already existed in the supplemental standards. The guidance would inform employees in advance of the types of employment and financial interests they should avoid. If cases did arise, such guidance would lend consistency in determining the appropriate resolution, such as divestiture or disqualification. It would also aid supervisors in reviewing the disclosure statements.

PROGRAMS SHOULD BE AUDITED  
FOR EFFECTIVENESS

AAFES and NAVRESO auditors have not evaluated the effectiveness of their agencies' standards of conduct programs. Their audits have only verified compliance with certain procedures, such as determining whether employees semiannually certify that they are aware of the standards of conduct and annually file disclosure statements.

Navy regulations require the Naval Audit Service (NAS) to make effectiveness audits of the standards of conduct programs of Navy components. However, an NAS regional official said NAS is not required to audit NAVRESO exchange or other non-appropriated-fund activities. DOD, Army, and Air Force regulations do not require such audits.

We believe effectiveness audits of these programs and policies by internal auditors or other review groups would have detected the problems we found. Such audits, if made periodically, would help insure program effectiveness and determine whether additional standards are needed to deal with current ethical situations.

COMBATING THE PROBLEMS OF GIFTS AND KICKBACKS

Considering the thousands of vendors seeking to sell billions of dollars of goods and services to the exchanges annually, AAFES and NAVRESO have tried to develop and implement programs to prevent the offer and acceptance of gifts and kickbacks. DOD and service regulations include special prohibitions against accepting kickbacks or gifts, including any advertising or promotional items with intrinsic value of \$5 or more, and require employees to certify twice annually that they are familiar with the standards of conduct.

In addition, AAFES regulations prohibit AAFES employees from accepting any gifts, and both AAFES and NAVRESO include special terms in their contracts prohibiting gifts or kickbacks and providing penalties for violations. Before the holiday season, NAVRESO sends all vendors letters and AAFES and NAVRESO send all employees memorandums reminding them of the prohibition.

AAFES and NAVRESO have standards of conduct training programs to help assure employee awareness of the standards, including this prohibition. AAFES also has issued supplemental guidelines for procurement personnel concerning their dealings with vendors.

To further discourage violations, AAFES publicizes detected violations and penalties assessed so that employees will be aware of management's concern and intent to maintain the standards of conduct. In October 1977 AAFES issued a memorandum to all salaried personnel stressing the need to maintain high ethical standards. It included an attachment listing violations and the disciplinary actions taken, which ranged from employee counseling to dismissal.

For the 37 conduct violation investigations closed at AAFES during fiscal year 1977, 25 employees were either terminated or allowed to resign for various violations, including acceptance of gifts. NAVRESO does not have a system for compiling reports on such matters, and the deputy counselor is aware of only a few cases of misconduct over a period of several years.

In April 1978 there was widespread publicity about several AAFES employees and vendors' representatives who had been charged with involvement in a kickback scheme. As a result of an AAFES referral, several persons were fined and given prison sentences after a long-term task-force investigation by several Federal agencies.

AAFES believes that acceptance of gifts and kickbacks is its biggest ethical problem and is hard to detect through basic audit techniques.

#### CONCLUSIONS

The standards of conduct programs at AAFES and NAVRESO generally implement CSC and DOD regulations. However, AAFES and NAVRESO should make these regulations specifically applicable to the agencies' operations and periodically audit the programs for effectiveness. Supplemental regulations could include

- the specific positions in which employees must file disclosure statements,
- emphasis on reporting of spousal employment,
- guidance for various divisions or positions as to the types of financial interests and outside employment that could create conflicts of interest or otherwise appear improper, and
- instructions to supervisors as to the type of interests to be questioned in reviewing the statements.

Many issues raised in this chapter are not unique to AAFES and NAVRESO but exist due to the lack of strong leadership and effective implementation of CSC and DOD financial disclosure regulations. For this reason, the same problems may exist throughout other DOD components, since all the systems are based on the CSC and DOD regulations.

#### RECOMMENDATIONS

We recommend that the Secretary of Defense:

- Require AAFES and NAVRESO to identify, in supplemental standard of conduct regulations, all positions, especially those below the grade 13 level which normally provide opportunities for conflicts of interest, and require the incumbents to file annual financial disclosure statements.
- Require AAFES and NAVRESO to develop <sup>the development of</sup> specific guidance for certain divisions, offices, or sensitive positions as to the types of financial interests, outside employment, or other situations which could create the appearance of conflicts of interest.
- ←Clarify instructions on the DOD disclosure form to require that the employment of spouses, minor children, and other household members be reported.
- Require that all consultants and advisors to AAFES and NAVRESO (including the AAFES Board of Directors) file disclosure statements and that AAFES obtain certification from source selection committee members that they have no conflicting financial interests.
- Require periodic audits of the standards of conduct regulations and the financial disclosure systems throughout DOD to determine whether they are adequate, effective, and tailored to the needs of DOD and its components.

## CHAPTER 3

### POST-EMPLOYMENT STATUTES SHOULD BE ENFORCED

For many years there has been much concern about former Government officials and employees using their public experience and contacts to personal advantage in the private sector. This concern is reflected in three statutes enacted by the Congress which restrict certain post-employment activities. One of these (18 U.S.C. 207) applies to all former executive branch officers and employees, including former military members and civilian employees, while two (18 U.S.C. 281 and 37 U.S.C. 801(c)) apply to all retired Regular military officers.

