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BY THE COMPTROLLER GENERAL

# Report To The Congress

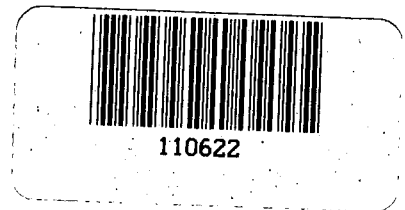
OF THE UNITED STATES

## Federal Agency Standards Of Employee Conduct Need Improvement

In a review at six Federal agencies, GAO found that the basic philosophy underlying the application of standards of employee conduct places the primary burden of responsibility on employees to know and abide by standards, while agencies assume a passive role usually only reacting to employee initiatives. Agencies generally have not taken sufficient action to evaluate the effectiveness of their standards, and the former Civil Service Commission's guidance to agencies on developing standards was not adequate to minimize variations in the behavior expected of employees from different agencies.

The report identifies problems and makes recommendations with respect to (1) negotiating for employment, (2) accepting honoraria, (3) outside employment activities, (4) accepting gifts and gratuities, (5) accepting travel reimbursement from private sources, and (6) resolving financial conflicts.

The Office of Personnel Management agreed with GAO's observations and intends to remedy the deficiencies noted.



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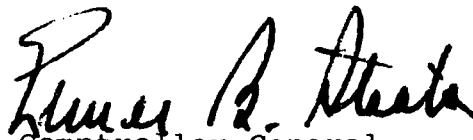
WASHINGTON, D.C. 20548

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

Executive Order 11222 prescribed basic standards of conduct for Government officials and directed 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. This report discusses needed improvements in the guidance given to agencies on developing standards of employee conduct, agency guidance to employees on questions of ethical conduct, and agency systems for implementing standards of employee conduct. It raises issues to be addressed by the Office of Personnel Management.

We are sending copies of this report to the Director, Office of Management and Budget; the Director, Office of Personnel Management; the Secretaries of Health, Education, and Welfare, Housing and Urban Development, and the Interior; the Director of the National Science Foundation; the Administrators of the Environmental Protection Agency and the National Aeronautics and Space Administration; and other interested parties.

  
Comptroller General  
of the United States

COMPTROLLER GENERAL'S  
REPORT TO THE CONGRESS

FEDERAL AGENCY STANDARDS  
OF EMPLOYEE CONDUCT NEED  
IMPROVEMENT

D I G E S T

Standards of employee conduct developed by Federal agencies

- often differ in the ways they are interpreted and applied,
- do not adequately meet some ethical issues confronting Federal employees, and
- could be implemented more effectively by Federal agencies.

Differences in agency application of standards result from statutes applicable to individual agencies, different agency responsibilities, and varied interpretations of general standards in Executive Order 11222 and implementing regulations. It is the interpretive differences that GAO questions. For example:

- Federal employees cannot accept honoraria for official activities. However, some agencies, in applying this rule, allow charitable contributions in place of the honorarium, others prohibit employees from suggesting charitable contributions, and some do not raise the issue.
- Some agencies require employees to report (1) an employment contact with another organization (company, local government agency, etc.) whose interests they can affect or (2) their intention to negotiate for employment with such an organization; others maintain that this type of reporting requirement would not be feasible.

These differences are dependent on agencies' interpretations of the most effective way to implement or apply a particular standard

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and result in wide variations in the behavior expected of Federal employees. These differences could be minimized by strengthening and expanding the guidance provided to agencies in the implementing regulations. Minimizing these differences would, in GAO's opinion, improve agency standards. (See pp. 20 through 22.)

Also GAO found that individual agency standards did not adequately address potential problems confronting agency employees. (See p. 25.) For example:

- Negotiating for employment generally was not defined.
- Restrictions on accepting honoraria in the Federal Elections Campaign Act Amendments of 1976 were included in the standards of only two of the six agencies.
- Only one agency prohibited outside employment with a company having business relationships with the agency.

Inadequate development of standards, due in part to the lack of guidance, resulted also because Federal agencies were not making use of available information sources to periodically review and evaluate the effectiveness of their standards as guidance for their employees. (See p. 30.)

Past identification of weaknesses in standards usually occurred as a result of adverse publicity over a particular problem.

Agency Inspectors General should become involved in reviewing the effectiveness of agency standards of conduct because of the types of talent that will be concentrated in these offices and the high visibility that will be accorded the findings and recommendations made by those offices.

Agencies have not taken affirmative steps to communicate to employees their responsibilities under standards of employee conduct or to assure that advice and guidance is consistent and correct. Officials authorized to respond to questions on ethics often did not respond correctly to GAO's questions. (See p. 37.) Even within individual agencies officials interpreted the same standards differently. (See p. 39.)

Agency management must better communicate the importance of these standards to employees and establish ways to recognize when problems exist in their implementation.

GAO recommends that the Office of Personnel Management ~~revise~~ the implementing regulations for Executive Order 11222 to:

- (1) --Strengthen the guidance in those regulations on developing standards by specifically addressing those issues subject to varying interpretations from agency to agency.
  - (2) --Require Federal agencies to review and evaluate the effectiveness of their standards of conduct in relation to their responsibilities. This review should include an evaluation of employee compliance, agency enforcement, and needed improvements in the standards.
  - (3) --Foster a basic change in the passive philosophy underlying implementation of the standards.
- To change this passive philosophy, Federal agencies should be required to make employees fully aware of their responsibilities and to assure consistent and correct advice and guidance when questions arise. Some specific actions agencies could be encouraged to take which would improve implementation of the standards include:

- ✓ --initiating special procedures for emphasizing the importance of standards of conduct (for example, a separate orientation package for new employees or a film or slide presentation),
- ✓ --providing interpretive guidance on sections of the standards,
- ✓ --developing an informative summary of the standards to alert employees to potential conflicts and areas in which they should seek advice,
- ✓ --providing effective lines of communication between deputy counselors and the agency counselor,
- ✓ --requiring documentation of advice and guidance except for simple repetitious cases and requiring that these cases at least be noted for future reference (for example, a telephone log such as that used by the assistant ethics counselor of the Department of the Interior), and
- ✓ --providing specific training and guidance to agency officials authorized to respond to employee questions.

Agency officials generally agreed with GAO's conclusions and recommendations. Office of Personnel Management officials said that unclear guidance results in wasted time; unnecessary anxiety about the propriety of specific acts; and, consequently, a natural disaffection for an ethics regulatory system. They intend to develop reasonable, highly specific, and clear regulations which are the most likely to overcome this natural disaffection and gain acceptance. They further contemplate a staff of employees who will visit agencies to determine whether steps have been taken to identify conflict-of-interest problems and keep employees informed of the standards of conduct.

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## CHAPTER 1

### INTRODUCTION

Over the past several years, Federal employees' ethical conduct has received continuing attention from the news media, public interest groups, concerned citizens, Federal agencies, and the Congress. As a result, we have reported on the deficiencies in many Federal agencies' financial disclosure systems and on the Government's efforts to regulate post-Federal employment. In addition, we have set up a task force to improve Government systems for identifying waste, fraud, and abuse.

This report--a continuation of our interest in employee ethics--addresses standards of ethical conduct for Federal employees that were developed in response to Executive Order 11222.

Our prior reviews identified, as a basic problem, the lack of a strong central authority to oversee the development and implementation of Federal agencies' standards of conduct. To correct this problem, we recommended the creation of the Office of Government Ethics. Title IV of the Ethics in Government Act of 1978 (Public Law 95-521) established this Office within the Office of Personnel Management. This Office is responsible for overseeing the development and implementation of standards of conduct previously assigned to the Civil Service Commission under Executive Order 11222.

Although strong ethical standards will not prevent ethical abuses anymore than a posted speed limit will necessarily prevent drivers from exceeding that limit, we believe that most Federal employees will abide by established ethical standards if agencies (1) apply standards consistently and equitably, (2) address situations which employees must avoid, and (3) keep employees aware of expected behavior.

#### LEGISLATIVE AND REGULATORY INITIATIVES IN THE ETHICS AREA

Standards of employee conduct were developed in response to Executive Order 11222. There are, however, a host of Government-wide and agency laws and regulations in addition to the Executive order which affect the development of standards of conduct.

## Executive Order 11222

Executive Order 11222, issued May 8, 1965, directed the establishment of standards of conduct for Federal employees and required the reporting of financial interests. The Executive order established

- Government policy regarding employee ethical conduct;
- standards concerning the acceptance of gifts, entertainment, and favors;
- ethical standards of conduct and financial disclosure reporting requirements for special Government employees; and
- financial disclosure requirements for regular, full-time employees.

The order directed the Civil Service Commission to (1) issue regulations implementing the order, (2) review agency regulations from time to time for conformance with the order, and (3) recommend any necessary changes to the order. Agency heads were directed to supplement the standards with regulations geared to their particular agency and to assure the availability of counseling for those employees who requested it.

### Government-wide legislation affecting standards of conduct

Government-wide legislation also affects the standards developed by Federal agencies. The major Government-wide statutes affecting the areas we reviewed are

- 18 U.S.C. 201 through 209 (Criminal Conflict of Interest Statutes),
- Public Law 95-105 (Foreign Gifts and Decorations Act),
- Public Law 94-283 (Restrictions on the amounts of honoraria that can be accepted by Federal employees),
- 5 U.S.C. 4111 (Allowing acceptance of contributions, awards, and reimbursements from nonprofit, tax-exempt institutions for training in a nonprofit facility or attendance at meetings or conferences), and

- Public Law 95-521 (The recently enacted Ethics in Government Act of 1978 which broadens some financial disclosure requirements, establishes the Office of Government Ethics, sets criteria for using blind trusts, and modifies restrictions on post-Federal employment).

The effect of these statutes on the standards will be discussed as needed in subsequent sections of this report.

### Specific statutes, regulations and other legal interpretations

The development of standards of conduct is also affected significantly by legislation that sets specific restrictions or responsibilities for a particular agency. Following are examples of agency requirements based on statutes and other legal interpretations we identified during our review.

- Travel reimbursements for official travel: In 46 Comp. Gen. 689 (1967) (B-128527, Mar. 7, 1967), the Comptroller General rendered a decision which allows an agency empowered by statute to accept gifts to accept reimbursement for the official travel of its employees and which allows agency employees to accept services in kind as donations to the agency.
- Financial disclosure systems: The Congress has established separate requirements for financial disclosure under a number of different statutes. In this review two agencies, the Department of the Interior and the Environmental Protection Agency, are faced with multiple disclosure requirements under the following statutes as well as under the Executive order and the Ethics in Government Act. In some cases these statutes also prohibit the holding of certain financial interests.

#### 1. Department of the Interior:

- The Federal Land Policy and Management Act of 1976.
- The Mining in the Parks Act.
- The Energy Policy and Conservation Act.
- The Outer Continental Shelf Lands Act Amendments of 1978.

--The Surface Mining Control and Reclamation Act of 1977.

2. Environmental Protection Agency:

--The Toxic Substances Control Act.

--The Solid Waste Disposal Act.

--The Clean Air Act.

--The Energy Research, Development, and Authorization Amendments of 1977.

--Organic Acts: Authorizing legislation for certain bureaus within the Department of the Interior sets specific restrictions on financial holdings of employees. These include the Bureau of Land Management and the Bureau of Mines.

--Disclosure and disqualification for nonfinancial relationships: The National Science Foundation is required under section 10 of Public Law 95-99 to establish a procedure for identifying and disclosing academic affiliations and relationships. Foundation employees are specifically disqualified from taking part in proposal actions if they have certain defined relationships with parties outside of the Foundation.

SCOPE OF REVIEW

We made our review primarily at six Federal agencies. (For a list of the agencies and sites, see app. II.) The issues we addressed involved employees' standard of conduct on:

--Accepting gifts and gratuities.

--Accepting reimbursements for official travel and subsistence expenses from non-Federal sources.

--Resolving financial conflicts of interest caused by the holdings of an employee, his spouse, or a member of his family.

--Negotiating for post-Federal employment while employed with a Government agency.

--Seeking employment or taking part in other activities outside an employee's normal Government employment.

--Accepting honoraria for such activities as teaching, lecturing, or writing.

We reviewed case files on problems brought to the attention of agency ethics counselors; files on questions raised by employees; information generated by clearance or approvals for outside employment; and studies by agencies, consulting groups, and congressional committee staffs.

