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REPORT BY THE U.S.



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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.



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

FEDERAL PERSONNEL AND
COMPENSATION DIVISION

B-148581

Mr. Douglas M. Costle, Administrator
Environmental Protection Agency

Dear Mr. Costle:

We have reviewed the development and implementation of standards of conduct for employees at the Environmental Protection Agency as part of a multiagency review of Federal agencies' standards of conduct. Our purpose was to evaluate the adequacy of the standards as guidance for employee ethical conduct and compare various methods used by Federal agencies 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 Agency can improve its development and implementation of standards of conduct for employees.

At the Environmental Protection Agency we found that certain issues are not adequately addressed by the standards. These include engaging in outside employment or other activities, accepting honorariums, negotiating for employment, and accepting gifts, gratuities, etc. We also found that the Agency could improve its program for implementing the standards by (1) increasing the employees' awareness of their responsibilities under the standards, (2) applying the standards consistently, and (3) identifying areas in which additional guidance on ethical conduct is needed.

We examined the policies and procedures followed by the Agency in implementing and enforcing selected employee conduct standards. We reviewed pertinent documents and interviewed individuals responsible for implementing the standards to obtain information on the effectiveness of the Agency's policies and procedures. The standards we reviewed involved conflict of interest matters of a financial nature, non-Government employment situations, and other dealings with parties outside the Agency.

THE STANDARDS DO NOT ADEQUATELY
ADDRESS CERTAIN ISSUES

The Environmental Protection Agency first published its own standards of conduct in 1973. Before that the Agency relied on the general standards issued by the Civil Service Commission (now the Office of Personnel Management). Since 1973 the Agency has considered revisions to the standards on several occasions, but substantive changes have not been made. For example, as a result of a 1975 study of the Agency's standards performed by a consultant, an ad hoc committee was established to discuss conflicts of interest and recommend needed changes. In June 1976 the committee reported that no serious conflicts existed and basic changes were not necessary.

In March and April 1977, staff of the House Subcommittee on Oversight and Investigation reviewed financial disclosure statements of selected Agency employees and found widespread conflicts. The problems were caused by the Agency's system for implementing the standards--49 high-level officials (deputy counselors) individually determining what constitutes a conflict of interest based on very general regulations and only minimal guidance from the Agency counselor. As a result of the subcommittee's findings, a second ad hoc committee on conflict of interest was established in May 1977 to recommend improvements to the standards. Proposed changes concerned primarily with potential conflicts from financial holdings were circulated for comment to all Agency staff in April 1978. At the time of our review, employee comments had been received, but no changes to the standards had been adopted.

The Agency counselor, in commenting on a draft of this letter, explained that the Agency would not be submitting revisions to the Office of Government Ethics because that office was only recently established and is not ready at this time to review and comment on individual agency revisions to the standards.

The issues discussed below were identified during our review. We believe any revisions to the present Agency standards should include consideration of these issues and the need for more specific guidance in these areas to prevent ethical problems.

Outside employment or
other outside activities

Agency regulations allow employees to engage in outside employment or other outside activity that is compatible with their Government employment. The regulations, however, require employees to obtain administrative approval before engaging in the following outside employment activities.

- Regular self-employment.
- Consulting services.
- Holding State or local public office.
- Outside employment or other outside activity involving an agency contractor or subcontractor.
- Any other outside work concerning the propriety of which an employee is uncertain.

The Agency counselor has taken a more restrictive view; according to him, prior administrative approval is required for all outside employment for employees in the Office of General Counsel.

Our review disclosed that deputy counselors have different opinions on the types of outside employment activities for which prior administrative approval is required. For example, deputy counselors told us:

- Teaching as an outside activity would not have to be approved.
- Approval is only required for outside employment or outside activities which interfere with official work time.
- Employees have to make their own decisions as to what outside employment should be reported.

Another deputy counselor told us that outside employment would not be approved under any circumstances.