NAVRESO has no reporting system to detect and prevent post-employment violations. AAFES has a reporting system by which former AAFES employees and military personnel complete notice of appearance forms before doing official business with the agency. However, more information should be disclosed on this form, and AAFES processing and review procedures must be formalized.

In reviewing these forms we found 19 instances of possible violations of the laws applicable to retired military officers. Five of these possible violations relating to the civil selling law (37 U.S.C. 801(c)) were referred to the Army and the Air Force finance centers for further investigation, while 14 names were referred to the Department of Justice for possible violations of the criminal selling law (18 U.S.C. 281). The Justice Department has informed us that it has declined to prosecute these cases as violations of 18 U.S.C. 281 because of the mitigating circumstances surrounding the cases. (See app. V.)

### POST-EMPLOYMENT STATUTES

#### 18 U.S.C. 207

This criminal statute placed two types of restrictions on employment activities of all former executive branch officers and employees, including former military members and civilian employees:

- Section (a) permanently barred former military members and civilian employees from acting as an agent or attorney in a particular matter involving specific parties in which the United States had an interest and in which the individual had substantially and personally participated while at the agency.

--Section (b) prohibited, for a period of 1 year, former military members and civilian employees from personally appearing as an agent or attorney for anyone before an agency in a particular matter involving specific parties in which the United States had an interest and over which he/she had had official responsibility within the past year.

This statute has been revised by Public Law 95-521 (Ethics in Government Act of 1978) and effective July 1, 1979, the statute will (1) increase the debarment period in section (b) from 1 to 2 years and (2) prohibit certain aiding and assistance activities on the part of former Government employees (GS-17 and above). This revision also added a section (c), which prohibits, for 1 year, specified former high level agency officials and military officers from any contacts with their former agencies on behalf of others to influence the outcome of any matter then pending before their former agencies.

18 U.S.C. 281

The "criminal selling law," 18 U.S.C. 281, reads:

"\* \* \* Nothing herein shall be construed to allow any retired officer to represent any person in the sale of anything to the Government through the department in whose service he holds a retired status \* \* \*."

37 U.S.C. 801(c)

The civil statute, 37 U.S.C. 801(c), provides that:

"Payment may not be made from any appropriation, for a period of three years after his name is placed on that list, to an officer on a retired list of the Regular Army, the Regular Navy, the Regular Air Force, the Regular Marine Corps, the Regular Coast Guard, the Environmental Science Services Administration, or the Public Health Service, who is engaged for himself or others in selling, or contracting or negotiating to sell, supplies or war materials to an agency of the Department of Defense, the Coast Guard, the Environmental Science Services Administration, or the Public Health Service." (The Environmental Science Services Administration was abolished on Oct. 30, 1970, and its functions were transferred to the National Oceanic and Atmospheric Administration.)

Both selling laws are interpreted as being applicable only to retired Regular officers and not to retired Reserve officers or other retired members.

AAFES SYSTEM TO PREVENT VIOLATIONS NEEDS IMPROVEMENT

AAFES has a reporting system to detect potential violations of the post-employment statutes. Anyone wishing to appear before AAFES on official business (mainly company representatives who present their products to AAFES for possible sales in the exchange) must register their names in a log before visiting an AAFES buyer. If they are former Government employees or former military personnel, they are to fill out AAFES Form 3900.7--"Notice of Appearance Before Exchange Activity" (see app. III) to disclose the purposes of the visits and their present or former statuses in the military service or Federal Government, including the dates of service. They also are to declare (1) whether the matters on which they are appearing involve the military departments in which they hold retired status and (2) their past relationships with the subject matters while in military service or Government employment. These forms are then reviewed in the merchandising division.

Several weaknesses in this system, which prevent it from being effective, include:

- There is no procedure to insure that all retired military officers or former civilian employees who contact AAFES complete the notice of appearance form.
- The form does not require disclosure of certain data needed to readily determine whether the appearance would violate the post-employment statutes.
- AAFES processing and review procedures are informal and do not include reviewing the forms for possible violations of the selling laws.

If changes were made, we believe this system could be effective in preventing post-employment violations and should be evaluated for use in other DOD components.

AAFES has not issued specific regulations as to how the system should operate.

For example, there are no procedures to insure that all retired officers or former employees who contact AAFES

complete the form. Nor is there any notice to those who complete the form that specific prohibitions apply to certain former employees and retired military.

The form does not require disclosing the name of the firm and the products or services represented by the vendor or the position title and products or services with which a former employee was involved while employed by AAFES. As a result it can be difficult, on the basis of the completed form alone, to determine whether 18 U.S.C. 207 would be violated by the proposed sales effort.

Further AAFES' review of the forms generally is not indicated on the form. The form does not identify who reviewed it, what determination was made, or whether it was reviewed by general counsel. Also the principal reviewing official said he reviewed the forms only for potential violations of 18 U.S.C. 207 and not for possible violations of the selling laws, although information provided on the form would make judgments possible concerning the selling laws.

AAFES officials agreed that changes needed to be made in their reporting system.

AAFES NOTICE OF APPEARANCE FORMS  
ARE NOT ADEQUATELY REVIEWED

Review of the forms filed at AAFES headquarters and regions in the United States disclosed that during the 42-month period ended in June 1977:

- Thirty-five former employees had appeared before AAFES in a selling capacity. We were advised that five of these had left AAFES specifically to set up businesses which would sell to AAFES.
- Nineteen persons, who identified themselves as retired Regular Army or Air Force officers, had appeared before AAFES in a selling capacity, apparently in technical violation of the criminal and/or civil selling laws.