We have issued separate reports to the Department of Health, Education, and Welfare; the National Science Foundation; and the Environmental Protection Agency recommending specific actions for improving their standards of conduct. (See app. III.) The agencies generally agreed with our conclusions and recommendations and indicated some specific actions they were taking to correct identified deficiencies. For example, Department of Health, Education, and Welfare officials indicated they were revising their standards of employee conduct and would include in their revision the points we raised. The Environmental Protection Agency is designating its Inspector General as the focal point for evaluating the effectiveness of the standards, and the National Science Foundation will prohibit acceptance of reimbursement for official travel from private groups.

## CHAPTER 2

### IMPLEMENTING REGULATIONS ON STANDARDS

#### OF CONDUCT NEED TO BE IMPROVED

Implementing regulations on developing standards of conduct are very general and do not cover certain issues which agency standards need to address. For example, two of the issues we evaluated--travel reimbursement from private sources and honoraria offered or given to agency employees--are not covered in the implementing regulations.

However, all six agencies addressed those and the other issues to some degree. The standards agencies developed were often general and differed substantially from agency to agency because of (1) specific statutes or special duties applicable to a particular agency and (2) the lack of specific implementing regulations for Executive Order 11222 which results in differences based on agency interpretations.

We believe differences not based on specific statutes or special duties should be minimized. The ethical conduct expected of employees of one agency should not vary substantially from that of another, nor should it vary substantially within one agency.

The following discussion of the standards, policies, and procedures used by the agencies to address the six issues we examined shows the variations in guidance for Federal employees. It also points out factors we believe should be addressed by agency standards and, to assure consistency, by the guidance provided to agencies on developing standards.

#### NEGOTIATING FOR EMPLOYMENT

Negotiating for employment is an area where employees may unknowingly encounter conflict-of-interest situations. Implementing regulations merely address the criminal statute regarding negotiating for employment. According to 18 U.S.C. 208, a Federal employee may not participate personally or substantially in any particular matter in which, to his knowledge, an organization with which he is negotiating for employment or has any arrangement concerning prospective employment has a financial interest.

A November 12, 1976, memorandum from the Department of Justice states that it is at least arguable that 18 U.S.C. 208 was intended to encompass some situations in which

unilateral contacts have been made by either the employee or the prospective employer. This memorandum further states that, even if this interpretation of the statute is not followed, disqualification would be appropriate under Executive Order 11222. We found, however, that several counselors and other agency officials were not aware of the memorandum.

Although agency standards referred to 18 U.S.C. 208, none of the agencies' standards defined "negotiating for employment." The National Science Foundation, as part of other ethics-related documents, has defined "negotiating" as a display of serious consideration on the part of the potential employer. Under this definition a Foundation employee could send out resumes to several institutions and continue to deal with those institutions until a response has been received indicating a serious interest.

The Department of the Interior, in addition to acknowledging the statutory restriction, prohibits its employees from negotiating for future non-Federal employment with persons or organizations having business with the Department which can involve the employee without first obtaining permission from his or her supervisor. The Department has not specified what type of contact constitutes negotiating.

Three divisions of the Environmental Protection Agency have developed procedures--not included in the Agency's standards--which require that employees submit a memorandum to their division head specifying their intention to make an employment contact or reporting the receipt of an employment contact.

In our opinion, implementing regulations for Executive Order 11222, at a minimum, should address the following matters:

- Actions which would constitute negotiating for employment.
- Specific policies describing limitations and restrictions on negotiations.
- Procedures to be followed when negotiating for employment to assure that a conflicting situation does not arise.

#### ACCEPTING HONORARIA

Acceptance of honoraria is only referred to in the Civil Service Commission's guidance on developing standards of

conduct in the section prohibiting certain Presidential appointees from receiving anything of monetary value for any activity devoted substantially to their official responsibilities. The guidance states only that the prohibition may be extended to other officials whom the agency head believes should be covered.

Honoraria are addressed in Public law 94-283--the Federal Election Campaign Act Amendments of 1976--which prohibits officers and employees of the Federal Government from accepting an honorarium of more than \$2,000 (excluding expenses for travel and subsistence, agents' fees, or commissions) for any appearance, speech, or article, or honoraria aggregating more than \$25,000 in any calendar year.

The acceptance of honoraria from groups doing business with or whose interests can be affected by an agency presents the potential for a conflict of interest or the appearance of a conflict of interest. However, none of the agencies' standards restricted honoraria on the basis of the identity of the individuals involved. Several agency ethics counselors stated that the identity of the participants, as well as the particular situation, is covered by other prohibitions in their standards (for example, the prohibitions on acceptance of anything of monetary value in certain circumstances in standards on gifts and gratuities or the restrictions on outside employment activities). We believe these prohibitions are not sufficient. Honoraria need to be specifically included as prohibited items in the same manner as the acceptance of gifts.

Although each of the six agencies, in recognition of the statutory prohibition against dual compensation (18 U.S.C. 209), prohibited the acceptance of anything of monetary value from outside sources for actions classified as official business, both the Environmental Protection Agency and the National Aeronautics and Space Administration allow employees to suggest a charitable contribution in place of the honorarium. Space Administration officials told us this was allowed in situations which could otherwise prove embarrassing to the Government. The Environmental Protection Agency has established an employee college scholarship fund to be supported by such contributions. The National Science Foundation allows employees to accept an honorarium for official acts in potentially embarrassing circumstances "in the name of the Foundation," and the money is deposited to a special trust fund. On the other hand, the Department of Health, Education, and Welfare has specifically told its employees to refuse honoraria and not to suggest or even agree to a charitable contribution in recognition of an official action.



We believe implementing regulations for Executive Order 11222 should address at least the following matters:

- The restrictions imposed by Public Law 94-283.
- The definition of an honorarium for purposes of the standards.
- Potential problems based on the relationship between the agency and the group, person, or organization offering the honorarium rather than simply on the specific reason the honorarium is being offered.
- The propriety of allowing employees to accept "in the name of the agency" or allowing employees to recommend or agree to a charitable contribution in place of an honorarium.

#### OUTSIDE EMPLOYMENT ACTIVITIES

Under Executive Order 11222 and implementing regulations, Federal employees are allowed to engage in outside employment or other activities, with or without compensation, that are compatible with their Government employment. However, they cannot accept anything of monetary value in circumstances which may result in or create the appearance of a conflict of interest.

Agency standards generally permit employees to engage in outside employment and other activities as long as it does not affect their official duties, tend to create a conflict between their private interests and their official duties, or reflect discredit or cause unfavorable criticism of the Government or the employing agency.

However, differences exist in the specificity of the prohibitions and agency requirements for prior approval of outside activities. For example, some agencies consider only work for pay as outside employment while others also consider employee activities as part of a professional group. Some agencies require clearance for certain types of outside activities, others for other types, and some not at all.

#### Agency restrictions

Agency restrictions differed extensively. The Department of Housing and Urban Development restricts

- activities that establish relationships or property interests that may result in a conflict;

- direct or indirect involvements in the purchase, sale, or management of real estate, including financing realty transactions with certain exceptions;
- employment related to or similar to the substantive programs conducted by any part of the Department, including real estate, mortgage lending, property insurance, construction financing and planning, and real estate development; and
- employment with any person, firm, or other private organization having business with the Department.

The Department of Health, Education, and Welfare restricts

- professional or consultative services;
- writing and editing;
- publishing;
- teaching, lecturing, and speechmaking;
- holding office in a professional society; and
- holding State or local government office.

The National Science Foundation restricts providing advice and assistance to nonprofit or commercial organizations if the services (1) are related to employees' Foundation activities, (2) draw on information derived from nonpublic Government information, or (3) are paid from a Foundation award.

The Department of the Interior includes specific restrictions based on statutes for several bureaus. For example, Geological Survey employees may not work on surveys or examinations for private groups or corporations with or without pay. Also Bureau of Land Management employees are not allowed to hold real estate licenses because of possible conflict with that Bureau's mission.

The Space Administration and Environmental Protection Agency do not permit work with any contractor or subcontractor which is connected with any work being performed for the agencies.

## Agency approval systems

Only two of the agencies do not require approval of certain outside activities: (1) The Department of the Interior, although some of its Bureaus do, such as the Bureau of Mines, and (2) the National Science Foundation.

Agency clearance procedures normally entail filing a written request with a supervisor who, after approving it, submits it to a higher management level for final approval. The ethics counselor may or may not become involved in the process, depending on the sensitivity of the position and the particular situation.

Department of Housing and Urban Development employees must obtain approval before engaging in outside employment with State, local, or other governmental bodies or in the same professional field as their official positions. Also, prior approval is needed to maintain a publicly listed place of business and to use an official title in connection with any publications.

The Department of Health, Education, and Welfare requires clearance of

- certain writing, editing, teaching, or lecturing activities;
- all professional and consultative services with a higher level approval for work with a group that has, is seeking, or has sought a grant or contract from a Federal agency; and
- certain office-holding activities in professional societies.

Environmental Protection Agency regulations require employees to obtain administrative approval before engaging in

- regular self-employment,
- consulting services,
- State or local public office,
- outside employment or other outside activity involving an agency contractor or subcontractor, and
- any other outside work about which an employee is uncertain.

The Space Administration requires administrative approval for the same type of outside activities as the Environmental Protection Agency. However, the Space Administration also requires approval for writing or editing activities, speaking engagements, and teaching and lecturing.

We believe implementing regulations should address

- the types of outside activities that can be considered employment (work for pay, volunteer work, activities as part of a professional group, etc.),
- the activities which should require prior approval,
- the criteria for determining a conflict of interest,
- types of clearance procedures which are the most effective and least onerous to employees.

#### ACCEPTING GIFTS AND GRATUITIES

Implementing regulations for Executive Order 11222 require agencies to prohibit employees from soliciting or accepting directly or indirectly any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a person or organization whose interests can be substantially affected by the performance or nonperformance of the employee's official duties. Exceptions include

- gifts based on family relationships,
- food and refreshments of nominal value on infrequent occasions during a luncheon or dinner meeting,
- usual loans from banks or other financial institutions to finance normal expenditures (for example, auto loans or mortgages), and
- unsolicited advertising or promotional material of nominal intrinsic value.

The regulations state that, among other things, the intention is to prevent any action which might create the appearance of (1) using public office for private gain, (2) losing complete independence, or (3) making Government decisions outside official channels.

The agencies' standards on accepting gifts, gratuities, entertainment, etc., are the same as the implementing regulations, with the following exceptions.

--The National Science Foundation prohibits accepting gifts, etc., "which might be reasonably interpreted by others as being of such a nature as to affect the employees' impartiality."

--The Space Administration and the Environmental Protection Agency specify exceptions tied to employees' duties. Also the Space Administration specifies the dollar value of a nominal gift (\$5).

The six agencies did not require reporting of gifts or gratuities. The value of such a requirement can be seen in a situation that occurred at the Environmental Protection Agency. Employees at the Agency often had to deal with foreign companies which offered gifts that were extremely difficult to refuse. The acceptance of these gifts came to light only when employees requested advice on how they should handle them. The Agency counselor was not aware that such situations constituted a problem. Since the Agency did not keep track of gifts offered or received, each request for advice was treated separately.

Each of the agencies allowed the acceptance of food and refreshments of nominal value on infrequent occasions and the acceptance of nominal promotional gifts. At the National Science Foundation, acceptance of meals while on site visits was a common practice known and accepted by management. A Bureau of Mines manager told us that accepting meals and refreshments when dealing with outside concerns was acceptable, while another Bureau of Mines manager told us he advised his employees that it was not an acceptable practice. The Space Administration's ethics counselor told us that contractors for that agency had been informed that meals were acceptable only when no provision could be made for Space Administration employees to pay for their own meals.

The values applied to "nominal" ranged anywhere from an undefined amount up to \$50, depending on the particular situation.

We believe implementing regulations for Executive Order 11222 on accepting gifts and gratuities should address

--the value of a nominal gift,

--what constitutes "infrequent" acceptance of meals or refreshments and the types of relationships which should inhibit acceptance of meals or refreshments,

--procedures to be followed when gifts are offered or received, and

--the criteria used to decide what gifts and gratuities to report.

