

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 The standards are incomplete, complex, and out of date.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.

FC

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 (5) use available information to identify areas of the standards that need to be revised.

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UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

HUMAN RESOURCES
DIVISION

B-148581

The Honorable Joseph A. Califano, Jr.
The Secretary of Health, Education,
and Welfare

Dear Mr. Secretary:

We have reviewed ^{was reviewed} the development and implementation of standards of conduct in the Department of Health, Education, and Welfare as part of a multiagency review of standards of conduct. We wanted to evaluate the adequacy of standards as guidance on employees' ethical conduct and to compare various Federal agencies' methods to implement standards of conduct. We plan to issue an overall report that will recommend actions the new Office of Government Ethics should take to improve the development and implementation of standards of conduct Government-wide. This letter recommends ways we believe your Department can improve its development and implementation of standards of ethical conduct. (BV) -22

At the Department of Health, Education, and Welfare, we found that

- present standards do not provide adequate guidance to enable employees and supervisors to identify and resolve potential ethical problems and
- procedures for implementing the standards are not effective because the Department relies on the Standards of Conduct regulation as the primary source of guidance for ethical conduct--for employees, on expected behavior; for supervisors, on how to respond to employees' questions.

We (1) evaluated the policies followed in developing and implementing selected standards, (2) interviewed persons

responsible for implementing ethical standards, and (3) reviewed financial disclosure reporting requirements in 16 offices in the

- Office of the Secretary;
- Public Health Service Headquarters;
- Center for Disease Control;
- Office of Education; and
- Atlanta Regional Office.

The standards we selected for review involved conflict of interest matters of a financial nature, non-Government employment situations, and other dealings with groups outside the Department.

THE STANDARDS OF CONDUCT DO
NOT PROVIDE ADEQUATE GUIDANCE

Both employees and supervisors in the Department must rely on its Standards of Conduct regulation for questions on ethics. This regulation, however, does not provide specific and meaningful guidance to employees and supervisors because it

- is complex and organized in a manner that is difficult to follow;
- is incomplete regarding certain ethical issues; and
- does not reflect the Department's current organization.

In addition, interpretations and decisions made by the Department's Counselor are not generally disseminated to supervisors who provide advice and guidance to employees.

Standards are complex

Although the Department's Standards of Conduct regulation consists of 25 pages of double-column small print, it often does not provide adequate information for making a decision. For example, the following excerpt shows the type of language and guidance provided.

"(a) Employees may engage in outside professional or consultative work only after meeting certain conditions. Except as provided in * * * 73.735-403, 73.735-404, and 73.735-405, the conditions which must be met are:

- (1) The work is not to be rendered to organizations, institutions, or State or local governments with which the official duties of the employee are directly related, or indirectly related if the indirect relationship is significant enough to permit existence of conflict of interest, and * * *."

The Department does not provide any additional interpretation of what is considered "directly related," "indirectly related," or "significant." The interpretation is left to the employee or, if asked, the employee's supervisor.

We discussed the complexity of the regulation with Office of Personnel officials responsible for its development. They told us that managers who work with the standards regularly often have trouble following the organization (i.e., various sections refer to or need to be read in conjunction with other parts of the document). They said they tried to simplify the standards several years ago by preparing an employee handbook. However, the General Counsel's Office rejected the idea because it feared some essential ingredients would be missed.

We were told at our exit interview that this idea has subsequently been revived and there have been some discussions on it between Personnel and the General Counsel's Office. Timeframes for developing and issuing a simplified version of the standards had not yet been established.

Other Department officials also expressed concern about both the complex language and difficulty of using the standards. An Office of Education official stated that the language needs simplification. Officials in the Department's Atlanta Regional Office and Center for Disease Control said that the standards were difficult to follow and that interpretations varied.

In a December 1976 memorandum to the Department Counselor, Public Health Service officials identified the following as problem areas:

- Honorariums from private organizations and from the Federal Government are not adequately covered.
- The terms "professional" and "consultative services" are ambiguous.
- Procedures to be followed in the event of failure to comply with provisions of the standards are not known.
- Use of the term "operating agency" is obsolete.
- There are apparent conflicts between the minimal guidance under "outside employment" and questions on the form used to request approval of such outside activities.

In the memorandum, Public Health Service officials also recommended that a task force study and revise the standards. The General Counsel's Office did not respond to this memorandum nor to a second, similar memorandum in 1977.

Standards are incomplete

The Standards of Conduct inadequately addresses or does not address some ethical issues. For example, accepting honoraria is not specifically discussed. Although there are restrictions on outside activities and compensation which affect the acceptance of honoraria, specific problems that could be caused are not included. In addition, the standards do not reference restrictions on accepting honoraria that are included in the Federal Election Campaign Act Amendments of 1976--that no Federal employee can accept an honorarium of more than \$2,000 (excluding amounts for travel and expenses) and honoraria totaling more than \$25,000 in any one year.