On June 21, 1978, we referred the names of 14 individuals to the Department of Justice for further investigation because the forms indicated possible violations of 18 U.S.C. 281. The Department of Justice has informed us that it has declined to prosecute these cases as violations of 18 U.S.C. 281 because of the mitigating circumstances surrounding the cases (e.g., the individuals had completed an AAFES Form 3900.7 before they engaged in the activities



in question, and no objections were made by AAFES officials at that time). Also, because of the vagueness of the statute, the Department expressed doubt whether a given case could be successfully prosecuted as a Federal crime under 18 U.S.C. 281.

We also referred the names of five persons to the Army and Air Force finance centers for further investigation for possible violations of 37 U.S.C. 801(c).

None of the possible criminal or civil selling law violations were questioned by AAFES during its review of the forms.

#### NAVRESO HAS NO DETECTION SYSTEM

NAVRESO requires all vendor representatives to sign a log at the reception desk before visiting a NAVRESO buyer. The log indicates the name of the visitor, the company represented, and the person being visited. This log is retained for several months and then discarded. Visitors are not required to state whether they are former NAVRESO employees or retired Regular military officers.

NAVRESO, therefore, has no reporting system for detecting potential violations of post-employment statutes. However, all employees attend semiannual standards of conduct training courses, where they are informed of the post-employment restrictions and the criminal or civil penalties for violating them.

NAVRESO officials believe that post-employment violations are not a problem, primarily because very few buyers have left the organization in recent years. However, they did agree that a reporting system, such as that in effect at AAFES, could help prevent any violations. They also believe that those leaving have not returned as vendors or vendor representatives. Since January 1, 1973, 69 management personnel in procurement or related positions left NAVRESO--61 civilian employees and 8 military officers. Without a reporting system we could not determine whether there had been any appearances by former employees, former Navy officers, or retired Regular officers of the Navy.

#### CONCLUSIONS

Because of the amount of products and services purchased for sale in the exchanges, AAFES and NAVRESO must have effective reporting systems to detect and prevent post-employment violations and possible undue influence in the purchasing

activities. Currently NAVRESO has no such system. AAFES' system could be effective if improvements were made and if the system were formalized and the notice of appearance forms properly reviewed. AAFES' system, with the improvements we have recommended below, should be evaluated for use in other DOD components.

#### RECOMMENDATIONS

We recommend that, to improve enforcement of post-employment statutes, the Secretary of Defense:

1. Require the commander, AAFES, <sup>and</sup> to:

--Revise the AAFES standard of conduct supplemental regulations to specify filing, processing, and review procedures for the notification of appearance form to help assure that post-employment statutes are being effectively and uniformly enforced at point-of-buy locations. /

--Revise the form and related instructions to obtain sufficient information from former employees and retired military officers to determine whether their appearances or other contacts would violate the post-employment statutes.

--Insure that the notice of appearance forms are promptly reviewed and prospective sellers cleared of any potential violations at all major point-of-buy locations.

2. / Require the commander, NAVRESO, to develop and implement a post-employment reporting system.

3. Determine whether such systems should be implemented at other DOD components where there is significant procurement activity.

*to assure <sup>effective</sup> post-employment reporting systems.*

## CHAPTER 4

### MATTERS FOR ACTION BY THE NEW

#### OFFICE OF GOVERNMENT ETHICS

The issues discussed in this report concerning financial disclosure systems, standards of conduct, and post-employment restrictions have Government-wide significance. Many have been reported by us in more than 20 reports. Many have resulted from the lack of leadership and enforcement of Executive Order 11222.

Recently the Congress enacted, and the President signed, the Ethics in Government Act of 1978. This act establishes an executive branch Office of Government Ethics with overall responsibility for financial disclosure and ethics regulations and their enforcement. While much of the act is geared toward the new public financial disclosure system established by the act, the agency does have responsibility for

- monitoring and investigating individual and agency compliance with any additional financial reporting and internal review requirements established by law for the executive branch,
- interpreting rules and regulations issued by the President or Office of Personnel Management governing conflict of interest and ethical problems and the filing of financial statements, and
- assisting the Attorney General in evaluating the effectiveness of the conflict of interest laws and in recommending amendments.

We believe the above responsibilities, if properly carried out, could resolve the issues discussed in this report and in previous reports. If Federal agency confidential financial disclosure systems were monitored and investigated, the Office of Government Ethics would find a consistent pattern of issues, such as raised in this report. The Office should also study the criminal and civil selling laws, in coordination with the Department of Justice and the Department of Defense, to determine their effectiveness and what should be done to make them equitable.

CONFIDENTIAL FINANCIAL  
DISCLOSURE REPORTING SYSTEMS

In developing new confidential reporting requirements for executive branch employees, the Office should act on most of the issues raised in chapter 2 of this report and those in our February 28, 1977, report, "Actions Needed To Make Executive Branch Financial Disclosure Systems Effective" (FPCD-77-23). (See app. IV for copy of the digest of the report.)