ACCEPTING TRAVEL REIMBURSEMENT  
FROM PRIVATE SOURCES

Generally, employees' acceptance of outside reimbursement for official travel expenses or services in kind is not allowed because it would be an augmentation of agency appropriations. However, a variety of exceptions, including the following, allow outside groups or organizations to pay for official Government employee travel:

- 5 U.S.C. 4111 provides that payments of travel, subsistence, and other expenses incident to attendance at meetings or training in a non-Government training facility may be accepted from nonprofit, tax-exempt organizations.
- 5 U.S.C. 3371 authorizes reimbursement of expenses for Federal employees detailed to State and local governments and to universities.
- 22 U.S.C. 1451 authorizes the Secretary of State to assign Government employees to foreign governments and accept, with the approval of the employing agency, reimbursement for the employees' pay and allowances.
- 5 U.S.C. 3343 authorizes the detail of employees to public international organizations in which the United States participates and allows agencies to accept reimbursement for the detailed employees' pay, travel expenses, and allowances.
- 42 U.S.C. 3506 authorizes employees of the Department of Health, Education, and Welfare to accept payment in cash or in kind from non-Federal agencies, organizations, and individuals for travel and subsistence in conjunction with meetings or advisory services.
- 46 Comp. Gen. 689 (1967), B-128527, held that any employee's expenses incurred incident to official travel are chargeable to an agency's appropriation unless the agency has statutory authority to accept gifts or donations from private sources. The agency

can use this authority to accept (1) travel reimbursement and (2) services in kind to employees from private groups as gifts to the agency.

Our major concern in this review was with situations in which private organizations could reimburse the agency or provide services in kind to employees on official travel.

Implementing regulations on accepting reimbursement for official travel state only that no payments should be accepted for travel reimbursed by the Government and that reimbursements for travel on official business should comply with the Comptroller General's decision (46 Comp. Gen. 689). There is no guidance on policies that should be followed to avoid conflicts or the appearance of a conflict of interest in this area.

Agencies' policies on accepting travel reimbursements for official travel vary extensively.

--The National Science Foundation's policy states that (1) an employee is not to accept cash reimbursement and (2) reimbursements cannot normally be paid from a Foundation award. There is no policy on accepting travel expenses or services in kind from Foundation award recipients.

--The Department of Health, Education, and Welfare restricts shifting normal travel costs to non-Federal sources and prohibits employees from soliciting travel reimbursements from private groups. It also prohibits (1) acceptance of payment in cash or services in kind if there is an inspectional or supervisory relationship between the employee and the potential donor and (2) reimbursement from a Federal Government grant. Acceptance of cash by employees is discouraged except from international organizations--either non-governmental or intergovernmental.

--The Department of Housing and Urban Development's standards of conduct allow for reimbursement for official travel according to the Comptroller General's decision, while the Department's travel regulations prohibit accepting reimbursement except according to 5 U.S.C. 4111. We were told that the Office of General Counsel plans to recommend revisions to the travel regulations to permit accepting reimbursement for official travel in certain cases.

- The Department of the Interior does not have authority to accept gifts on the departmental level. However, some of its bureaus are authorized to accept travel reimbursement, but some bureau assistant ethics counselors were unaware of this authority.
- The Space Administration's policy on reimbursement for official travel requires an official "reimbursable arrangement" before travel, which specifies the service to be performed and the extent of reimbursement. The reimbursement must be paid directly to the Space Administration by check. In-kind hospitality may also be permitted when employees are on official travel; however, the written approval for this must be shown on the travel order.
- The Environmental Protection Agency could not accept reimbursement for official travel expenses from private concerns.

We believe the implementing regulations for Executive Order 11222 should address the following matters:

- The conflict of interest potential inherent in the acceptance by employees of cash payments for travel reimbursements.
- Situations in which travel reimbursement should be restricted (e.g., National Science Foundation restrictions on reimbursements from a Foundation grant).
- Relationships that could lead to the appearance of a conflict (e.g., the Department of Health, Education, and Welfare's restrictions on reimbursement when an inspectional or supervisory relationship exists between the employee and the donor).
- The need for specific controls over reimbursed travel (e.g., the Space Administration's approval system).

#### RESOLVING FINANCIAL CONFLICTS

The financial disclosure system, which is included as a part of the agencies' standards of conduct, is perhaps the most well known aspect of the entire ethics program. We have reported on the problems of implementing financial disclosure systems in over 20 reports to the Congress. (See app. I.) In this review, we concentrate on how agencies resolve conflicts of interest once they have been identified.



Implementing regulations for the Executive order refer to possible remedies for conflicts of interest and require that conflicts which cannot be resolved on a lower agency level be referred to the head of the agency through the agency ethics counselor. The instructions do not specify the criteria to apply in deciding to use a particular remedy, the length of time that would be considered acceptable between identifying and resolving a conflict or potential conflict of interest, the type of followup that is needed to assure that a particular remedy is carried out, or how to define a substantial interest in deciding what constitutes a conflict.

Following are remedies for conflicts of interest:

--Disqualification/reassignment.

--Divestiture.

--Blind trust.

--Waivers.

--Dismissal (in extreme cases).

The Ethics in Government Act of 1978 (Public Law 95-521) established specific rules and criteria on what could be included in a blind trust. Dismissal is used only after all other remedies fail. Therefore, we concentrated our review on disqualification, divestiture, and waivers.

The agencies, except for the Department of the Interior, generally had not developed criteria to determine when and how to use a given remedy.

In addition, agency officials often did not know whether conflicts were actually resolved because there was little if any followup to assure that agreed-on actions had been taken.

### Disqualification

Each of the agencies permitted employees to use disqualification as a remedy for a conflict. However, except for the National Science Foundation, the agencies had no specific criteria on the use of disqualification.

The National Science Foundation, as part of Public Law 95-99, was required to establish specific criteria on when an employee should be disqualified. Employees who perform a decisionmaking function in handling any grant or

contract research proposal are to determine whether they have any affiliation with the applicant, proposed principal investigator, or project director. If they are affiliated in any of the ways specified, they may not participate in any decisions involving the proposal, and a statement explaining the disqualification is placed in the proposal file.

Also the agencies generally had not established formal procedures for monitoring disqualifications. Some have initiated informal procedures. For example, the National Aeronautics and Space Administration "builds a double layer" by making a disqualification known in writing to the employee's supervisor and subordinates. The Department of Housing and Urban Development notifies the employee's supervisor of the potential conflict so that an employee's assignment can be changed.

We believe agencies should develop specific criteria for determining when disqualifications are acceptable and establish a regular procedure for monitoring them.

### Divestiture

At most of the agencies, divestiture of conflicting interests was handled on an individual basis with nothing specific on when divestiture should be used. The length of time allowed to implement a divestiture also varied. The fact that divestiture can create a hardship for an individual stresses the need for agencies to establish criteria governing its use and develop procedures to assure that the recommended actions have been properly implemented.

Agency counselors told us that they handled divestiture in the following manner, although formal procedures did not exist with the exception of the Department of the Interior.

- The National Aeronautics and Space Administration recommends divestiture for substantial holdings which conflict with the individuals' duties. We were told that employees were usually given 3 months to divest; however, agency regulations specified no time period. The agency counselor told us that she disqualified employees during this period, checked that divestitures had taken place, and noted it on the disclosure statement. But this followup is not required.
- The Environmental Protection Agency requires divestiture for substantial holdings which could conflict with an individual's duties. However, as with the

Space Administration, there is no specified time for implementing a divestiture order; various deputy counselors told us they would allow from less than 30 to more than 120 days, and there is no followup to assure it has taken place.

--The Department of Housing and Urban Development specifies that any divestiture order is to be implemented within 60 days. The Department requires written notification by the employee that the order has been complied with.

--The Department of Health, Education, and Welfare has not established formal criteria on when to use divestiture nor procedures for implementing or following up on divestiture orders. The agency counselor said that employees are given 90 to 120 days to implement an agreed-upon divestiture.

--At the Department of the Interior, bureau and office ethics counselors decide the need for divestitures. The order to divest must be in writing, indicate the specific interests and why they create a problem, and specify the time allowed for the divestiture. The departmental assistant ethics counselor told us that from 60 to 90 days was the normal period allowed for divestiture, and employees are required to submit sales receipts or similar evidence that the order has been complied with.

--National Science Foundation officials told us they had not had occasion to use divestitures for a conflicting interest and had not established any procedures for using the remedy.

Each of the agencies using divestiture to remedy a conflict or the appearance of a conflict considers the "substantiality of the holdings." The Space Administration and the Science Foundation stated that holdings below \$5,000 would not be considered substantial. The Department of the Interior's level, though not specified, is about \$2,500. The Department of Health, Education, and Welfare and the Environmental Protection Agency do not have a particular dollar amount. The Department of Housing and Urban Development's level of substantiality is \$7,500 (if it represents less than 1 percent of the outstanding stock of a company). However, we were told by the Department assistant ethics counselor that this is used as the level of substantiality in deciding on waivers to 18 U.S.C. 208, the Criminal Conflict of Interest Statute. It is not normally used in deciding whether or not a divestiture is required.

The use of divestiture as a remedy for a conflicting financial interest is a serious step that should be carefully considered, and agencies should establish criteria governing its use.

### Granting of waivers

Five of the agencies will grant waivers for financial holdings if the holdings are too remote or insubstantial. According to the National Science Foundation ethics counselor, the Foundation has never granted a waiver for financial holdings and has no criteria on deciding this issue.

The problem discussed in relation to divestiture on determining what constitutes a substantial holding also applies in determining whether to grant a waiver. Although the agencies reviewed are generally consistent about when to grant waivers, not all have established followup procedures to assure that changing situations are accounted for.

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Remedies for conflicts and appearances of conflicts from financial holdings are vital to the success of any standards of conduct program. Also specific regulations on this aspect are clearly lacking at the agencies we reviewed. Implementing regulations should address

- the need to establish criteria on when to use any particular resolution,
- a general level of substantiality for purposes of divestiture and the granting of waivers,
- the time that should be allowed to resolve a conflict, and
- the need to establish procedures for monitoring of disqualifications.

### CONCLUSIONS

Agencies differ in the policies and procedures used to apply and implement employee standards of conduct. In some cases, specific statutes and in others the varied duties and responsibilities of a particular agency are the cause for these differences. However, many differences in the ethical behavior expected from Federal employees are due to agency interpretations of very general guidance or, in some areas, the lack of guidance contained in implementing regulations for Executive Order 11222.

Our review showed that agencies applied many different rules to similar problems and that the rules were not always well defined. Major emphasis is often on individual judgments of employees.

--In the area of negotiating for employment, some agencies have specific reporting requirements and others rely on their employees' reading and understanding the criminal statutes--18 U.S.C. 208. Similarly, one agency defined negotiating as any employment contact, and another allows employees to submit resumes to outside organizations and only considers an employee as negotiating when the prospective employer has indicated serious interest. Other agencies have not provided guidance on what constitutes negotiating.

--In the area of honoraria, agencies generally allowed acceptance for nonofficial activities unless it created a conflict or the appearance of a conflict with employees' duties. Agencies did not restrict honoraria because of the appearance of a conflict that can exist based on the relationship of the offeror to the agency as well as to the individual employee. Further, some agencies allow employees to suggest charitable contributions in place of honoraria offered for official acts, while one agency specifically directs its employees to neither suggest nor even agree to a charitable contribution in recognition of an official act.

--In the area of outside employment, one agency primarily restricted work for pay, another included restrictions on office holding in a professional society. Each agency restricted activities that conflicted with the employees' duties but only one prohibited employment with an organization or firm doing business with the agency. Some agencies required approval of certain types of outside employment activities, others did not require any prior approval.

--In the area of accepting gifts and gratuities, agencies differed substantially in what would be considered nominal--from an undefined amount up to \$50; the Space Administration specified \$5. Infrequent acceptance of food and refreshments was generally allowed, but one agency allowed acceptance of food and refreshments as a common practice during visits to private organizations.

--In the area of reimbursement for official travel expenses from private organizations, some agencies allowed reimbursement for general travel, and some restricted reimbursement to travel costs for unusual travel--to give a speech or meet at the convenience of the paying group--others did not permit travel costs to be paid by private groups. One agency prohibited reimbursement from grants or contracts funded by that agency, another from any Federal grant or contract, and others did not address the issue. One agency allowed acceptance of cash payments by employees in certain circumstances, and other agencies specifically prohibited acceptance of cash.

In our opinion, Federal agencies need guidance from the Office of Personnel Management to prevent the many differences we have pointed out. The regulations on developing standards of employee conduct need to be revised to provide this guidance.

