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Testimony before the Senate Committee on Banking, Housing and Urban Affairs; by Paul G. Dembling, General Counsel.

Issue Area: Personnel Management and Compensation: Employee Conflicts of Interest (301).

Contact: Office of the General Counsel.

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Organization Concerned: Civil Service Commission.

Congressional Relevance: Senate Committee on Banking, Housing and Urban Affairs.

Authority: Defense Production Act Amendments of 1977; S. 695 (95th Cong.). Public Officials Integrity Act of 1977; S. 555 (95th Cong.).

Proposed legislation would set forth (1) a code of conduct for contracting officers, (2) reporting requirements for former Federal contracting officers, and (3) reporting requirements for current Federal employees of certain grades who were formerly employed by or consultants to Government contractors. The bill would establish a Conflict of Interest Review Board for enforcement. GAO agreed with the objective of assuring proper conduct of Government business, but thought the enforcement approach was too piecemeal. As an alternative, it suggested an office of ethics to be established in the executive branch with administrative, advisory, and enforcement responsibilities. The bill, S.555, under Senate consideration, would provide for establishment of an Office of Government Ethics within the Civil Service Commission which would be suitable for including requirements of S.695. A proposed amendment to S.695, which would broaden coverage of regulations for dealing with organizational conflicts of interest, reflects recommendations formerly made by GAO. Consideration was suggested about another provision in the amendment which would exclude prime contracts from inclusion of a threshold amount.

(HTW)

ms. Albert
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02269
STATEMENT OF PAUL G. DEMBLING
GENERAL COUNSEL, UNITED STATES GENERAL ACCOUNTING OFFICE
BEFORE THE
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS
ON
S.695 - DEFENSE PRODUCTION ACT
AMENDMENTS OF 1977

Mr. Chairman and Members of the Committee:

I appreciate your invitation to appear as a witness before your Committee today to discuss our views on S.695 as amended; a bill which if enacted would be cited as the "Defense Production Act Amendments of 1977."

This bill sets forth (1) a code of conduct for contracting officers; (2) reporting requirements for former Federal contracting officers; and (3) reporting requirements for current Federal employees, GS-13 equivalent and above, who were formally employed by, or served as a consultant to, a Government contractor. Also, the bill would establish a Conflict of Interest Review Board to enforce its provisions.

The objectives of S.695 are to help assure that the Government's business is done properly and that the citizens' confidence in their Government is maintained. We would agree that no Government employee, particularly Federal employees who award and supervise the billions of dollars in contracts and grants for the Government each year, should be placed in a situation where they might feel tempted, or pressure could be exerted by the anticipation of a lucrative job outside the Government, to favor their own private economic interests over the interests of the Government. Reasonable steps should be

taken to avoid suspicion that this can happen. A strong code of conduct, together with an effective conflict of interest disclosure system, can help provide such assurance.

Our overall difficulty with S.695 is its piecemeal approach to the problem of enforcing ethical standards in the executive branch. If a Conflict of Interest Review Board were established for contracting officers, one could logically conclude that such boards may be necessary for other professions.

We believe, as an alternative, that an office of ethics should be established in the executive branch to enforce codes of ethics and financial disclosure regulations for all executive branch employees. In a recent report to the Congress, "Action Needed To Make The Executive Branch Disclosure System Effective" (FPCD-77-23, February 28, 1977), we recommended that the President of the United States establish an office of ethics with adequate resources to address the problems of enforcement and compliance for the executive branch. Among its responsibilities, we stated that this office should

- Issue uniform and clearly stated ethical standards of conduct and financial disclosure regulations as discussed in GAO reports.

- Develop financial disclosure forms so that all relevant information is obtained concerning employee interests needed to enforce conflict-of-interest matters.

- Make periodic audits of the effectiveness of agency financial disclosure systems on a sample basis to see that they include appropriate procedures for collecting and reviewing statements, and followup procedures to preclude possible conflicts of interest.
- Establish a formal advisory service to render opinions on matters of ethical conduct so that all agencies are advised of such opinions.
- Provide criteria for positions requiring disclosure statements.
- Investigate and resolve ethical conduct matters unresolved at the agency level, including allegations against Federal employees.
- Provide a continuing program of information and education for Federal employees.
- Administer the financial disclosure system for Presidential appointees under section 401 of Executive Order 11222.
- Report annually to the President and the Congress on the effectiveness of the ethics program and recommend changes or additions to applicable laws as appropriate.

We believe such an office could encompass the functions of S.695 concerning codes of ethics, financial reporting, enforcement, advisory opinions, and oversight responsibility. The office of ethics could be given the additional responsibilities regarding oversight of post-employment reporting requirements.

The Senate is currently considering the "Public Officials Integrity Act of 1977." S.555 provides for the establishment of an Office of Government Ethics within the Civil Service Commission which would recommend rules and regulations to be

promulgated by the President pertaining to the identification and resolution of conflicts of interest. We believe that S.695 would be useful in prohibiting conflict of interest situations currently not being covered. From an institutional standpoint we take the position that the requirements of S.695 should be centralized in one Office in the executive branch designated to deal with conflict of interest matters. If S.555 is enacted, the Office of Government Ethics would be suitable for including the S.695 requirements.

Regarding organizational conflicts of interest, the bill would require persons entering into contracts for conducting research, development, evaluation activities, or for technical and management support services to furnish agencies information concerning possible organizational conflicts-of-interest. While it is recognized that several departments and agencies do have regulations dealing with organizational conflicts of interest, they are not as broad in coverage as is contemplated by the proposed amendment No.192 to S.695. There is a need for such coverage in the area of organizational conflicts of interests in Federal procurements.

The proposed amendment substantially reflects our recommendation of last year for the prevention of organizational conflicts of interests in ERDA procurements. In making that recommendation we noted the desirability of clearly defining

Government contracting personnel responsibilities for avoiding conflicts in this area, while at the same time stressing our concerns that those responsibilities not introduce unnecessary administrative burden and delay into the procurement process. The proposed amendment includes a \$10,000 threshold amount for subcontracts but would presumably apply to all prime contracts regardless of amount. The Committee might consider whether the benefits to be derived from the amendment is justified in terms of the administrative burdens on all parties and the possible lessening of competition which may result absent a threshold amount for prime contracts.

This concludes my prepared statement. I will be pleased to reply to your questions.