Areas in which agency regulations should be improved are

- criteria for determining positions whose incumbents should be required to file financial disclosure statements;
- procedures for collecting, reviewing, and controlling statements;
- specifics concerning the types of information required to be disclosed on the statements;
- supplemental standards of conduct for employees in particularly sensitive positions; and
- a requirement for periodic effectiveness audits of agency financial disclosure systems and standards of conduct programs.

These issues should be thoroughly reviewed by the Office and dealt with in assessing the present basic regulations concerning confidential financial disclosure reporting systems.

CRIMINAL AND CIVIL SELLING  
LAWS SHOULD BE REVIEWED

Former Government officials using, or appearing to use, their public experience to their personal advantage in private business can detrimentally affect the Government's credibility. On August 28, 1978, we issued a report, "What Rules Should Apply to Post-Federal Employment and How Should They Be Enforced?" (FPCD-78-38) detailing many issues involved in enforcing post-employment regulations.

In our work at AAFES and NAVRESO, in determining the extent to which post-employment statutes, 18 U.S.C. 207, and the criminal (18 U.S.C. 281) and civil (37 U.S.C. 801(c)) selling laws were enforced, we raised many questions and concerns about the effectiveness and equity of the laws.

The criminal selling law prohibits a retired Regular military officer from selling anything to the Government through the department in which the officer holds a retired status. The civil selling law prohibits a retired Regular officer from selling supplies or war materials to any DOD agency for 3 years after retirement. These laws apply only to retired Regular military officers and not to retired Reserve officers or civilian employees who have career experiences similar to those with which the laws are concerned.

At AAFES and NAVRESO one of the most sensitive positions is that of a buyer. Buyers purchase millions of dollars of merchandise from private industry for resale worldwide in the exchanges. They select, or participate in the selection of, vendors; evaluate competing proposals; negotiate contracts; and place orders against the contracts. The buyers exercise considerable influence on sources and prices.

These buyers, usually civilians, deal with many companies daily. Some are, and others could be, hired by companies at substantial increases over their Government salaries. At least 35 former employees returned to sell to AAFES over a 42-month period, and at least 5 of these left AAFES specifically to establish their own businesses which would sell to AAFES. At least 22 former employees returned to sell to AAFES within 1 year of leaving. Any such employees might use their former contacts and knowledge of the AAFES procurement system for personal gain and for benefiting their new employers, and yet the selling laws do not apply to them.

We believe the Office, under its authority to help the Attorney General evaluate the effectiveness of conflict of interest laws, should study the selling laws. Several key questions warrant further study:

- Should the two laws be consolidated into one overall selling law with specified penalties?
- Should they apply to all former Regular and Reserve officers who have more than a specified period of active service and DOD civilian employees?
- Should they apply to former employees of all Federal agencies and not just DOD?
- Who should enforce the laws, and what is the best method of enforcement?

--For how long should the laws prohibit sales activity?

--Should the laws be rescinded and 18 U.S.C. 207 revised to include specific selling prohibitions in a single statute?

The present laws are not equitable in that they apply to one class of former employees, retired Regular officers, but not to others who are in an equal position to use their knowledge and former contacts to influence sales. The Department of Justice has informed us that there is some question whether the present criminal selling law is enforceable as a Federal crime because of its present vagueness caused by a 1962 amendment.

### CONCLUSIONS

Over the past 4 years, we have issued many reports on deficiencies in Federal agency financial disclosure systems. These deficiencies are widespread throughout the executive branch. The Ethics in Government Act of 1978 will, through public disclosure, improve the systems for designated high-level officials and military officers. However, no action has been taken to improve the confidential reporting systems.

The civil and criminal selling laws are not equitable as they apply only to retired Regular military officers. Retired Reserve officers and civilian employees, who also can use their former contacts and knowledge to influence sales, are exempt. According to Department of Justice officials, there is some question whether the criminal selling law is enforceable as a Federal crime.

### RECOMMENDATIONS

We recommend that the Director, OPM:

--Develop new regulations concerning confidential financial disclosure systems, addressing the problems discussed in this and in our previous reports.

--Thoroughly study, in coordination with the Departments of Justice and Defense, the criminal and civil selling laws to determine their effectiveness and how they should be amended and enforced.

## CHAPTER 5

### SCOPE OF REVIEW

We made our review primarily at AAFES and NAVRESO headquarters. We also visited several AAFES and NAVRESO field locations and obtained information from other field locations, including overseas locations. We assessed the adequacy and effectiveness of AAFES' and NAVRESO's

- standard of conduct regulations,
- financial disclosure systems, and
- enforcement of post-employment laws.

In reviewing the financial disclosure statements filed by AAFES and NAVRESO employees, we maintained the confidentiality of the statements at all times.

REPORTS ON AGENCIES' FINANCIAL DISCLOSURE SYSTEMS

<u>Agency</u>	<u>Report title, number, and issue date</u>
Federal Power Commission	"Need for Improving the Regulation of the Natural Gas Industry and Management of Internal Operations," B-18028, 9/13/74.
U.S. Geological Survey	"Effectiveness of the Financial Disclosure System for Employees of the U.S. Geological Survey," FPCD-75-131, 3/3/75.
Civil Aeronautics Board	"Effectiveness of the Financial Disclosure System for Civil Aeronautics Board Employees Needs Improvements," FPCD-76-6, 9/16/75.
Federal Maritime Commission	"Improvements Needed in the Federal Maritime Commission's Financial Disclosure System for Employees," FPCD-76-16, 10/22/75.
U.S. Railway Association	"Improvements Needed in Procurement and Financial Disclosure Activities of the U.S. Railway Association," RED-76-41, 11/5/75.
Department of the Interior	"Department of the Interior Improves Its Financial Disclosure System for Employees," FPCD-75-167, 12/2/75.
Food and Drug Administration	"Financial Disclosure System for Employees of the Food and Drug Administration Needs Tightening," FPCD-76-21, 1/19/76.