#### RECOMMENDATION

We recommend that the Director, Office of Personnel Management, revise the implementing regulations for Executive Order 11222 to cover potential problem areas not now covered and make the guidance already contained in those regulations more specific. The Office of Personnel Management should determine whether revisions, in addition to those we recommend, are needed and, in developing new regulations, should obtain opinions from appropriate agency officials. (This was done by the Office of Personnel Management in developing post-employment regulations.) The revision should cover at least

- the actions which would constitute negotiating for employment and criteria for requiring employees to report employment contacts;
- the conditions under which honoraria could create a conflict and suggestions for treating honoraria offered for official acts;
- the types of outside activities which can create a conflict with an employee's duties and under what conditions prior approval should be required;
- the range of dollar amounts for nominal gifts and the value of collecting information on the receipt of gifts and gratuities by employees and guidance on what is meant by "infrequent occasions";

--the potential for conflicts when employees accept cash from private organizations for official travel expenses and/or accept reimbursement paid from a Federal grant or contract; and

--the criteria for using a particular remedy for a conflicting financial interest, the level at which a holding should be considered substantial, the time that should be allowed to implement remedial actions, and the need to follow up and monitor to assure that remedial actions have taken place.

Where appropriate, these revisions should be done in consultation with the Department of Justice.

#### AGENCY COMMENTS AND OUR EVALUATION

Officials commenting on this report generally agreed with the need for additional guidance from the Office of Personnel Management to resolve the problems of differing interpretations from agency to agency and provide consistent ethical standards for all Federal employees. Office of Personnel Management officials intend to remedy the deficiencies noted in the report. They said that, although conformity is generally desirable, a number of solutions within a reasonable range may be acceptable; however, uncertain and unclear guidance can result in wasted time, unnecessary anxiety about the propriety of specific acts, and consequently a disaffectation for an ethics regulatory system. They intend to develop reasonable, highly specific, and clear regulations which their experience has shown are most likely to find acceptance.

The National Aeronautics and Space Administration expressed concern that the guidance might not allow sufficient flexibility to account for special agency problems. We believe the need for flexibility is tied to variances in agency duties and responsibilities. The need for flexibility to account for these special duties and responsibilities is brought out in the Executive Order 11222 requirement that agency heads "supplement the standards \* \* \* with regulations of special applicability to the particular functions and activities of his agency." In this report we specify that we are talking about differences based on interpretation.

The Department of the Interior agreed with our recommendation but believed:

1. The Office of Personnel Management should solicit and consider the views of numerous agency officials in developing new regulations.
2. The recommendation should suggest that agencies be allowed to issue more stringent regulations where justified.
3. The Office of Personnel Management should work with the agencies and the Congress to consolidate many of the separate statutory financial disclosure provisions.
4. Immediate action by the Office of Personnel Management is important.



## CHAPTER 3

### AGENCIES NEED TO DEVELOP MORE

#### SPECIFIC STANDARDS OF ETHICAL CONDUCT

Just as the Office of Personnel Management has not developed specific regulations to implement Executive Order 11222, agencies have not developed specific standards for their employees.

Agency standards often do not sufficiently explain ethical issues or provide guidance on expected ethical behavior to help employees identify and resolve potential ethical problems. Actions to improve standards have usually resulted from adverse publicity because of ethical problems or apparent conflicts of interest. With the exception of the required financial disclosure systems, agencies have not monitored compliance with the standards.

To assist them in periodically evaluating the effectiveness of their standards, agencies need to determine the information sources available and use these sources to identify needed improvements.

#### STANDARDS DO NOT ADEQUATELY ADDRESS ETHICAL ISSUES

Executive Order 11222 directed agency heads to provide employees with clear standards of ethical conduct and with guidelines and interpretations needed to relate those standards to individual situations.

Agency standards were often very general in nature, merely repeating regulations implementing Executive Order 11222. The standards at several agencies did not provide employees with enough information on

- negotiating for post-Federal employment while still employed with the agency;
- accepting honoraria for such activities as teaching, lecturing, and writing;
- becoming involved in outside employment activities;
- accepting reimbursements for travel expenses while on official travel; and
- accepting gifts and gratuities.

Examples of the problems we found, which are discussed in greater detail in chapter 2, included:

- Negotiating for employment was not well defined. Additional restrictions on negotiating for employment were included in the standards at the Interior, and the statutory restriction (18 U.S.C. 208) was included in all the standards, but very little additional guidance on potential problems was included.
- None of the agencies defined an honorarium in their standards, although it is defined in Public Law 94-283. That statute prohibits a Federal employee from accepting an honorarium of more than \$2,000 or more than \$25,000 in any one calendar year. However, the statute was only referenced in the standards of two of the six agencies--the Space Administration and Department of the Interior.
- The standard on outside employment at the Department of Health, Education, and Welfare, although extensive, was not easy to apply to any particular situation--a fact that was pointed out internally by officials of the Public Health Service. The Interior and the National Science Foundation did not require approval for outside employment activities. Only the Department of Housing and Urban Development specifically prohibited outside employment with any company having business relationships with the Department. The Space Administration prohibited working for a contractor or subcontractor on work being done for that agency.
- Reimbursements for travel expenses or for services in kind from private sources receiving grant or contract funds from the National Science Foundation were allowed only with the admonition that the payments should not come from a Foundation award, should not be in cash to the employee, and should not involve a conflict of interest.
- Most agencies prohibited the acceptance of gifts and gratuities with certain exceptions. The National Science Foundation only prohibited employees from accepting gifts which might reasonably be interpreted by others as affecting the employees' impartiality--a determination made by the employee. The Environmental Protection Agency's standard on gifts did not specifically cover gifts from foreign companies, although this was a major problem to some employees. Most

agencies allowed acceptance of nominal promotional gifts, but only the Space Administration defined "nominal" in terms of a dollar amount (\$5). "Nominal value" at various agencies ranged from \$50 to an unknown amount depending on the individual's position.

Our separate reports to the Department of Health, Education, and Welfare; the National Science Foundation; and the Environmental Protection Agency recommended specific actions for improving these agencies' standards. (See app. III.)

AGENCIES DO NOT PERIODICALLY EVALUATE  
THE EFFECTIVENESS OF THEIR STANDARDS

Agencies adopted standards between 1966 and 1973 as called for by Executive Order 11222 and implementing regulations.

Department of Health, Education, and Welfare	1966
Department of Housing and Urban Development	1967
Department of the Interior	1966
National Science Foundation	1966
National Aeronautics and Space Administration	1967
Environmental Protection Agency (note a)	1973

a/The Environmental Protection Agency was created in 1970 and operated with the general standards issued by the Civil Service Commission until 1973 when the Agency adopted its own standards.

Changes to the standards have occurred in each agency except the Environmental Protection Agency. However, the extent of change has varied and has often been related to the amount of external pressure to improve standards, rather than an internal evaluation of the effectiveness of the standards and their implementation. None of the agencies had established procedures for periodically evaluating the effectiveness of their standards.

For example, the Department of Health, Education, and Welfare has not substantially modified its standards since adopting them. No changes have been made to the standards since September 1970. In 1976 Public Health Service officials recommended that a task force study and revise the Department's standards. Public Health Service officials said

- honoraria were not adequately covered,
- "professional" and "consultative services" were ambiguous terms,
- procedures to be followed if the standards were violated were not known, and
- apparent conflicts existed between the guidance on "outside employment" and questions on the form used to request approval of outside activities.

However, the General Counsel did not respond to these recommendations, and no action was taken to revise the standards.

On the other hand, the Food and Drug Administration supplemented the departmental standards with regulations on financial disclosure and restrictions specific to Food and Drug employees in 1972. These supplemental regulations were improved only after congressional interest in potential conflicts and two GAO reports 1/ issued in 1976 and 1977. At the time of our review, the Department had no policy for periodically evaluating the effectiveness of its standards to identify areas for improvement.

The Department has conducted a procedural review of the financial disclosure system and the system for disseminating standards of conduct to employees, but this work had not been completed at the time of our review.

Problems with the Environmental Protection Agency's standards were identified initially in 1975 in a consultant's study of its standards. However, an ad hoc committee established to recommend changes as a result of this study reported in June 1976 that no serious conflicts existed and basic changes were not necessary.

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1/"Financial Disclosure System for Employees of the Food and Drug Administration Needs Tightening" (FPCD-76-21, Jan. 19, 1976) and "The Food and Drug Administration's Financial Disclosure System for Special Government Employees; Progress and Problems" (FPCD-76-99, Jan. 24, 1977).

In March and April 1977, the Subcommittee on Oversight and Investigations, House Committee on Interstate and Foreign Commerce, reviewed financial disclosure statements of selected Agency employees and reported finding widespread conflicts. As a result of the Subcommittee's findings, a second ad hoc committee on conflicts of interest was set up to recommend improvements. Changes proposed by this second committee were concerned primarily with potential conflicts from financial holdings--the problems brought out by the Subcommittee's report.

Our review identified problems in areas other than financial holdings, and, in our report to the Administrator, we recommended that the Agency institute a periodic effectiveness evaluation of the standards. (See app. III.)

The Department of the Interior developed standards in 1966. These were revised in July 1975 to correct deficiencies identified during our review of the U.S. Geological Survey's financial disclosure system. Revisions in December 1976 made further refinements and incorporated new public disclosure requirements under various acts applying to Department activities. (See pp. 3 and 4.) The Department's Office of Audits and Investigations subsequently reviewed implementation of certain sections of the standards--primarily the operation of the financial disclosure system. However, a periodic evaluation of the effectiveness of the standards was not instituted.

Similarly, the National Science Foundation has not established a procedure for periodically evaluating the effectiveness of its standards. The Foundation has conducted ad hoc reviews to resolve recurring problems. For example,

--in 1974 the Office of General Counsel issued additional guidance on frequently encountered conflicts of interest because of several problems that had come to the attention of management and

--in 1978 an ad hoc committee on conflicts of interest addressed questions on employee conduct.

The National Aeronautics and Space Administration revised its standards in 1976 to strengthen the standard on employee acceptance of gifts, gratuities, or entertainment and to incorporate the statutory restrictions on acceptance of honoraria in Public Law 94-283. The standards on gifts, gratuities, or entertainment was revised because of the adverse publicity and congressional interest that resulted from Department of Defense officials' accepting trips and

other gratuities from private companies and identification by the Space Administration that some Space Administration officials were involved.

At the Department of Housing and Urban Development, the standards of conduct developed in response to the Executive order did not differ significantly from those issued by the Civil Service Commission. Since adopting the standards, the Department has modified restrictions on outside employment, clarified language relating to a "moderate scale of investment," and permitted employees to continue serving as officers and directors of Federal credit unions after these organizations gained authority to make loans under title II of the National Housing Act of 1934, as revised. As with the other agencies, the Department had not periodically reviewed the standards' effectiveness at the time of our review.

AVAILABLE INFORMATION IS NOT  
USED TO EVALUATE STANDARDS'  
EFFECTIVENESS

We identified the following information sources which could be used to evaluate the effectiveness of standards of conduct and identify potential problem areas:

- Information contained on financial disclosure statements.
- Information on outside employment activities based on prior approval systems.
- Questions raised on interpretations of the standards and answered either informally or without regard to the question as a possible indication of a general problem.
- Information developed as part of investigations of employee activities by Inspectors General or internal security offices.

Financial disclosure statements

Most Federal employees at GS-13 or above (and some below GS-13) file a confidential financial disclosure statement as required by Executive Order 11222. GS-16 and above employees are required to publicly disclose information on financial interests, the acceptance of gifts, and the amounts of honoraria accepted for teaching, lecturing, and writing under the Ethics in Government Act of 1978. In addition,

Environmental Protection Agency and Department of the Interior employees must file public disclosure statements under several other statutes. (See pp. 3 and 4.)

### Clearance of outside employment

Outside employment activities and other outside activities which could reflect on the particular agency were subject to clearance or prior approval to some degree at each of the agencies except the National Science Foundation. In addition:

- The Department of Health, Education, and Welfare required clearance of many teaching, editing, writing, and publishing activities.
- The Environmental Protection Agency and the Space Administration required clearance for self-employment, consulting services, holding State or local public office, and any outside employment involving an agency contractor or subcontractor. In addition, the Space Administration required clearance of teaching, lecturing, writing, and editing.
- The Department of the Interior required prior approval of nonofficial expressions. While the Interior did not generally require that outside employment activities be approved, articles or speeches did require clearance. Some bureau ethics counselors were not aware of this requirement. Also Bureau of Mines employees must get prior approval for some outside employment.
- The Department of Housing and Urban Development required clearance of outside employment if it was in the same professional field as the employees' official positions or employment with a State or local government.