Negotiating for future employment is inadequately covered by the standards. Under the section dealing with restrictions on financial interests, an employee is prohibited from participating in his Government capacity in any matter in which "* * * (an) organization with which he is negotiating for employment has a financial interest." However, the standards neither define "negotiating" nor provide any further guidance on negotiating for employment. An employee must decide when job-seeking constitutes "negotiation" and what procedures he should follow to avoid "acting in his Government capacity."

Additional guidance on negotiating for employment, prepared by the Department of Justice, was disseminated to Deputy Regional Counsels, and an interpretation of the statutory restriction by the General Counsel was disseminated for use by employees in the Office of General Counsel. However, this guidance was not disseminated to other supervisors and employees within the Department.

Standards are not current

The Department's Standards of Conduct regulation has not been substantively revised since it was first published in 1965, and no changes have been made since September 1970. As a result, it does not take into account organizational changes.

For example, the standards require that requests for approval to perform professional or consultative services for an institution or business that has recently negotiated or may in the near future seek contracts or grants with a Federal agency be referred to the head of an operating agency for approval. However, the Department no longer uses the term "head of operating agency." As a result, these requests were being approved at different levels in the Public Health Service and the Office of Education, although both supposedly followed the same procedure.

Inadequate dissemination of the
Department Counselor's interpretations

Since the standards were adopted, the Department's Counselor has rendered numerous decisions on issues not covered by the standards or in which the guidance was not clear. We were told that information pertaining to these interpretations is often not disseminated to Deputy Counselors and management officials who are responsible for advising employees on ethical matters. The interpretations are only provided to the component agency in which the question arises. Also, we were told by the Counselor that advice is often given over the phone and is not documented unless a formal reply is requested.

THE DEPARTMENT HAS NOT
EFFECTIVELY IMPLEMENTED ITS
STANDARDS OF CONDUCT REGULATION

Responsibility for promoting compliance with the Standards of Conduct is officially divided among (1) the Department Counselor--the Assistant General Counsel for Business

and Administrative Law, (2) Deputy Counselors--Regional Attorneys, and (3) heads of principal operating components. We found, however, that the primary responsibility is the employee's--to know and comply with the Standards of Conduct. Supervisors are to advise on questions brought to their attention or to determine if a potential problem is beyond their ability to resolve and refer it to higher management levels.

In our opinion, if this system of implementing standards is to be effective, the employee must understand his responsibilities, the supervisor must be able to provide specific and meaningful guidance on ethical questions, and the Department should be able to identify weaknesses in the standards. We found, however, that employees are not always aware of their responsibilities, supervisors do not always provide consistent and correct advice, and available information is not being used to identify weaknesses in the standards.

The Counselor primarily provides guidance and advice on conflict of interest problems that are brought to his attention by supervisors and employees. His participation in coordinating the program is limited to briefing operating component personnel when requested.

Similarly, the Deputy Counselors only advise individuals as requested. They can refer difficult questions to the Department Counselor. The responsibilities delegated to heads of principal operating components are generally being performed by Department personnel offices, as discussed below.

Procedures for making employees and supervisors aware of standards

Department personnel offices give new employees a copy of the Standards of Conduct regulation without discussing or explaining it. Annual reminders of the standards, usually via memorandums, local newsletters, or bulletins, rarely provide interpretive information. Reminders simply notify employees that they are responsible for familiarizing themselves with and observing the standards.

Supervisors are responsible for interpreting the Standards of Conduct and responding to employees' questions on them. However, supervisors are provided little more than employees, in the way of guidance, as the standards are covered only minimally in supervisory training courses.

Agency officials agree with us that the Department's standards are difficult to interpret. Most offices we visited, however, had not established any general guidance or interpretive material for their employees. The Center for Disease Control is one exception; it has established a personnel guide for supervisors to use in reviewing employee requests for approval of employment activities with groups outside the Department. These guidelines describe in general what constitutes a conflict of interest for activities such as writing and editing, publishing, teaching and lecturing, and other professional services.

At the completion of our fieldwork, we were told the Social Security Administration and the Food and Drug Administration have also issued supplements to the Department's standards. However, we did no work at these two agencies.

Our interviews with officials responsible for advising employees disclosed that several were not able to respond accurately to our questions. For example:

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

--Employees generally must 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 financial disclosure statements told us, however, that employees did not have to report financial interests of a spouse or minor child unless they resided with the employee.

We also found instances where agency officials did not correctly interpret sections of the regulation. For example:

--An employee in the Office of Education had been offered, and had accepted, a position with an organization whose financial interests he could affect. At no point prior to our discussion with his supervisor was any action taken to disqualify the individual from dealing with the organization during

the remainder of his employment with the Office of Education. His supervisor had not considered accepting a job offer as "negotiating" for employment.