<u>Agency</u>	<u>Report title, number and issue date</u>
U.S. Geological Survey	Letter report to Congressman John Moss on U.S. Geological Survey employees' divestiture, FPCD-76-37, 2/2/76.
Inter-American Foundation	"Inter-American Foundation's Financial Disclosure System for Employees and Its Procurement Practices," ID-76-69, 6/30/76.
Federal Aviation Administration	"Problems With the Financial Disclosure System, Federal Aviation Administration," FPCD-76-50, 8/4/76.
Department of Commerce	"Problems Found in the Financial Disclosure System for Department of Commerce Employees," FPCD-76-55, 8/10/76.
Small Business Administration	"Management Control Functions of the Small Business Administration--Improvements Are Needed," GGD-76-74, 8/23/76.
Export-Import Bank	"Export-Import Bank's Financial Disclosure System for Employees and Its Procurement Practices," ID-76-81, 10/4/76.
Federal Communications Commission	"Actions Needed To Improve the Federal Communications Commission Financial Disclosure System," FPCD-76-51, 12/21/76.
Tennessee Valley Authority	"Tennessee Valley Authority: Information on Certain Contracting and Personnel Management Activities," CED-77-4, 12/29/76.

<u>Agency</u>	<u>Report title, number and issue date</u>
Food and Drug Administration	"The Food and Drug Adminis- tration's Financial Disclo- sure System for Special Government Employees: Pro- gress and Problems," FPCD-76-99, 1/24/77.
Energy Research and De- velopment Administration	"An Improved Financial Dis- closure System," FPCD-77-14, 1/26/77.
Department of Agriculture	"Financial Disclosure System for Department of Agricul- ture Employees Needs Strength- ening," FPCD-77-17, 1/31/77.
The White House	"Action Needed To Make the Executive Branch Financial Disclosure System Effective," FPCD-77-23, 2/28/77.
Office of the Comptroller of the Currency	"Financial Disclosure Systems in Banking Regulatory Agen- cies," FPCD-77-29, 3/23/77.
The Federal Deposit Insurance Corporation	"The Federal Deposit Insurance Corporation's Financial Dis- closure Regulations Should Be Improved," FPCD-77-49, 6/1/77.
Civil Service Commission	"Financial Disclosure for High- Level Executive Officials: the Current System and the New Com- mitment," FPCD-77-59, 8/1/77.
Federal Reserve Board	"Proposals Regarding the Fed- eral Reserve Board's Financial Disclosure System," FPCD-77-46, 8/12/77.
Commodity Futures Trading Commission	"Regulation of the Commodity Futures Markets--What Needs to Be Done," CED-78-110, 5/17/78.

<u>Agency</u>	<u>Report title, number, and issue date</u>
Department of Commerce	Letter report to the Chairman, Subcommittee on Commerce, Consumer, and Monetary Affairs, House Committee on Government Operations, on Department of Commerce Actions to implement GAO recommendations concerning the Department's financial disclosure system, FPCD-78-42, 4/13/78.
Bank Regulatory Agencies	Letter report to the Chairman, Subcommittee on Commerce, Consumer, and Monetary Affairs, House Committee on Government Operations, concerning actions taken by three bank regulatory agencies to implement GAO recommendations on their financial disclosure systems, FPCD-78-54, 7/14/78.