At the Department of Health, Education, and Welfare, we identified four employees who were teaching workshops on the regulations and administrative requirements for obtaining Government grants and contracts. The standards did not prohibit this activity since the individuals were involved in policysetting and not directly in the grant or contract process. However, we believe several individuals from the same office involved with the same outside activity could give the impression that the outside activity was directly related to their positions in the Department. This type of

information could be used to identify areas where additional guidance is needed to prevent even the appearance of unethical conduct.

### Responses to employee questions

Employee questions concerning the standards were often treated as informal requests for information, and agencies made no attempt to document the questions or use the information to identify problems.

The Department of the Interior's assistant ethics counselor kept a log of employees' questions. If each bureau ethics counselor did this, the logs could give a general picture of the ethical areas employees are concerned about.

At the Department of Housing and Urban Development, supervisors are instructed not to refer questions to the appropriate deputy ethics counselor. We were told that, with the exception of routine questions, the Department requires deputy counselors to coordinate responses with its ethics counselor.

At other agencies, employees' questions are directed to a variety of persons.

--At the Department of Health, Education, and Welfare, supervisors are primarily responsible for handling employees' questions. If supervisors cannot answer the questions, they refer them to deputy counselors or the departmental counselor. Answers are often informal and undocumented, and no data base is developed.

--The program divisions handle most of the questions at the National Science Foundation without referring them to the ethics counselor or developing a data base on questions.

--Employees at the Environmental Protection Agency direct questions to 49 deputy counselors who base their answers on their own interpretation of the standards.

--At the Space Administration, questions were often answered informally without any records being maintained.

In our opinion, documenting employees' questions could be a valuable source of information for identifying weaknesses in the standards and the need for change.



## Investigations of alleged misconduct

Agencies generally do not attempt to systematically abstract information from internal investigations to show the need for improvements. This information could be used to identify issues which are not addressed.

For example, at the Environmental Protection Agency, from 1973 through 1976 over \$2,600 worth of gifts from foreign companies that had dealings with Agency employees had been reported to the Inspections Office by employees concerned with potential conflicts of interest. However, no action was taken to regulate this situation. Officials in the Inspections Office had not identified any violation of law or regulation and therefore had no reason to recommend corrective action.

## Specific agency sources

Sources of information specific to a particular agency could also be used to monitor compliance and identify weaknesses in the standards. For example, at the National Science Foundation, one source could be information on academic affiliations or financial interests required by Public Law 95-99. Another source would be information on travel reimbursements and acceptance of services in kind at agencies which allow this.

## CONCLUSIONS

Agencies generally have not examined their standards in terms of their employees' responsibilities. As a result, standards at several agencies did not adequately address certain issues or provide employees with the information they needed to avoid ethical problems and conflicts of interest.

None of the agencies have established any procedure--other than the required financial disclosure systems--for monitoring compliance with standards and evaluating their effectiveness. In some cases, parts of the program have been audited, but these have been procedural reviews and not overall evaluations. In addition, sources of information which could be used to systematically evaluate the effectiveness of standards of conduct are not being used.

We believe that agencies need to develop standards that adequately address the problems confronting their employees. In doing so, they must periodically review and evaluate their standards to monitor compliance and identify weaknesses. We believe that the logical focal point to

identify weaknesses and recommend corrective action would be the newly established Offices of Inspector General. These offices are the best equipped to review and evaluate the standards of conduct. The types of analysis necessary to evaluate the standards' effectiveness is typical of Inspectors General work.

Where agencies do not have an Inspector General, the President, in December 1978, directed that significant features of the Inspector General program be extended throughout the Federal Government and called for development of plans for using agency audit and investigative resources to deal with issues of waste, fraud, and abuse. We believe that these plans should also include an evaluation of the effectiveness of agencies' standards of conduct.

#### RECOMMENDATIONS

We recommend that the Director, Office of Personnel Management, revise Executive Order 11222 implementing regulations to require Federal agencies to periodically evaluate their standards of employee conduct. The review should evaluate employee compliance, agency enforcement, and needed improvements in the standards.

We further recommend that agency Inspectors General take an active role in these evaluations as part of their responsibilities to combat waste, fraud, and abuse. In their semiannual reports to the Congress, they should specifically set out their work dealing with standards of conduct and the extent of investigations and types of violations they have encountered with their recommendations for improvements.

#### AGENCY COMMENTS AND OUR EVALUATION

The Office of Personnel Management said that it would not merely devise regulations but also contemplate on organization with a staff of employees who would visit the agencies to determine whether steps were being taken to identify conflict-of-interest problems and keep employees informed of the standards of conduct.

National Aeronautics and Space Administration officials commented that they had developed specific standards in five of the six areas addressed in the report, and, therefore, the report does not accurately reflect the situation at that agency.

The degree of detail and specificity of the individual standards used by the Space Administration varies as it does

at each of the agencies we reviewed. For example, the Space Administration has developed a highly specific standard on accepting gifts and gratuities but has not developed a standard covering negotiating for employment. The degree of specificity of the standards developed by the Space Administration is recognized throughout chapter 2.

In this chapter we emphasize that agencies generally have not reviewed their standards in terms of the needs of their employees. Further, identification of problems with standards has often been as a result of influence external to the agency--as was the case with the Space Administration's identification of deficiencies in its standard on gifts and gratuities. We are recommending that a periodic evaluation of the standards be required of all Federal agencies and continue to believe that implementing this recommendation could result in improvements in the standards of employee conduct at the Space Administration as well as at other agencies.

The Department of the Interior pointed out that the standards of employee conduct program was the responsibility of the Department's Inspector General. Making the Inspector General responsible for evaluating the effectiveness of the standards would require that the Inspector General audit standards written, for the most part, by her own staff.

The Department stressed, however, that it would continue to perform compliance audits of various bureaus' and offices' implementation of the standards and that our recommendation relating to the use of internal sources of information to identify problems with the standards would be adopted.

## CHAPTER 4

### AGENCIES COULD MORE EFFECTIVELY

#### IMPLEMENT STANDARDS OF CONDUCT

Agencies need to communicate more effectively with employees on the importance of knowing and complying with standards of employee conduct. The general philosophy underlying the regulations implementing Executive Order 11222 is that the employee is primarily responsible for complying with the standards, while the agency reacts to problems and questions that arise. Agencies are required to (1) develop standards, (2) see that employees receive a copy of the standards, and (3) establish a counseling service to respond to employee questions.

Such requirements place heavy emphasis on action being initiated by employees. For example:

- The employee is to be given a copy of the standards. The agency is not required to establish any system for assuring that employees read and understand the standards.
- Agencies are required to designate counselors to interpret the standards and provide advice and guidance. However, counselors only contribute to effective implementation of the standards where an employee identifies a potential problem and initiates a question.

The effect of this passive philosophy can be seen in the lack of emphasis by agencies on implementing standards of conduct.

#### EMPLOYEES COULD BE MADE MORE AWARE OF THE STANDARDS

Implementing instructions for Executive Order 11222 state that

"\* \* \* a full awareness of the standards and requirements on the part of the employees \* \* \* is fundamental to the effective execution of Presidential policy in the area of ethical and other conduct."

The implementing regulations require that agencies furnish employees with a copy or comprehensive summary of the standards and bring the appropriate regulations to their attention whenever circumstances warrant.

We found agency employees were often not aware of the standards and their responsibilities. At the Department of Health, Education, and Welfare, we found several indications of a lack of awareness. For example:

--Department regulations require that employees disqualify themselves from matters in which any organization with which they are negotiating for employment has a financial interest. However, an official told us that the Department's regulations do not cover negotiating for future employment.

--Department regulations require certain employees to report the financial interests of (1) a spouse or minor child regardless of whether they reside in the same household as the employee and (2) any blood relative residing in the same household. An official responsible for reviewing the financial disclosure statements on which this information is to be reported told us, however, that employees did not have to report financial interests of a spouse or minor child unless they resided with the employee.

--A lack of knowledge of procedures to be followed if standards are violated was one of the problems cited by Public Health Service officials when they recommended that a task force review the standards.

Department personnel offices provide new employees with a copy of the regulation when they are hired, but do not discuss the importance of the regulation. Annual reminders of the standards rarely interpret information. They simply notify employees of their responsibility for observing the standards.

At the National Science Foundation, awareness problems resulted from (1) the Foundation's failure to provide standards as a single package instead of in fragmented documents, (2) the lack of orientation of new employees to standards of employee conduct, (3) the lack of emphasis placed on the importance of knowing and abiding by the standards of conduct, and (4) the Foundation's failure to annually remind employees of its standards.

Discussions with several deputy counselors at the Environmental Protection Agency revealed that the Agency had not provided the type of guidance that employees needed. For example, one deputy counselor told us employees needed more information on dealing with Agency contractors. A second deputy counselor said the language of the standards is too "legalistic" and difficult for employees to read

and understand. Another told us that orders, other than the standards, dealing with employee conduct responsibilities are not disseminated.

In March 1975 the Agency Administrator issued a memorandum to all employees to heighten awareness of the legal and ethical concepts governing employee actions. However, there was no further communication on ethics for the next 3 years. In April 1978 the Office of Inspector General produced a film dealing with employee standards of conduct. The film generally reflects the information in the standards and should improve awareness on the part of Agency employees. Also, during 1978 the General Counsel's office conducted a series of talks on standards of conduct in various agency regional offices. This, however, was a one-time program.

The level of employee awareness at the Department of the Interior varied among groups of employees. The Department has put substantial effort into standards of conduct. However, most of this effort has been directed toward implementing various financial disclosure requirements. We found indications of a lack of awareness on the part of employees and in several instances on the part of personnel responsible for giving advice in the three groups we reviewed.

In the Bureau of Land Management, new employees are to receive a copy of the standards of conduct regulation when they are hired and sign a statement certifying that (1) they do not have any interests in public lands and (2) they have received a copy of the standards of conduct regulation. The extent that standards of conduct are emphasized depends on the individual personnel specialist or supervisor involved in orienting the new employee. For instance, in the Sacramento office we found that the orientation package did not always include a copy of the standards of conduct. The assistant ethics counselor told us he did not have enough copies, and, as a result, he would often send a copy of the regulation to a new employee with instructions that the employee read and return the regulation so that it could be available for other employees.

We found further indications that the Bureau of Land Management's procedures for making employees aware of the standards of conduct need to be improved.

--Several cases in the ethics counselor's files indicated employees were requesting waivers to the prohibition on ownership of interests in public lands. In two cases, the employees had been told the interest did not fall within the prohibition of the law when in fact it did. As authorized by the applicable law,

in both cases waivers were granted because of the extenuating circumstances and the fact that the holdings would not create a conflict of interest.

--Several investigations by the Department's Office of Audits and Investigations revealed no wrongful intentions on the employees' part but rather a lack of awareness that the actions violated Department regulations. One specific area in which employees lacked awareness was "negotiating for employment."

In the Bureau of Mines, we also found procedures for informing employees of their responsibilities could be improved.

--Preemployment counseling of new staff to cover standards of conduct is done only on an irregular basis.

--We were told that employees received annual reminders of the standards of conduct. However, the assistant ethics counselor was not able to provide us with copies of these reminders.

One Bureau of Mines supervisor told us that he did not apply restrictions to the acceptance of meals and drinks by personnel in his office and had accepted meals and drinks on several occasions himself. This same official believed that anything up to \$25 would constitute a "nominal" gift and that acceptance of services in kind, such as accommodations when in travel status that were not sufficiently covered by per diem, would not violate any regulations.

The Bureau of Mines requires employees to obtain prior approval for outside employment activities which could be interpreted as being related to the employees' jobs or the Bureau's work. An official told us that, although employees must get approval for outside employment, he did not know who would be responsible for approving it. Another official told us that an employee would not be allowed to teach at a university that received research grants from the Bureau. He was not aware that prior approval is not required for teaching at a university.

#### INADEQUATE ADVICE

Executive Order 11222 and implementing regulations require agency heads to designate a top-ranking employee to be the counselor for the agency and qualified deputy counselors to give advice on ethics questions. Further, each agency must make employees aware of the availability of counseling.