In our opinion, the standard governing outside employment or activities is not adequate because it is not clear

which outside activities require administrative approval. In addition, the standard does not provide criteria for granting or denying approval of these activities. The Agency counselor should determine on an agencywide basis whether all or only certain types of outside activities should be submitted for approval and develop written criteria on what constitutes a conflict of interest regarding outside employment activities. This criteria should be used by deputy counselors to assure that the standard is consistently applied.

In commenting on this letter the Agency counselor agreed that criteria for use by deputy counselors in determining what constitutes a conflicting outside employment interest could be beneficial. However, in his opinion, granting or denying permission to work outside the Agency is at least in part a management decision which does not relate to conflict of interest. As a result, complete consistency in allowing outside employment is not likely to occur. While we agree that conflict of interest may not be the only consideration in granting or denying permission to engage in outside employment, we believe it is a significant consideration and should be applied equally to all Agency employees. The responses we received from deputy counselors indicated to us that different interpretations of what constitutes a conflict are being applied.

Acceptance of honoraria

The Agency's standard on acceptance of honoraria differentiates between honoraria offered while not on duty and while on duty.

- An employee may accept an honorarium for a permissible outside activity which is nonofficial in character.
- An employee is prohibited from accepting an honorarium while performing official duty.

The standard for accepting honoraria while not on duty does not adequately address the potential problem that can occur if employees accept honoraria from organizations affected by or who do business with the Agency. Although clearance of some types of outside activities is required during which the propriety of accepting an honorarium could

be reviewed, there is no criteria for reviewing these requests. Approval is dependent on the deputy counselor's interpretation and does not address the possibility that although an activity may not be prohibited, acceptance of a monetary gift for undertaking that activity could create the appearance of a conflict. Further, not all outside activities require prior approval (the requirement for approval and the approval process are not consistently applied by deputy counselors). (See p. 3.)

The Agency counselor commented that acceptance of honoraria from any person or organization that does business with, is seeking to do business with, or is regulated by the Agency is strictly forbidden by the section of the standards dealing with gifts and gratuities. We believe this prohibition should be clarified by specifying that honoraria are included as prohibited items in the same manner as the acceptance of a gift would be.

Although employees are not permitted to accept honoraria for official activities, they are allowed to suggest that a contribution be given to charity. However, the option of suggesting a charitable contribution instead of an honorarium is not addressed as part of the standard on honoraria. According to the Agency counselor, to comply with the standard and the law prohibiting dual compensation for actions taken as a Government employee (18 U.S.C. 209), employees have to refuse the offer of an honorarium. The employee may suggest a charitable contribution, but only with complete understanding on the part of the offerer that the contribution is his decision and will not affect the services provided.

In 1972, to accommodate the option of suggesting a charitable contribution, a college scholarship fund, supported by contributions in place of honoraria offered to employees, was established to provide financial aid to children of present and former Agency employees. Agency officials estimate that the scholarship fund accumulates \$5,000 to \$7,000 annually.

The existence of the scholarship fund was discussed by the first ad hoc committee, and in June 1976, three of the committee members stated in a memorandum to the Administrator:

"The acceptance of any gift or money from an outside organization gives the impression that an * * *

employee appreciates the gift and this could result in an apparent conflict of interest. The gift allows the employee to make an indirect contribution to a charity * * *."

The memorandum pointed out that if an honorarium is given to the scholarship fund in recognition of a speech given as part of an employee's official duty and the funds are then used to give scholarships to employees' families, public funds have, in effect, been converted to private use. The members of the ad hoc committee recommended that employees be instructed to refuse or return all honoraria. This recommendation was never implemented.

The acceptance by the scholarship fund of donations in recognition of official actions on the part of employees from companies that can be affected by Agency actions could result in the appearance of a conflict. We believe restrictions on contributions to the fund from businesses or groups whose operations can be affected by Agency operations are necessary, because of the significant potential for an appearance of a conflict and the potential for building good will among Agency employees.

In addition, specific guidance is needed for employees on how to suggest that a charitable contribution be made without directly accepting the honorarium and without "steering" the contribution in such a manner as to give the appearance of having directed who the recipient should be. For example, in one case an employee returned an honorarium with the statement that he could not accept, but that if he could, he would probably donate the honorarium to his alma mater.