IF ADDITIONAL SPACE IS REQUIRED, USE SEPARATE SHEET AND INDICATE ITEM NUMBER

<b>CONFIDENTIAL STATEMENT OF AFFILIATIONS AND FINANCIAL INTERESTS</b> DEPARTMENT OF DEFENSE PERSONNEL (INCLUDING SPECIAL GOVERNMENT EMPLOYEES) DATA REQUIRED BY THE PRIVACY ACT OF 1974			
<b>AUTHORITY</b>	Information is solicited in this Statement under the authority of Executive Order 11222.		
<b>PRINCIPAL PURPOSE</b>	Information is required from categories of DoD personnel specified in DoD Directive 5600.7, Section XIX or implementing regulation to enable supervisors and other responsible DoD officials to determine whether there are actual or apparent conflicts of interest between the individual's present and prospective official duties and non-Federal affiliations or financial interests.		
<b>ROUTINE USES</b>	This information shall be treated as confidential except as determined by the component head concerned or the Civil Service Commission.		
<b>DISCLOSURE</b>	Filing is voluntary in the sense that no criminal penalties will follow from refusal to file. However, the refusal to provide requested information may result in such measures as suspension of consideration for appointment, reassignment of duties, disciplinary action, or termination of employment.		
1 NAME (Last, First, Middle Initial)	2 TITLE OR POSITION		
3 DATE OF APPOINTMENT TO PRESENT POSITION	4 DOD COMPONENT AND MAJOR ORGANIZATIONAL SEGMENT		
<b>PART I - TO BE COMPLETED BY THOSE DOD PERSONNEL INDICATED IN SECTION XIX OF DOD DIRECTIVE 5600.7 OR IMPLEMENTING REGULATION</b>			
<b>5. NON-FEDERAL AFFILIATIONS AND FINANCIAL INTERESTS</b> The interest of a spouse, minor child, and any member of your household shall be reported in the same manner as your interests. List the names of all corporations, firms, partnerships, and other business enterprises, nonprofit organizations, and educational, or other institutions (a) with which you are (or since last filing were) affiliated as an employee, officer, owner, director, member, trustee, partner, adviser, agent, representative, or consultant, or as a person on leave from or having any understanding or plans for future affiliation, (b) in which you have any continuing financial interests, such as through a pension or retirement plan, shared income, continuing termination payments, or other arrangement as a result of any current or prior employment or business or professional association; or (c) in which you have any financial interest through the legal or beneficial ownership of stock, stock options, bonds, securities, or other arrangements including trusts. Identify any financial interests in commodities which you have had since last filing. If none, write "None".  Associations with, or interests in, a professional, charitable, religious, social, fraternal recreational, public service, civic, or political organization not conducted for profit and which is not engaged in ownership or conduct of a business for profit is not required. Educational and other institutions doing research and development or related work involving grants from or contracts with the Government are to be included in this report.  Amounts of financial interests need not be reported unless specifically requested by the Standards of Conduct Counselor or Deputy Counselor. For required information not known to you but known to another person, you are required to request its submission on your behalf.			
<b>NAME AND KIND OF ORGANIZATION</b>	<b>ADDRESS</b>	<b>POSITION OR AFFILIATION</b> <i>(Present or intended)</i>	<b>NATURE OF FINANCIAL INTEREST</b> <i>(Stock, prior business income, pension, etc.)</i>
<b>6 CREDITORS</b> List all creditors other than those providing arms length, conventional loans on customary commercial terms. If none, write "NONE".			
<b>NAME AND ADDRESS OF CREDITOR</b>		<b>NATURE OF DEBT</b> <i>(Personal loan, note, etc.)</i>	

DD FORM 1555 1 JAN 77

EDITION OF 1 MAR 66 IS OBSOLETE. REPLACES DD FORM 1555 1, 1 MAR 66, WHICH IS OBSOLETE

**7. INTERESTS IN REAL PROPERTY.** List your interests in real property other than personal residence you occupy. Note any DoD contractor relationship, present or prospective, regarding acquisition or present status. If none, write "NONE."

NATURE OF INTEREST (Ownership, mortgage, life, investment trust, etc.)	TYPE OF PROPERTY (Residence, hotel, apartments, farm, undeveloped land, etc.)	ADDRESS

**8. INFORMATION REQUESTED FROM OTHER PERSONS.** If any information is to be supplied by other persons (e.g., trustee, attorney, accountant, relative), indicate name and address of such person, date on which you requested information, and subject matter involved. If none, write "NONE"

NAME AND ADDRESS	DATE OF REQUEST	SUBJECT MATTER

**PART II - ADDITIONAL INFORMATION TO BE FURNISHED ONLY BY "SPECIAL GOVERNMENT EMPLOYEES"**  
(Temporary or part-time "advisors or consultants" as prescribed in Section III C of DoD Dir 5500.7 or implementing regulation)

**9. ESTIMATE THE NUMBER OF DAYS ON WHICH SERVICES ARE EXPECTED TO BE PERFORMED**

a. WITH EMPLOYING DOD COMPONENT	b. WITH OTHER FEDERAL AGENCIES	c. SUM OF a. AND b.

d. NUMBER OF DAYS WORKED FOR DOD DURING THE 365 DAYS PRECEDING DATE OF CURRENT APPOINTMENT	e. NUMBER OF DAYS WORKED FOR EMPLOYING DOD COMPONENT DURING THE 365 DAYS PRECEDING DATE OF CURRENT APPOINTMENT

**10. FEDERAL GOVERNMENT EMPLOYMENT.** List all other DoD Components and Federal agencies in which you are presently employed. If none write "NONE."

COMPONENT OR AGENCY AND LOCATION	TITLE OR KIND OF POSITION	APPOINTMENT PERIOD		ESTIMATED NUMBER OF DAYS
		From	To	

I certify that the statements I have made are true, complete, and correct to the best of my knowledge and belief, and that I have read and understand the contents of DoD Directive 5500.7 as implemented by my employing DoD Component's regulation.

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

**SUPERVISOR'S EVALUATION**  
(See enclosure 3 of DoD Dir 5500.7 or implementing regulation)

I have reviewed the above statement in light of the present and prospective duties of the individual to ensure that both actual and apparent conflicts of interest are avoided. My evaluation is

No affiliation/financial interests reported.

Reported affiliation/financial interests are unrelated to assigned or prospective duties, and no conflicts appear to exist.

Assigned duties require participation in matters involving or which may involve the following reported affiliation/financial interests. This conflict or apparent conflict will be resolved by:  Change in assigned duties,  Divestiture of the interests and relief of incumbent from all related duties pending divestiture.

Disqualification;  Other (explain). A copy of my advice is attached. Notice of completed corrective action will follow.

The following reported affiliation/financial interests are related to assigned or prospective duties, but have been determined by the appropriate appointing official to be not so substantial as to affect the integrity of the individual's services.  
A copy of that formal determination and rationale is attached.