At each agency, except the Department of the Interior, the agency counselor was part of the agency's legal staff. The Interior Department's counselor was located in the Office of Audit and Investigation (subsequently the Office of Inspector General). Deputy counselors were legal, personnel, or high-level management officials.

At the Department of Housing and Urban Development, employees are advised to direct all questions or requests for interpretations to the counselor or a deputy counselor. We were told by the assistant ethics counselor that, to insure uniformity among deputy counselors, the Department required coordination of all, except routine, responses with the agency counselor.

At the Department of Health, Education, and Welfare, the primary responsibility to know and comply with the standards of conduct belongs to the employees. Supervisors give advice on questions brought to their attention or determine the problem is beyond their ability to resolve and refer it to higher management levels. The department counselor and deputy counselors only advise individuals as requested. In many cases, questions--even those that are brought to the attention of the department counselor--are answered informally and are not documented.

At the National Science Foundation, most questions that arise are answered within the operating divisions without consulting or informing the ethics counselor. Interpretations by the ethics counselor are not routinely disseminated for program managers.

At the Environmental Protection Agency, the agency counselor and 49 deputy counselors give advice on ethics questions. Each individual operates independently, answering employee questions on the basis of their own interpretations of the Agency's standards.

At the Department of the Interior, various bureau deputy and assistant ethics counselors, usually personnel office officials, are the primary source of advice on ethics questions. We found, however, that employee's questions were often answered by supervisory personnel without reference to ethics counselors. Also, questions at the Bureau level may be referred to the Department Solicitor's Office or to the department counselor in the Inspector General's office.

At the National Aeronautics and Space Administration, deputy counselors provide advice. The areas in which they respond to questions are specified in the employee handbook.



We were told by the agency deputy counselor that consistent interpretations are maintained by annual meetings.

Agencies often provide advice through a variety of individuals who answer questions on the basis of their personal interpretation. Interpretations made by agency counselors are often not widely distributed. As a result, agencies have no assurance that advice on similar questions is consistent. In addition, we found that some personnel providing advice were not able to respond accurately to questions concerning the standards or interpretations of the standards of conduct. Consequently, agencies have little if any assurance that the advice provided is accurate.

For example, at the Department of Health, Education, and Welfare, officials in positions to provide advice responded incorrectly to several of our questions on the standards. (See p. 37.)

The House Subcommittee on Oversight and Investigation reported in February 1978 that inconsistent application of conflict-of-interest regulations by Environmental Protection Agency officials had resulted in extensive problems with financial conflicts or the appearance of financial conflicts. We found similar inconsistencies in applying other sections of the standards of conduct which we discussed in our report to that Agency. (See app. III.)

Operating managers at the National Science Foundation expressed different views on interpretations of specific sections of the standards. One official believed that the nominal value criteria for acceptance of foreign gifts also applied to domestically received gifts. This same official did not realize that certain Foundation employees must disclose outside employment activities on their financial disclosure statements. Another official thought that an employee must obtain approval to accept an honorarium. Still another official stated that he was not aware that the Foundation even had a formal standards of conduct program.

At the Department of the Interior, we discussed the standards of conduct with several assistant ethics counselors and other officials who were providing advice.

--Counselors in the Bureau of Land Management use \$2,500 as the level below which financial holdings are not substantial, whereas the Bureau of Mines and Heritage Conservation and Recreation Service counselors do not recognize any specific level of substantial value. The department ethics counselor informally uses \$2,500 as the criterion for determining substantiality.

- Ethics counselors in the Bureau of Land Management generally were not aware that employees are required to obtain permission for "non-official expressions" (article or speeches) which relate to the employees duties and did not know who would be the approving official.
- Assistant ethics counselors in both Bureaus were unsure whether or not an employee could take annual leave and interview for a position with a company with which he was conducting official business.
- An official in one Bureau thought acceptance of dinners and entertainment acceptable because he considers them nominal, whereas employees in another office have been criticized by the Inspector General for accepting "hospitality" from private companies during trade shows.

Although the agencies depend on a variety of sources to provide advice on standards of conduct, only minimal training is provided on interpreting the standards. In reports to the Secretary of Health, Education, and Welfare; the Director of the National Science Foundation; and the Administrator of the Environmental Protection Agency (see app. III), our recommendations included training in interpreting the standards for those individuals authorized to answer questions on ethical conduct. We also recommended the establishment of better communication procedures between the agency counselor and deputy counselors and dissemination of interpretations of the standards to those who would be required to respond to questions on ethics.

We found some of the same problems of coordination and lack of dissemination of information at the Department of the Interior. For example, decisions by the Department Solicitor interpreting certain sections of the standards had never been disseminated to assistant ethics counselors in the Bureau of Land Management and the Heritage Conservation and Recreation Service.

The acting departmental ethics counselor told us that development of training for bureau assistant ethics counselors was a recognized need; however, since updating the standards, the Department has been required to put its major efforts into developing and implementing public financial disclosure systems under the various statutory provisions enacted since 1976. This work, in addition to improvements to the confidential financial disclosure system, has taken precedence.

## CONCLUSIONS

The basic philosophy underlying the implementation of standards of conduct in the regulations implementing Executive Order 11222 and in agencies' systems for implementing standards is that agencies only provide standards and answer employee questions when the need arises. Employees have primary responsibility for knowing and complying with the standards. The agencies' roles are unquestionably passive, and, consequently, procedures for making employees aware of the standards of conduct and for providing advice and guidance on standards of conduct are often not adequate.

Agencies need to take more aggressive action to make employees aware of standards of conduct. Some methods may include:

- An orientation package devoted to all pertinent standards of conduct documents.
- Special procedures for emphasizing the importance of standards of conduct when new employees are hired (e.g., a face-to-face discussion).
- Interpretation on sections of the standards rather than simple notification of their existence.
- An informative summary of the standards designed to alert employees to potential conflicts and areas in which they should seek advice.
- A film or slide presentation, such as the one used by the Environmental Protection Agency.
- Certification that an employee has read the standards as is used by the Space Administration.
- Annual lectures or seminars as have been used by the Department of Housing and Urban Development since 1973.

Agencies have not established procedures to assure consistency in advice and guidance or provided training to persons authorized to respond authoritatively to questions arising in the area of employee ethics or conflict of interest. As a result, we found instances of inconsistent and incorrect advice and guidance being given to employees.

We believe consistent and correct interpretations are imperative to help employees to deal properly with ethical problems, and agencies can take several steps to assure this:

- Authorize a manageable group to give advice, such as that in the Department of Housing and Urban Development and the National Aeronautics and Space Administration, and provide effective lines of communication between this group and the agency counselor.
- Require advice to be documented, except for simple repetitious cases, and require that these cases at least be noted for future reference (for example, a telephone log such as that used by the assistant ethics counselor of the Department of the Interior).
- Establish a system for making interpretations of the standards of conduct available for use by all persons authorized to answer employee ethics questions. This system should provide for maintaining the confidentiality of information on any individual.
- Provide specific training to agency officials authorized to respond to employee questions on how the standards should be interpreted.

#### RECOMMENDATIONS

We recommend that the Director, Office of Personnel Management, revise current regulations implementing Executive Order 11222 to foster a basic change in the philosophy underlying the implementation of standards of conduct. The revised regulations should require Federal agencies to

- educate their employees on the importance of the standards of conduct through some of the methods we have suggested or other methods they consider appropriate and
- assure that advice on ethics is consistent and correct by requiring agencies to follow suggestions we have made and any additional steps they consider necessary and appropriate.

#### AGENCY COMMENTS AND OUR EVALUATION

The agencies generally agreed that more can and should be done to improve the implementation of standards of employee conduct.

The Office of Personnel Management said it planned to have a staff of employees who would visit agencies to determine whether the agencies have taken steps to identify conflict-of-interest problems and are keeping their employees informed of the standards of conduct.

The National Aeronautics and Space Administration expressed concern that the report fails to recognize the importance that that agency attaches to its ethics program, the commitment of the agency's top management to a strong ethics program, and the established lines of communication to and from the agency's employees.

We believe that our report recognizes that the Space Administration has taken steps to promote its standards of employee conduct. However, we believe also that the additional steps we have suggested in this report could, if implemented by the Space Administration, further promote the importance of the program among its employees.

SELECTED GAO REPORTS ISSUED ON FINANCIALDISCLOSURE AND STANDARDS OF CONDUCT

	<u>Number</u>	<u>Date</u>
"The Food and Drug Administration's Financial Disclosure System for Special Government Employees: Progress and Problems"	FPCD-76-99	1/24/77
"Action Needed to Make the Executive Branch Financial Disclosure System Effective"	FPCD-77-23	2/28/77
"Financial Disclosure for High-Level Executive Officials: The Current System and the New Commitment"	FPCD-77-59	8/01/77
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
"Post-Federal Employment Regulations: A Problem in Need of a Remedy"	FPCD-78-38	8/28/78
"Employee Standards of Conduct: Improvements Needed in the Army and Air Force Exchange Service and the Navy Resale System Office"	FPCD-79-15	4/24/79
"The District of Columbia Government Should Establish a Separate Office of Ethics"	FPCD-79-65	8/16/79

AGENCIES AND OFFICESAT WHICH AUDIT WORK WAS PERFORMED

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE:

## Office of the Secretary:

- Office of the General Counsel
- Office of Personnel Policy and Planning
- Office of Inspector General
- Division of Personnel, Office of the Secretary
- Office of Personnel, Atlanta Regional Office
- Office of General Counsel, Atlanta Regional Office

## U.S. Public Health Service:

- Office of Personnel Management
- Personnel Operations Office

## Center for Disease Control:

- Personnel Management Office
- Financial Management Office

## Office of Education:

- Office Management
- Personnel and Training Division
- Bureau of Elementary and Secondary Education
- Office of Educational Programs, Atlanta Regional Office
- Office of Student Assistance, Atlanta Regional Office

## DEPARTMENT OF THE INTERIOR:

## Office of the Secretary:

- Office of the Solicitor
- Office of Audits and Investigation
- Division of Personnel Service

## Bureau of Land Management:

- Division of Personnel
- Eastern State Office
- California State Office

## Bureau of Mines:

- Division of Personnel
- Division of Nonferrous Metals
- Office of Mining Research--Health and Safety

## Heritage Conservation and Recreation Service:

- Division of Personnel
- Office of Archeology and Historic Preservation
- Office of Programming

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT:

- Office of the General Counsel
- Office of Inspector General
- Office of Personnel

## Atlanta Regional Office:

- Office of Regional Counsel
- Office of Inspector General
- Office of Regional Administrator
- Personnel Division

## Atlanta Area Office:

- Office of the Area Manager
- Multi-family and Architectural and Engineering Branch
- Property Disposition Branch

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION:

- Office of the General Counsel
- Personnel Programs Division
- International Affairs Division
- Office of Inspections and Security

## NATIONAL SCIENCE FOUNDATION:

- Office of the General Counsel
- Division of Personnel and Management
- Division of Financial and Administration Management
- Division of Biological, Behavioral, and Social Science
- Division of Astronomical, Atmospheric, and Earth, and Ocean Science

## ENVIRONMENTAL PROTECTION AGENCY:

- Office of the General Counsel
- Office of Security and Inspections
- Office of Regional and International Operations
- Office of International Activities
- Office of Toxic Substances
- Office of Energy, Minerals, and Industry
- Office of Noise Abatement and Control
- Financial Management Division
- Office of Personnel



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REPORT BY THE U.S.

# General Accounting Office

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## Department Of Health, Education, And Welfare Standards Of Employee Conduct Need Improvement

Standards of conduct for Federal employees in the Department of Health, Education, and Welfare do not provide sufficient guidance to enable employees and supervisors to identify and resolve potential ethical problems. The standards are incomplete, complex, and out of date. As a result, employees are not always aware of their responsibilities, and a supervisor's advice is often a personal interpretation of the Department's Standards of Conduct regulation.

GAO recommends that the Department (1) revise and update the standards to make them complete, current, and easier to read and understand, (2) make the Department Counselor's interpretations of the standards available to supervisors, (3) expand training on the standards for Department supervisors who provide advice and guidance on employees' ethical conduct, and (4) use available information to identify areas of the standards that need to be revised.



FPCD-79-29  
MARCH 14, 1979

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REPORT BY THE U.S.