The standard also does not incorporate the restrictions on accepting honoraria set out in the Federal Election Campaign Act Amendments of 1976 (Public Law 94-283)--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 1 year.

Negotiating for employment

At present, the only restriction on employees negotiating for employment included in the standards of conduct is the statutory disqualification requirement, and this is only enforced to the degree the employee himself abides by it.

According to the statute (18 U.S.C. 208), an employee may not participate personally and substantially in any particular matter in which to his knowledge, an organization with which he is negotiating for employment has a financial interest.

While the standards provide no specific criteria on negotiating for employment, employees can receive additional guidance based on Department of Justice criteria and supplementary guidance issued by three divisions in the Agency. An assistant to the Agency counselor told us that the Agency follows criteria regarding negotiating for employment contained in a November 12, 1976, Department of Justice memorandum. According to the memorandum, conflict of interest laws do not prohibit a Federal employee from seeking other employment while he is still with the Government, even if the prospective employer is regulated by or has dealings with the employee's own department or agency. The laws do require the employee to disqualify himself from any Government action which may directly affect the prospective employer. However, this criteria has not been generally distributed to employees or deputy counselors, and there are no controls over disqualification.

Deputy counselors for three divisions have issued written guidance to their employees on the avoidance of conflict of interest supplementing Agency regulations. The guidance contains procedures to be followed when negotiating for employment. It states that an employee who wishes to pursue employment opportunities with an organization regulated by that division or which holds a contract with that division must submit a memorandum to the Deputy Assistant Administrator through the appropriate branch chief identifying the organization with whom the employee expects to discuss employment opportunities and stating that the employee will disqualify himself from any matters affecting that organization.

In our opinion, the guidance provided in the procedures established within these divisions indicates the type of action the Agency could take to prevent ethical problems from occurring due to negotiations for employment. These procedures have been in effect since March 1974 in one division, June 1976 in the second, and November 1978 in the third. Overall Agency standards should provide this type of guidance for all employees. In addition, the guidance contained in the Department of Justice memorandum should be distributed to deputy counselors.

Acceptance of gifts and gratuities

The regulations prohibit acceptance of gifts and gratuities, etc., with some exceptions. These include

- food or refreshments and modest entertainment of nominal value on infrequent occasions,
- gifts where the motive is an obvious family relationship,
- unsolicited promotional material of nominal value, and
- incidental transportation in kind provided by a private organization.

The regulations do not provide clear guidance on "nominal" and "infrequent" and they do not address the acceptance of gifts from foreign companies.

In interviews with several deputy counselors, we were given various dollar amounts as their concept of nominal. Two counselors indicated they would not allow acceptance of any gift no matter what the dollar amount. One of the counselors indicated he would consider an acceptance of a gift on more than one occasion to be grounds for an investigation and possibly disciplinary action. He also indicated he would fire an employee that accepted an "expensive" gift but did not define expensive. Another deputy counselor indicated that although a nominal gift of under \$5 is acceptable an employee is not allowed to accept meals.

The Agency needs to clarify terms such as nominal and infrequent so that employees are aware that there is a relatively standard criteria. The value of a nominal gift should not differ substantially depending on which deputy counselor is asked.

We found that receipt of gifts and gratuities by employees dealing with foreign companies has been a major problem on occasions in the past. Employees have often been involved in foreign travel. Japan, one of the frequently visited countries, has a custom of giving gifts to their visitors.

For example:

- In 1976 several employees were given a variety of small gifts, calculators, and engraved watches. The watches were valued at about \$500 each, retail. The employees, to offset implications of impropriety, presented the giver of the watches a briefcase valued at \$100. The gifts were reported and, according to an official, the watches were turned over to the Department of State. The Agency counselor's case file did not indicate the disposition of the watches.
- In 1977 two employees meeting with representatives of a Japanese auto manufacturer were presented various gifts. On returning to the United States they reported these gifts to the Agency counselor and estimated the value of the gifts as between \$25 and \$30. They were told that the decision on the value of the gifts was their responsibility or their supervisors', and that if they doubted that the value of the gifts were nominal then they should return them. The Agency counselor made no offer to return the gifts and refused to provide an opinion on their value.

