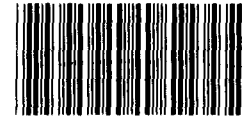


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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

For Release During
Hearings Scheduled
April 2, 1985, at
10:00 a.m.

STATEMENT OF
ROSSLYN S. KLEEMAN, ASSOCIATE DIRECTOR
GENERAL GOVERNMENT DIVISION
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
ON
FINANCIAL DISCLOSURE PROVISIONS OF THE ETHICS IN
GOVERNMENT ACT



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Mr. Chairman, and Members of the Subcommittee:

I am pleased to be here today to discuss a statutory interpretation that invalidates financial disclosure requirements as they affect a large proportion of the federal government's work force.

In August 1983, we became aware of certain Department of Justice legal opinions that severely affected the enforcement of financial reporting requirements in several agencies. In essence, these opinions indicated that agency financial disclosure systems could not be validly applied to the majority of the executive branch work force--those who occupy positions below grade GS-16 or below the Senior Executive Service (SES).

Attached to my statement is an August 30, 1983, letter to the Chairman of the Subcommittee on Human Resources of the House Post Office and Civil Service Committee, in which we discuss this problem at some length. In essence, the letter notes that Section 207(c) of the Ethics in Government Act had been interpreted by the Department of Justice as superseding financial disclosure requirements in other statutes, many of them specific to individual programs or agencies. The Ethics in Government Act applies only to federal employees in the SES or grades 16 and above. Section 207(a) of the act authorized the President to issue an executive order extending the disclosure requirements to other employees. However, when we wrote the letter, no executive order had yet been issued.

The effect of this situation was that there were no legally enforceable financial disclosure requirements for the vast majority of the federal work force. Thus, we suspended ongoing and planned work on the disclosure systems in two bureaus of the Department of Interior, and we have initiated no new work in this area.

To our present knowledge, the situation described in the August 1983 letter still prevails. The President still has not issued an executive order extending financial disclosure requirements to executive branch employees not covered by the law, even though executive branch officials have known of this problem since 1980. Our view remains the same as we expressed it 18 months ago--that ultimately a legislative solution to the problem will be required.

The letter provides brief analyses of four possible options for resolving the problem. We recognize that each of the options involves some disadvantages, and we are not prepared to make a specific recommendation at this time.

That concludes my prepared statement, Mr. Chairman. I shall be glad to respond to any questions that you or other members of the Subcommittee might have.



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

GENERAL GOVERNMENT
DIVISION

B-103987

AUG 30 1983

The Honorable Donald Joseph Albosta
Chairman, Subcommittee on Human
Resources
Committee on Post Office
and Civil Service
House of Representatives

Dear Mr. Chairman:

Subject: Options for Amending the Ethics in Government Act

This letter is in response to an August 22, 1983 request from your office for a quick analysis of problems arising from an interpretation of the provision in the Ethics in Government Act that supersedes financial disclosure requirements under other laws. Department of Justice opinions issued to the Environmental Protection Agency in April of 1980 and to the Office of Government Ethics in February of 1983 indicate that presently Federal employees at the GS-15 grade level and below (with few exceptions) are not subject to financial disclosure requirements. Those opinions are based on the Department of Justice interpretation of sections 207(a) and (c) of the Ethics in Government Act.

Section 207(c), Title II of the Ethics in Government Act (Public Law 95-521) states:

The provisions of this title requiring the reporting of information shall supersede any general requirement under any other provision of law or regulation with respect to the reporting of information required for purposes of preventing conflicts of interest or apparent conflicts of interest.

On April 11, 1980 the Department of Justice concluded that this section of the Act displaced the general financial reporting

requirement provisions of four environmental protection laws.^{1/}
Other Federal agencies--the Department of the Interior, for
example--have similar reporting requirements affected by this
Justice opinion.

Section 207(a) Title II of the Ethics in Government Act,
however, states:

The President may require officers and
employees in the executive branch
(including the United States Postal
Service and members of the uniformed
services) not covered by this title to
submit confidential reports in such
form as is required by this title.

The Department of Justice in a memorandum to the Acting
Director of the Office of Government Ethics on February 10, 1983
concluded that employee confidential financial disclosure
reports ordered by the President should include the same infor-
mation required of higher level employees under Title II of the
Ethics Act.

Because the President has not yet exercised his authority
to require confidential financial disclosure under 207(a), these
Department of Justice opinions mean that there is currently no
enforceable requirement for public or confidential financial
disclosure by Federal employees below the GS-16 grade level.
The statutory prohibitions on the financial interests of
specific groups of Federal employees, however, still exist.
Therefore, Federal officials responsible for agency ethics
programs have been left with duties to enforce statutory pro-
visions that prohibit certain financial interests employees may
hold, but these officials no longer have a legal basis for
requiring the necessary public or confidential disclosure
reporting by employees below the GS-16 grade level in order to
enforce these prohibitions.

1/ Section 26(e) of the Toxic Substance Control Act, 15 U.S.C.
2625(e)

Section 1007 of the Solid Waste Disposal Act, 42 U.S.C. 6906

Section 318 of the Clean Air Act, 42 U.S.C. 7618

Section 12 of the Environmental Research, Development and
Demonstration Authorization Act of 1978, Public Law 95-155,
91 Stat. 1263

Monitoring of Implementation Curtailed

Our review of the financial disclosure systems operated by Federal agencies has been curtailed pending a resolution of the dilemma confronting agency officials responsible for administering and operating financial disclosure systems.