# General Accounting Office

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## National Science Foundation Standards Of Employee Conduct Need Improvement

Standards of ethical conduct for Federal employees of the National Science Foundation do not adequately address certain issues with which employees must deal in carrying out their official duties. Also, the Foundation could improve its programs for making employees more aware of their responsibilities under the standards, providing advice and guidance on questions of ethical conduct, and identifying areas in which additional guidance is needed.

GAO recommends that the Foundation correct identified deficiencies and periodically review and evaluate the standards to identify needed revisions. GAO also recommends that to more effectively implement its standards of conduct the Foundation should

- take actions to increase employee awareness of the standards,
- develop training for personnel that provide advice and guidance to employees on ethics questions, and
- make better use of available information to evaluate the standards and identify areas where additional guidance is needed.



FPCD-79-33  
MARCH 29, 1979

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REPORT BY THE U.S.

# General Accounting Office

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## Environmental Protection Agency Standards Of Employee Conduct Need Improvement

Standards of conduct for Environmental Protection Agency employees do not adequately address certain issues facing employees in carrying out their official duties. The Agency could improve its program by (1) making employees aware of their responsibilities under the standards, (2) applying the standards consistently, and (3) identifying conduct areas requiring additional guidance.

GAO recommends the Agency correct identified deficiencies, periodically review and evaluate the standards for needed revisions, and more effectively implement its standards of conduct by

- increasing employees' awareness of the standards,
- developing guidance for use by deputy counselors in applying the standards and establishing procedures for regular communication between deputy counselors and the Agency counselor,
- developing criteria on resolutions to conflict of interest problems, and
- involving the Inspector General in evaluating the effectiveness of the standards.



FPCD-79-48  
MAY 8, 1979

United States of America  
**Office of  
Personnel Management**

Washington, D.C. 20415

Reps. Res. 1

Your Reference

Mr. H. L. Krieger  
Director, Federal Personnel and  
Compensation Division  
General Accounting Office  
Washington, D. C. 20548

**AUG 17 1979**

Dear Mr. Krieger:

We have reviewed your draft report entitled "Federal Agency Standards of Employee Conduct Need Improvement," forwarded by your letter of July 11, 1979.

At the time of our submission of comments to the appropriate congressional committees on GAO Audit Report FPCD-79-15, dated April 24, 1979, we indicated that the Office of Government Ethics would likely not be able to turn its attention to the problems raised in that report until at least late 1979, inasmuch as our permanent staff was currently being recruited and the Office was being organized on a permanent basis and, in addition, was faced with resolution of certain core tasks imposed on it by the newly passed Act as a first order of business. Since submission of that report two additional amendments have been made to the Ethics in Government Act of 1978, Pub. L. 95-521, October 26, 1979 (the Act). On June 13, 1979, technical and conforming changes to the financial disclosure provisions in the Act were passed—Pub. L. 96-19 (H.R. 2805). And on June 22, 1979, Pub. L. 96-28 (S. 869) amended the standards for designation of separate agencies and bureaus and specified certain exceptions from the one-year bar of 18 U.S.C. section 207(c) and limited the scope of coverage of 18 U.S.C. section 207(B)(ii). The Office played a major role in drafting the legislation and overseeing its passage.

With the above remarks in mind, we offer the following comments:

Executive Order 11222 was promulgated by President Johnson in May of 1965 to set up, for the first time, standards of conduct for all federal employees in the Executive Branch. The then Civil Service Commission was authorized to issue regulations to implement the provisions of the Order, but had limited powers. As a result, the Commission recommended the enactment of specific legislation granting clear authority to the Commission or a similar body. (See remarks of Chairman Campbell on June 16 and 23, 1977 before Subcommittee on Employee Ethics and Utilization of the House Committee on Post Office and Civil Service, Hearings Serial No. 95-19, at p.10.) Title IV of the Act embodies this program.

Your report identifies problems and makes recommendations with respect to the following areas: (1) negotiating for employment, (2) accepting honoraria, (3) outside employment activities, (4) accepting gifts and gratuities, (5) accepting

travel reimbursement from private sources, and (6) resolving financial conflicts. We believe that the Report's observations are generally correct and we intend to remedy the deficiencies noted.

To this end this Office is currently developing a functional organizational plan which will focus the responsibilities of the Office of Government Ethics in three general areas. These areas will be (1) Financial Conflicts of Interest and General Direction of Ethics Policies, (2) Post Employment Conflict of Interest, and (3) Studies and Audits. We contemplate a staff of employees who will not merely devise regulations but who will visit the agencies to determine whether agencies have taken steps to identify conflicts of interest problems and are keeping their employees informed of the standards of conduct.


The report notes that current agency implementing regulations tend to be "very general" and that practices vary among the agencies. Although uniformity is generally desirable, we are less concerned with variances in practices since a number of solutions within a reasonable range may be acceptable and a desire for complete uniformity tends to be more intellectually driven than practically required. The greater problem, as we see it, is the uncertainty and unclarity of guidance which results in repeated instances of wasted time, unnecessary anxiety about propriety of specific acts and consequently a natural disaffection for an ethics regulatory system. It has been our experience, derived from the development of regulations governing post-employment activities, that reasonable, highly specific and clear regulations are most likely to find acceptance. We intend to develop such regulations in the areas you note.

There are some minor inaccuracies in the draft report. The following agency regulations have been revised as of the dates below: [See GAO note below.]

Department of Health, Education, and Welfare	Nov. 2, 1976
Department of the Interior	Dec. 23, 1976
National Aeronautics and Space Administration	July 2, 1976
Environmental Protection Agency	Sept. 22, 1975 (presently being revised)

You should also note that the reporting of gifts and reimbursements exceeding a specific threshold is required by the Act. This does not, of course, validate gifts otherwise impermissible (see section 207(d) of the Act).

Sincerely yours,

  
Alan K. Campbell  
Director

GAO note: This information is consistent with the information in this report as explained on pp. 27 through 30. The Environmental Protection Agency has considered several revisions to its standards since 1975; however, none had been incorporated in the standards as of the time of our review.



## United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

AUG 24 1979

Mr. H. L. Krieger, Director  
Federal Personnel and Compensation Division  
U.S. General Accounting Office  
441 G Street, N.W.  
Washington, D.C. 20548

Dear Mr. Krieger:

This letter contains our official comments on the GAO draft proposed report, Federal Agency Standards of Employee Conduct Need Improvement, released July 12, 1979. On July 19, June Gibbs Brown, Inspector General, U.S. Department of the Interior requested written comments on the draft report from the appropriate Bureau Directors and Assistant Secretaries. Their comments are consolidated in this letter.

### Accepting Travel Reimbursement from Private Sources

- [16] Page 16 - The last sentence of the 2nd paragraph implies that all assistant ethics counselors were unaware of authority to accept travel reimbursement. The Assistant Director, Bureau of Mines comments that assistant ethics counselors in the Bureau of Mines were aware of the authority and in fact had discussed it on several occasions with the Assistant Department Ethics Counselor. We feel this sentence would be more accurate if it stated that some bureau assistant ethics counselors were aware of this authority.

### Recommendation that the Director, Office of Personnel Management (OPM) take steps to preclude wide variations among agencies

- [22] Page 22 - We believe your recommendation should:

1. Ask OPM to solicit and give consideration to the views of officials from numerous agencies.
2. Suggest to OPM that agencies be allowed to issue more stringent regulations than OPM's when justified.
3. Include the need for OPM to work with the agencies and Congress in an effort to consolidate many of the separate statutory provisions you cite on pages 3 and 4.
4. Stress the importance for immediate OPM action.

Clearance of Outside Employment

- [31] Page 30 - In regard to the last sentence of the 5th paragraph, Bureau of Mines employees must get prior approval for outside employment when it is closely related to their Bureau position or when it may give the appearance of a conflict of interest. This is further explained on page 37. We suggest that these comments be combined.
- [39]

Recommendations to have Inspectors General evaluate standards of conduct

- [34] Page 33 - At the Department of Interior, revision of the employee responsibility and conduct standards is the responsibility of the Inspector General. If we adopt this recommendation our Inspector General would be auditing conduct standards written, for the most part, by her own staff members.

Evaluating the effectiveness of agency conduct standards has been, and we understand will continue to be, a routine cyclical audit task for GAO. Further, the new Ethics in Government Act requires the Office of Government Ethics (OGE) to monitor and evaluate agency conduct standards (Section 402(b)(12)). Therefore, we believe this recommendation will result in duplication of audit effort.

I wish to stress that our Inspector General will continue to perform compliance audits within the Department to ensure that bureaus and offices are properly implementing our conduct standards. These internal audits do provide indications of needed revisions to the conduct standards. Also, we will adopt your recommendation to analyze investigation reports for problem areas and we will increase our review of bureau and office conduct referrals received by the Inspector General. Using these means and the GAO and OGE reviews we feel we can adequately monitor, evaluate and improve our employee responsibility and conduct standards without a specific internal review directed solely at the standards.

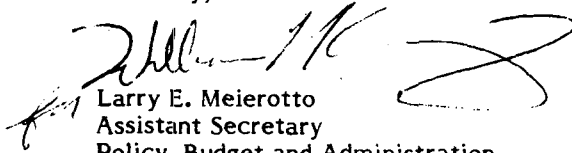
Employees Could Be Made More Aware of the Standards

- [39] Page 37 - We disagree with three of the observations made concerning the Bureau of Mines.
1. Concerning pre-employment counseling, upon entering on duty, each Bureau of Mines employee is given a copy of the conduct regulations. Also, each new employee is given the name of the Assistant Ethics Counselor and told to address questions to that counselor. [See GAO note 1, p. 59.]
  2. Concerning annual reminders, all Bureau of Mines employees receive annual reminders of the conduct regulations. These reminders are sent out separately from the notices to file financial disclosure statements. [See GAO note 2, p. 59.]

3. Concerning outside employment activities, the Bureau of Mines sends out instructions informing managers where to send requests for outside work approval (copy enclosed). [See GAO note 3, p. 59.]

Thank you for the opportunity to comment on this proposed draft report.

Sincerely,



Larry E. Meierotto  
Assistant Secretary  
Policy, Budget and Administration

Enclosure



OFFICE OF THE DIRECTOR



## United States Department of the Interior

BUREAU OF MINES  
 2401 E STREET, NW.  
 WASHINGTON, D.C. 20241

July 31, 1978

EPM PERSONNEL MANAGEMENT LETTER NO. 78-5 (735)

SUBJECT: Outside Employment

Federal Personnel Manual Chapter 735, 2-3, "Outside Employment" prohibits Federal employees from engaging in outside employment or other activities not compatible with the full and proper discharge of the duties and responsibilities of their Government employment. Outside employment which tends to impair employees' mental or physical capacity to perform their Government duties and responsibilities in an acceptable manner is proscribed.

Bureau employees are prohibited from accepting employment from any private party for services in the examination of any mine or private mineral property or working on any private report as to the valuation or the management of any mine or other private mineral property. In addition, employment which is of such a nature that it may reasonably be construed by the public to be the official act of the Bureau, involves the use of official information not available to the public, and/or tends to impair the employee's mental or physical capacity to perform the assigned Bureau duties and responsibilities in an acceptable manner is also prohibited.

Teaching, lecturing, or writing for a non-profit institution such as a university or college is encouraged but such activities should not interfere with performance of the employee's assigned duties. Teaching, lecturing, or writing for a private profit-making institution or industrial organization will be permitted as outside employment provided the subject matter presented is not dependent upon information obtained as a result of the employee's Government employment. If an employee has a unique competence and it is in the National interest for him/her to teach or otherwise impart knowledge to a private organization, university, or college, a cooperative agreement between the Bureau and the organization, university or college should be written so the teaching or writing becomes a part of the employee's duties.

INQUIRIES: Richard R. Harrison, Branch of Personnel Operations,  
 Division of Personnel, Telephone (202) 634-4721

DISTRIBUTION: Full



Part-time employment, other than that mentioned above, is generally permitted if the employment does not reflect discredit to the Bureau or does not impair performance of the employee's assigned Bureau duties. Active proprietary management of any except the smallest business is questionable because of the probability that such management responsibilities may interfere with the employee's obligations to his/her primary employer, the Federal Government.

With the exception of teaching in an accredited non-profit institution of higher education, outside employment which could be interpreted as being related to the individual employee's job or to the Bureau's work must be approved in advance by the Bureau's Deputy Ethics Counselor, the Assistant Director--Administration. Requests for such approval must be submitted in writing through line management officials to the appropriate assistant director or head of independent office reporting to the Director, to the Bureau's Deputy Ethics Counselor. The memorandum must provide an approval block for the signature of the Bureau Deputy Ethics Counselor...