The prospective employee's duties will require participation in matters involving the following reported affiliation/financial interests, and the appointment cannot be consummated until divestiture of these interests is completed.

SIGNATURE OF SUPERVISOR \_\_\_\_\_ PRINT OR TYPE NAME AND TITLE \_\_\_\_\_ DATE \_\_\_\_\_

**STANDARDS OF CONDUCT COUNSELLOR/DEPUTY COUNSELLOR - REVIEW** (See enclosure 3 of DoD Dir 5500.7 or implementing regulation)

As a duly designated counsellor (or Deputy Counsellor), I have examined the foregoing Statement and Evaluation

I concur with the supervisor's evaluation.

I do not concur with the supervisor's evaluation and recommend the following action:

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

ARMY AND AIR FORCE EXCHANGE SERVICE		DATE
NOTICE OF APPEARANCE BEFORE EXCHANGE ACTIVITY		
TO: (Indicate Organizational Activity and Address)		FROM: (Typed Name, Business Address and Telephone Number)
I HEREBY FILE NOTICE OF APPEARANCE IN THE MATTER DESCRIBED BELOW AND CERTIFY THAT THE REPRESENTATIONS MADE HEREIN ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.		
1. SUBJECT MATTER (Enter Contract or Claim Number, or describe in detail purpose of visit.)		
2. MY PRESENT OR FORMER STATUS IN THE MILITARY SERVICE, Civilian Employ U.S. Government, Including the Exchange Service. (Check as Appli.)		
<input type="checkbox"/> a. None <input type="checkbox"/> b. Retired Officer of Regular Component of U.S. Armed Forces. <input type="checkbox"/> c. Member Former Member Non-Regular Component of the US Armed Forces Not on Active Duty. <input type="checkbox"/> d. Former Officer or Employee Other than c. <input type="checkbox"/> e. In Active Service or Employ of the United States, Including with the Exchange Service.		
3. PERIODS OF SERVICE OR EMPLOYMENT IN THE U.S. GOVERNMENT, Including the Exchange Service (If None, So State.)		
DATES		DEPARTMENT AND AGENCY, OFFICE OR EXCHANGE ACTIVITY
FROM	TO	
4. THE ABOVE MATTER <input type="checkbox"/> DOES <input type="checkbox"/> DOES NOT INVOLVE THE MILITARY DEPARTMENT IN WHICH I HOLD A RETIRED STATUS. THE ABOVE MATTER <input type="checkbox"/> WAS <input type="checkbox"/> WAS NOT PENDING IN ONE OF THE EXECUTIVE DEPARTMENTS OF THE GOVERNMENT WHILE I WAS IN THE ACTIVE SERVICE OR EMPLOY OF THE UNITED STATES, INCLUDING THE EXCHANGE SERVICE.		
5. MY RELATIONSHIP WITH ABOVE SUBJECT MATTER -While in Active Service or Employ of the U.S. Government, Including the Exchange Service.		
<input type="checkbox"/> a. Subject Matter Within the Area of my Responsibility or the Responsibilities of Subordinates Over Whom I Exercised Supervision. <input type="checkbox"/> b. Performed Duties, Gave Personal Consideration To, Made Decisions, or Otherwise Gained Specific Knowledge with Respect to Above Matter. <input type="checkbox"/> c. Otherwise Connected With Above Matter. <input type="checkbox"/> d. None		
6. REMARKS EXPLANATIONS (If None, So State.)		
SIGNATURE:		

**COMPTROLLER GENERAL'S  
REPORT TO THE CONGRESS****ACTION NEEDED TO MAKE THE  
EXECUTIVE BRANCH FINANCIAL  
DISCLOSURE SYSTEM EFFECTIVE****D I G E S T**

The system requiring Federal employees to report their financial interests is not working as it should.

Operation of the system was delegated to the Civil Service Commission by the President, who in 1965, prescribed under Executive Order 11222, the standards of ethical conduct.

On the basis of GAO's 18 previous reviews on financial disclosure systems in Federal departments and agencies, GAO recommends that an office of ethics be established in the executive branch with administrative and enforcement authority strong enough to carry out the multiple responsibilities involved in operating a sound financial disclosure system. The executive branch conflict-of-interest program can no longer be managed on an ad hoc basis with limited support and insufficient resources.

GAO came to this conclusion after finding numerous cases in which employees owned stock or had other financial interests in companies that could conflict with their official duties. Many of these potential conflicts were obvious, yet those who reviewed the statements either did not question them or, if they did, failed to resolve the potential conflicts.

Many employees who were required to file statements failed to do so or filed late. Many others had filed but their statements were missing. Many were not even required to file, although they should have been.

In addition, GAO found problems in the:

- Developing financial disclosure forms so that all relevant information is obtained concerning employee interests needed to enforce conflict-of-interest matters.
  - Making periodic audits of the effectiveness of agency financial disclosure systems on a sample basis to see that they include appropriate procedures for collecting and reviewing statements and followup procedures to preclude possible conflicts of interest.
  - Establishing a formal advisory service to render opinions on matters of ethical conduct so that all agencies are advised of such opinions.
  - Providing criteria for positions requiring financial disclosure statements.
  - Investigating and resolving ethical conduct matters unresolved at the agency level, including allegations against a Federal employee or officer.
  - Providing a continuing program of information and education for Federal officers and employees.
  - Administering the financial disclosure system for Presidential appointees under section 401 of Executive Order 11222.
  - Reporting annually to the President and the Congress on the effectiveness of the ethics program and recommending changes or additions to applicable laws as appropriate.
3. Amend Executive Order 11222 to clearly define the terms "conflict substantially" and "substantially affected" so that all parties have an understanding of what is meant by these terms.