--An employee was encouraged by her supervisor to accept a policymaking position in a professional organization that could, and subsequently did, apply for financial assistance from the Department. The supervisor saw the employee's acceptance of the position as a chance to develop contacts with an interest group in a particular area. The employee was placed in the position of helping the organization prepare the request for assistance and of taking part in a committee that reviewed the proposal. As a result, the employee may have violated 18 U.S.C. 208. Department of Justice officials decided the employee's actions were not subject to prosecution under 18 U.S.C. 208 because of the unintentional nature of the action.

In addition, many officials with whom we discussed the standards did not consider potential ethical problems when approving travel reimbursement by private sources.

Available information is not being used to identify weaknesses in the standards

The Department has not made use of available information to evaluate the standards and to identify and correct weaknesses. The Department has sources that could be used to evaluate the implementation of the standards and identify potential problems. Some of these sources are financial disclosure statements, prior administrative approvals of certain outside employment activities, questions that come to the attention of the Department Counselor and are informally answered, and information developed by the Department's Inspector General (giving due regard for the confidentiality of the information).

We reviewed requests for administrative approval of outside employment and identified four individuals employed in the Department's Office of Grants and Procurements who were teaching workshops on the administrative requirements for obtaining Government grants and contracts. The Department Counselor told us that this activity is not prohibited by the standards because the individuals were involved in policy setting and not in the grant or contract process. He agreed, however, that several individuals from the same office being involved with the same activity could give the

impression that the outside employment was directly related to their positions with the Department. In our opinion, the type of information on such requests should be used to identify areas of the standards where additional guidance is needed to prevent even the appearance of unethical conduct.

We also found that the Department's Inspector General investigates violations related to the Standards of Conduct regulation. Criminal violations are referred to the Department of Justice; in cases concerning Department regulations, the matter is referred to the relevant operating component for resolution. In addition, the Inspector General prepares semiannual reports covering, among other things, a description of significant problems identified during the reporting period and recommended corrective action. The information developed in investigations is not routinely referred to the Department officials responsible for revising the regulation. The investigative information and the Inspector General's semiannual reports could be used to identify problems with the regulation.

We believe the Department should make use of its available information to evaluate and identify areas where revisions or additional guidance can strengthen implementation of the Standards of Conduct.

CONCLUSIONS

The Department's Standards of Conduct regulation for employees does not provide adequate guidance because the standards are complex, incomplete, and dated. In addition, the Department Counselor's interpretations of the standards are generally not disseminated to supervisors charged with providing advice and guidance on matters of employee conduct.

Implementation of the standards is not effective because the Department has relied almost completely on the regulation itself as a source of guidance. As a result, employees and supervisors are not always aware of their responsibilities, and advice on ethical problems is not always consistent because it is based on individual interpretations. In addition, the Department has not made use of available information to identify areas of the standards that need to be revised.

RECOMMENDATIONS

We recommend that you

- have the Assistant Secretary for Personnel Administration, in conjunction with the General Counsel, revise and update the Department's Standards of Conduct regulation so that it is complete, current, and easier to read and understand. These revisions should be coordinated with the Office of Government Ethics because of its responsibilities in this area. The Assistant Secretary should also establish a procedure for periodically reviewing and revising the standards;
- have the Department Counselor disseminate interpretations and decisions to Deputy Counselors (with due regard for the privacy of individuals involved) and advise supervisors that this additional guidance should be used;
- have the Assistant Secretary for Personnel Administration ~~prepare, with the assistance of the Counselor,~~ a publication summarizing the standards and alerting employees to potential conflict problems for which they should seek advice. This publication should be revised periodically to keep abreast of regulations;
- have the Assistant Secretary for Personnel Administration require that all supervisory training programs' coverage of the standards be expanded and define the extent of that coverage; and
- have the Assistant Secretary for Personnel Administration use the available information sources, such as investigations by the Inspector General, to identify areas of the standards that need to be revised.

We have discussed the matters concerned in this letter with the Department's Counselor in the Office of General Counsel and with representatives of the Office of Personnel and Training. We appreciate the cooperation extended to our staff during this review. We would also appreciate being advised of what action you plan to take on our recommendations.

As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to

submit a written statement on actions taken on our recommendations to the House Committee on Government Operations and the Senate Committee on Governmental Affairs not later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report.

We are sending copies of this report to the chairmen of the above committees, other interested committees and subcommittees of the Congress, and the Directors of the Office of Management and Budget and the Office of Personnel Management. We are also sending copies to your General Counsel, Assistant Secretary for Personnel Administration, and Inspector General.

Sincerely yours,


Gregory J. Ahart
Director

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