Without a valid reporting requirement in place, we are not in a position to report positive or negative audit results on systems designed to process financial disclosure statements, insofar as those systems purport to address employees at the GS-15 grade level or below. If we report positively on an agency's design and implementation of such, we in essence will be endorsing an unauthorized system. If we report negative findings, the agency could argue that it is not legally obligated to require financial disclosure reporting, public as well as confidential, from its employees below the GS-16 grade level.

Three of our current audits of Federal financial disclosure systems have been affected by the Justice opinions. We have asked the Congressional requestor of two audits for permission (1) to close one audit with a staff briefing and (2) to suspend audit work at another agency. The third audit report, with a number of negative findings, has been delayed because of this issue. These jobs involve an assessment of the agencies' financial disclosure systems for Federal employees at the GS-16 and above grade level as well as employees below the GS-16 grade level.

Our past audits reveal that financial disclosure for employees at the GS-16 and above grade level, which continues to be in effect, is a small segment of agencies' overall financial disclosure systems. For example, at the Department of the Interior's Minerals Management Service, 14 employees at the GS-16 and above grade level filed the public disclosure form SF-278 required by the Act. Another 1,300 employees below the GS-16 grade level filed other confidential or public disclosure statements. Only the 14 employees at the GS-16 and above grade level are currently required to file disclosure statements under the Ethics in Government Act.

Options for Resolving the Problem

There are several ways to resolve this problem. GAO has not yet had time to analyze thoroughly all of the implications of the alternatives, but some pros and cons are presented below:

1. The President could issue a new executive order under Section 207(a). This would bring confidential reporting requirements for employees below the GS-16 grade level into conformance with reporting requirements for higher grades prescribed in Title II of the Ethics in Government Act.

Pros:

- This can be done under existing authority, with no action required by Congress.
- Work has been going on for many months within the executive branch to do this.

Cons:

- Because Section 207(a) requires reporting in the same form as Title II, a new executive order would still disrupt the reporting requirements in several agencies which now ask for information relevant to agency missions but not covered by Title II.
- Executive branch officials have known of this problem for more than three years, and the lack of a decision may indicate a reluctance to pursue this option.

2. Amend the Ethics in Government Act by removing Section 207(c).

Pros:

- This would be a simple solution from a legislative perspective.
- Existing reporting practices would remain intact for employees at the GS-15 grade level and below.

Cons:

- Employees in grades GS-16 and above would have to file not only the Standard Form 278 required by the Ethics in Government Act, but also other forms under other acts, reverting to the redundancy and excessive paperwork that characterized the period before passage of the Ethics in Government Act.
- This would directly violate a primary aim of the Act, which was to make reporting requirements for high level employees uniform among agencies.
- It should be noted that legislation has already passed the Senate without a provision for removing Section 207(c). Reconsideration may involve delay.

3. Amend the Ethics in Government Act by modifying Section 207(c) to make it applicable only to GS-16's and above (more specifically, to those enumerated in Section 201(f)).

Pros:

- Since only an introductory phrase to Section 207(c) would need to be added, this is a simple solution.
- Existing reporting requirements would remain intact for employees at the GS-15 grade level and below.
- This would essentially ratify the commonly held understanding of Section 207(c), that it superseded only the duplicative requirements affecting highest-level employees, and not those at GS-15 and below.
- GAO and other agencies would have a valid basis for reviewing disclosure systems in operation.

Cons:

- This would partially mitigate one purpose of the Act, which was to make reporting requirements more consistent for employees across the board; some employees at the GS-15 grade level and below will have to file two or more statements.
- Reconsideration to modify Section 207(c) may involve delay since legislation has already passed the Senate without this change.

4. Amend the Act to give Federal agencies administrative authority to require confidential financial disclosure to the extent necessary to enforce statutory prohibitions and otherwise monitor the financial interests of their employees.

Pros:

- There would be minimal disruption of operating systems.
- The Office of Government Ethics could monitor agency use of the authority to assure that it is not extended too broadly.

--GAO and the agencies would have a valid basis for reviewing disclosure systems in operation.

--As a temporary expedient, it could buy time for a more comprehensive review of the problem. In this regard, the authority could be granted for a limited period.

Cons:

--Same as alternative 3.

--If adopted as a temporary expedient, it could result in a period of confusion and hesitation.

While each of these options has disadvantages, we are convinced that a very real need exists for providing agencies with a defensible mechanism for requiring and monitoring financial disclosure statements of a broader range of their employees than are currently covered by the Ethics in Government Act. Ultimately, we believe Congress will have to resolve this problem through legislation. The fact that the Ethics in Government Act is presently under consideration by your Subcommittee offers an opportunity to resolve the problem before it becomes even more serious.

While your request for an immediate reply has not enabled us to do a complete analysis, we trust that this is responsive to your request. We would be pleased to do further work on this subject if you would find that helpful.

Sincerely yours,



William J. Anderson
Director