- Criteria for reviewing financial disclosure statements and for determining who should file.
- Procedures for collecting, processing, and controlling the financial disclosure statements.
- Methods for exacting timely remedial action to resolve conflicts that are detected.
- Procedures to ascertain that employees who have been required to disqualify themselves on matters affecting their financial holdings have, in fact, done so.

Some agencies have strengthened their systems in line with GAO's recommendations. However, departments and agencies will have to obtain more information from their employees if the appearances of conflicts of interest are to be avoided.

GAO recommends that the President:

1. Issue a clear statement to the heads of all executive departments and agencies setting forth a firm commitment to the highest standards of ethical conduct. Such statement should indicate the need for (a) each agency to promulgate ethics regulations that include compliance with regulations and laws applying to the functions and activities of the agency and (b) more stringent enforcement and evaluation of conflict-of-interest regulations.
2. Establish an executive branch office of ethics with adequate resources to address the problems of enforcement and compliance. The office should have the following responsibilities, among others:
  - Issuing uniform and clearly stated ethical standards of conduct and financial disclosure regulations as discussed in this report.

4. Amend Executive Order 11222 to (a) require all employees designated to file to disclose the types of data discussed in chapter 4 of this report and (b) require the collection of information necessary to enforce agency conflict-of-interest laws and administrative prohibitions.



## UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the  
Division Indicated  
and Refer to Initials and Number  
PBH:THH:CCD:ph  
186-16-New

28 MAR 1979

Mr. Milton J. Socolar  
General Counsel  
General Accounting Office  
Washington, D.C.

Attention: Ray Wyrsh  
Office of the General Counsel

Dear Mr. Socolar:

On June 21, 1978, your office referred to this Division for prosecutive review as possible criminal violations of 18 U.S.C. 281, several matters involving the sale of materials to Army-Air Force Exchange Services by former Army and Air Force officers. On July 11, 1978, we acknowledged receipt of your correspondence, informed you that we had some question concerning the continued vitality of 18 U.S.C. 281 as a criminal statute following the repeal of most of the statute in 1962, and we agreed to advise you when our prosecutive review of these matters was completed. Since that time, Craig C. Donsanto of this office has discussed these matters informally with Ray Wyrsh of your staff and indicated to him that we do not believe that prosecution under section 281 is appropriate here.

All of the matters you referred involved former military officers who had been requested to complete questionnaires concerning their past military service by AAFES prior to their undertaking the selling activities which were the subject of your referral. In each instance, the officer in question completed the form accurately revealing the nature and scope of his military record. In each instance AAFES personnel accepted these forms, filed them, but continued to allow the putative defendants to engage in the selling activities which section 281 arguably forbids. In none of the instances involved here was any effort apparently made to inform these former officers, either orally or through a written statement on the disclosure form they were required to execute, that selling material to AAFES could subject a former Army or Air Force officer to criminal liability.

As we indicated to you in our letter of July 11, 1978, we have had continuing question whether 18 U.S.C. 281, in its present form, states a criminal offense for which individuals may be subjected to the Federal criminal justice system. As you know, section 281 was largely repealed in 1962, and its substance transferred to what is today 18 U.S.C. 203. Accompanying the repeal of the former statute was a statement in the Public Law to the effect that nothing in the repeal should be "construed to permit" former officers of the armed services to contract for the sale of material with the military service in which they had served. Violations of section 281 were Federal felonies, punishable by fines of up to \$10,000 and/or by imprisonment for up to 5 years. Accordingly, to the extent that the statement reflected in the repealer provision for section 281 states a Federal crime, the activities described in your referral could feasibly be subject to these criminal penalties.

We are not in a position at this juncture to state positively that the unusual manner which the Congress chose to express its disapproval of the activities involved here does not constitute a Federal crime. In an unusually aggravated case we may feel the facts might warrant an attempt to apply this statute in a criminal setting. However, this is not such a case. Little perceptible harm to the Government appears reflected in your incoming material. Moreover, the failure of AAFES to warn these prospective defendants that they may be subject to criminal liability substantially weakens the matters from the standpoint of jury appeal, and may well give rise to delicate questions of estoppel and due process. Viewed in their entirety, we do not believe that these matters are appropriate vehicles to litigate the complex and novel questions concerning the continued vitality of 18 U.S.C. 281 as a Federal crime.

It is our understanding that administrative remedies are available to the Department of Defense in matters such as this, including requiring the officers in question to forfeit a portion of their military retirement pay under 37 U.S.C. 801(c). Under the circumstances present here, we feel that such action is an appropriate manner in which to redress public law enforcement interests, and in this

connection we note from your original referral that your office has already brought these matters to the attention of appropriate authorities at the Department of Defense.

We appreciate your bringing these matters to our attention. If we can be of assistance, please advise.

Sincerely,

PHILIP B. HEYMANN  
Assistant Attorney General  
Criminal Division

BY:

  
THOMAS H. HENDERSON, JR.  
Chief, Public Integrity Section

(964110)





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