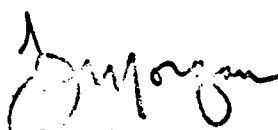
Supervisors are to notify their employees of the contents of this Letter. If employees and supervisors cannot resolve a question about outside employment, they should consult with the Deputy or Assistant Ethics Counselors, who are as follows:

Deputy Ethics Counselor - Walter J. Lander, Assistant Director--  
Administration, (202) 634-1336

Assistant Ethics Counselors - Glen D. Peterson, Chief, Division  
of Personnel, (202) 634-4710

- Richard R. Harrison, Chief, Branch  
of Personnel Operations,  
(202) 634-4721

This Letter supersedes the Director's memorandum of July 29, 1976, "Outside Employment Request" and EBM 367.40, "Private Employment".

  
Acting Director  
J. D. Morgan

## GAO notes:

1. In our opinion, preemployment counseling would consist of explaining the standards to potential employees in terms of the possible impact on that employee. We do not consider giving an employee a copy of the standards the equivalent of pre-employment counseling.
2. We were told that Bureau of Mines employees received annual reminders. However, when asked, the assistant ethics counselor could not provide us with any documentation (such as copies of the reminders) that they actually sent out reminders to all agency employees.
3. We do not disagree that the Bureau has a policy on approval of outside employment. However, our discussions with Bureau of Mines managers revealed a lack of policy awareness, which, we believe, should be corrected.

GAO note: Numbers in brackets refer to pages in this report.



National Aeronautics and  
Space Administration

Washington, D.C.  
20546

JUL 30 1979

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Mr. J. H. Stolarow  
Director  
Procurement and Systems  
Acquisition Division  
U.S. General Accounting Office  
Washington, DC 20548


Dear Mr. Stolarow:

Thank you for the opportunity to review GAO's draft report entitled, "Federal Agency Standards Of Employee Conduct Need Improvement", which was forwarded with your letter, dated July 11, 1979.

NASA representatives discussed the draft, on July 19, 1979, with Mr. Thomas J. Denomme of GAO's Federal Personnel and Compensation Division, and it was agreed that NASA should provide written comments on the draft report. They are enclosed.

If we can be of further assistance, please let me know.

Sincerely,

  
Robert F. Allnutt  
Acting Associate Administrator  
for External Relations

Enclosure

cc: Mr. Denomme, GAO/FPCD

NASA Comments on the GAO Draft Report -  
Federal Agency Standards of  
Employees Conduct Need Improvement  
received July 11, 1979

At NASA, standards of conduct for employees is of high priority. It is a visible program supported by the Administrator and Deputy Administrator. This emphasis on, and concern with ethical conduct is communicated to employees by top management in a number of ways. Detailed specific standards have been developed so that employees will know what is expected of them. Counseling for employees on ethics questions is readily available and encouraged. Employees who file annual financial interest statements are required to certify annually that they have read these standards of conduct which have been issued to each employee in the form of a handbook. At the annual Chief Counsels' meeting which is attended by senior level ethics counselors from Headquarters and the field centers, ethics standards are discussed to help ensure that interpretations are consistent. Additionally, there is open and frequent communication between the legal ethics counselors throughout the year. At the Middle Management Program, given at least three times a year, senior legal ethics counselors give detailed seminars on the standards.

In essence, NASA conducts a vigorous ethics program so that employees will be aware of and understand that they have a responsibility as Federal employees to adhere to the standards of conduct set forth in the handbook. We have found that NASA employees are aware of the behavior that is expected of them and generally conduct themselves in an exemplary manner.

We have reviewed your draft report and are deeply concerned about what appears to be a lack of recognition of: (1) the importance NASA attaches to its ethics program, (2) the commitment of top NASA management to a strong ethics program, (3) the detailed specific standards developed by NASA and (4) the established lines of communication to and from NASA employees. Of particular concern to us is the number of places in the draft report where generalizations about all six agencies audited are set forth (for example, see pages ii, iii, 24, 32, 34, 35, and 41). [ii, iii, 25, 33, 36, 37, and 43]

While these generalizations may be reflective of the situation that exists at some of the six agencies audited, they do not reflect the situation existing at NASA. Such generalizations should be modified so that they accurately reflect the situations at the respective agencies. For example, on page 24, [25] it is stated as follows:

"Just as the Office of Personnel Management has not developed specific regulations to implement Executive Order 11222, agencies have not developed specific standards for their employees."

While NASA may not have specific standards in one of the six areas audited, NASA has developed specific standards in the other areas. Thus, the general statement quoted above is not an accurate reflection of the existing situation at NASA. We suggest that the generalizations in the draft report be carefully reassessed to ensure that they are accurate in all respects and factually reflect NASA and other agencies' practices.

We are further concerned about three other issues on which we wish to comment in a generalized manner.

1. We agree with the GAO that agencies do have a responsibility for: (1) effectively communicating the standards of conduct to employees; (2) ensuring that knowledgeable counselors are available and able to counsel employees; (3) providing consistent advice, and (4) making employees aware that ethical conduct is of high priority. We believe, however, that the basic philosophy of the current ethics program, which places responsibility on the employee to adhere to the standards of conduct, should be recognized in the report. If recognition of this basic employee responsibility is not clearly stated at the beginning of the report, there is a danger that the report will be misperceived as relieving the employee from such personal responsibility.

As written now, the report emphasizes strengthening the responsibilities of the agencies and leaves an impression with the reader that GAO is advocating a constant policing of employee conduct. We believe employees are basically intelligent adults who, for the most part, are aware of the high standards of conduct expected of them. As stated above, GAO should clearly recognize in the report the personal responsibility of employees for their conduct so that the report reflects an accurate balanced perspective.

2. Throughout the draft report the phrase "implementing regulations" is used. However, it is not entirely clear whether the phrase, when it is used, is a reference to government-wide regulations or individual agency regulations. It is suggested that this confusion could be clarified by using the phrases "government-wide regulations" and "agency regulations" as appropriate.

3. In your recommendations regarding the issuing of government-wide regulations by the Office of Personnel Management, we believe it is essential that you state that such regulations should retain flexibility so that an agency will be able to adapt them to its individual needs. Agencies with differing missions and differing organizations must have such flexibility so that standards of conduct will be meaningful to employees and conflict situations can be avoided.

In summary, while we recognize that agencies have responsibilities in the standards of conduct area, equal emphasis in the report should be given to the employees' responsibility to adhere to the standards. Additionally, the generalizations in the report should be modified to accurately reflect the situations in the respective audited agencies. It should be further emphasized that some flexibility needs to be retained in any government-wide regulations that are to be issued.

Technical comments keyed to segments of the report are attached.

S. Neil Hosenball  
General Counsel  
Agency Ethics Counselor

Date

JUL 27 1979

Attachment [See GAO note 1 below.]

GAO note:

1. The attachment is not included in this report.

GAO note: Numbers in brackets refer to pages in this report.

NATIONAL SCIENCE FOUNDATION  
WASHINGTON, D.C. 20550OFFICE OF THE  
DIRECTOR

AUG 10 1979

Mr. Elmer B. Staats  
Comptroller General  
U. S. General Accounting Office  
Washington, D. C. 20548

Dear Mr. Staats:

You have asked for the views of the National Science Foundation on General Accounting Office's Draft of a Proposed Report entitled, "Federal Agency Standards of Employee Conduct Need Improvement."

Scope of Review

The scope of the GAO review covers six areas:

1. Accepting gifts and gratuities;
2. Accepting reimbursements for official travel and subsistence expenses from non-Federal sources;
3. Resolving financial conflicts-of-interest caused by the holdings of an employee, his spouse, or a member of his family;
4. Negotiating for post-Federal employment while employed by a Government agency;
5. Seeking employment or taking part in other activities outside an employee's normal Government employment;  
and
6. Accepting honoraria in connection with activities such as teaching, lecturing, or writing.



In its March 29, 1979 report on the Foundation's standards of employee conduct the GAO stated that the Foundation's standards needed improvement in four of these six areas. Namely, the GAO report stated that the Foundation's standards were insufficiently strict regarding: (1) the acceptance of gifts and gratuities, (2) the acceptance of reimbursements for official travel and subsistence expenses from non-Federal sources, (3) the negotiating for post-Federal employment while employed at the Foundation, and (4) the acceptance of honoraria in connection with activities such as teaching, lecturing, or writing. The GAO report on the Foundation's employee standards contained a number of recommendations, and in my written response of May 29, 1979, I stated the Foundation's views on each of them. A copy of my response accompanies this letter. The GAO staff apparently believes the Foundation's employee standards were adequate in the other areas, namely: (1) resolving financial conflicts-of-interest caused by the holdings of an employee, his spouse, or a member of his family and (2) seeking employment or taking part in other activities outside an employee's normal Government employment. [See GAO note 1, p. 67.]

Agencies Need to Develop More Specific  
Standards of Ethical Conduct

The GAO draft report contends that the Foundation's employees have awareness problems that result from the "(1) Foundation's failure to provide standards as a single package instead of in fragmented documents, (2) the lack of orientation of new employees to standards of employee conduct, (3) the lack of emphasis placed on the importance of knowing and abiding by the standards of conduct, and (4) the Foundation's failure to annually remind employees of its standards." (Draft Report, p.35) [37]

The Foundation believes that its standards for employee conduct are quite good. Before the GAO review, the Foundation initiated its own review of the standards. All the areas of special concern to the GAO have been reviewed, and the Foundation has made a number of changes consistent with the recommendations of the GAO.

The Foundation's orientation for new employees includes providing the relevant documents and, for the past few years, having new employees participate in a week's orientation of Foundation practices and procedures including conflict-of-interest matters. The Conflict-of-Interest Counselor has served as the resource person for employee conduct and ethical standards matters during these sessions. In addition, she advises the professional staff in each of the Foundation's Directorates on an as-needed basis about the Foundation's standards and related matters (e.g., in-depth briefings on the Ethics in Government Act of 1978 and its implementing regulations). Further, she now participates as a resource person in the Foundation's week-long Supervisory Skills Seminar for new supervisors. Finally, employees are reminded many times throughout the year of the Foundation's standards - and those required by statute or regulation to file annual financial reports receive a special notice each year of this requirement.

Conflict-of-interest statutes and regulations are complex, elaborate, and difficult. Thus, it would be most unrealistic to expect employees to memorize or recite all the applicable laws and regulations. It is realistic, in our view, to have employees aware of conflict-of-interest matters and ethical standards and have them seek guidance when situations dictate.

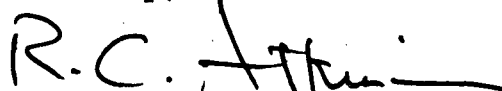
The Foundation has welcomed the GAO's scrutiny of its ethics standards and their implications. Though the reports of the GAO study team unearthed no issues or problems of which we were unaware, its perspective and suggestions on them were helpful. We do have some concern about the tone of the report, particularly in the more summary portions. To read them, one might think that there are serious, possibly even shocking, deficiencies in the ethical standards and programs of several Government agencies. Indeed, several newspaper reports reflected a perception very like that, thus chipping away further at public trust in the Government. In fact, however, at least at the NSF most of the points raised in the report, particularly those relating to the content of ethical standards, were relatively minor points and one on which reasonable people can and do differ.

The NSF appreciates that the assignment and proper role of the GAO in such matters as these is to find what is wrong and to recommend ways of fixing it. We value the scrutiny and

constructive criticism the GAO provides. We believe, however, that in such a case as this even a small effort to put findings and recommendations in a broader perspective would not only provide a more accurate picture to Congress and the public, but produce a more willing and constructive response from those who have been under scrutiny.

In general, I believe the Foundation has a good program for implementing its specific ethics standards and for sensitizing employees to potential sources of bias, whether or not specifically covered by the standards, that could affect the objectivity and integrity of their decisions. Further, we agree with GAO that more can and should be done, and we have launched an energetic effort to strengthen our program.

Sincerely,



Richard C. Atkinson  
Director

Enclosure [See GAO note 1 below.]

GAO note:

1. This response was deleted because it pertained to our earlier report issued to the National Science Foundation. ("National Science Foundation Standards of Employee Conduct Need Improvement," FPCD-79-33, Mar. 29, 1979.)

GAO note: Number in brackets refers to page in this report.  
(964121)

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