A review undertaken by the Inspections Office (currently the Office of Inspector General) when the watches were reported in 1976 revealed that between 1973 and 1976 over \$2,600 worth of gifts had been reported to the Inspections Office as received by Agency employees from foreign companies whose interests they could affect. However, the Agency has not provided any specific guidance on dealings with foreign companies. The advice provided appears to be primarily after the fact and similar to the advice provided the two employees listed above.

In our opinion, the standard should recognize the potential problems that employees face when dealing with foreign companies. Specific procedures should be established to assist employees in dealing with the awkward situations that can arise when gifts are offered to employees by foreign companies. For example, employees who received expensive watches felt obligated to purchase a more than nominal gift in return because they recognized that the gift created an appearance of conflict.

Conclusions

None of the previous reviews on Agency standards of conduct has resulted in revisions to the Agency standards.

We believe the Agency should take action to correct the deficiencies in its standards noted by us and in previous reviews of the standards. We realize that official changes to the standards have to be approved by the Office of Government Ethics, however, where deficiencies in the standards are identified, interim measures such as guidance to deputy counselors on the deficiency should be used. In addition, since the Agency has no procedures for reviewing the adequacy of the standards of conduct on a periodic basis, we believe that the establishment of a periodic review and evaluation would assure that questions are addressed, and possibly forestall major problems through an early identification of weaknesses in the standards.

Recommendations

We recommend that the Administrator of the Environmental Protection Agency take action to correct the deficiencies we have noted in the standards and the deficiencies identified in earlier reviews of the standards. Any formal revisions to the standards must be coordinated with the Office of Government Ethics because of its responsibilities in this area under Executive Order 11222. Further, the Administrator should require a periodic review and evaluation of the standards to identify deficiencies and suggest needed revisions.

THE STANDARDS COULD BE MORE EFFECTIVELY IMPLEMENTED

Effective standards of conduct require that employees be aware of their responsibilities, that the Agency counselor and deputy counselors provide complete and consistent advice when questions arise, and that the Agency be able to identify problems with the standards so that corrective action can be taken.

At the Environmental Protection Agency ^{if we} we found that

- employees are not always aware of their responsibilities under the standards;
- deputy counselors interpret and apply the standards independently, which results in employees being provided inconsistent advice and guidance on questions of ethics; and
- the Agency counselor has not made use of available information to identify weaknesses in the standards.

Employee awareness

Agency procedures to make employees aware of their responsibilities under the standards consist primarily of giving a copy of the regulations to each new employee and expecting the employee to read and comply with them and seek advice from deputy counselors if needed. Discussions with several deputy counselors revealed that the procedure is not adequate and the Agency has not always distributed the type of information and guidance the employees need.

For example, one deputy counselor told us he does not believe employees receive sufficient guidance to make them aware of their responsibilities. He told us employees need better information and more guidance on dealing with Agency contractors. A second deputy counselor agreed with the opinion that employees do not receive sufficient guidance and said the "legalistic" language of the standards makes it difficult for employees to read them. Another deputy counselor told us orders, other than the standards, dealing with employee conduct responsibilities are not distributed. Employees must seek them out.

Two deputy counselors indicated they believe employees are aware of their responsibilities. However, one based the belief completely on the fact that employees receive a copy of the standards when they are hired, and the other based the belief on the fact that most of the employees which the deputy counselor has dealt with have been with the Government for a long period of time and should therefore be aware of the behavior expected from Government employees.

Further indications of a lack of employee awareness were:

- The number of financial conflicts identified by the staff of the House Subcommittee on Oversight and Investigation shortly after an Agency review had identified no serious problems.
- Actions by employees who when offered honoraria accepted checks and endorsed them over to the Agency scholarship fund. The Agency counselor, when made aware of this situation issued a memorandum to the manager of the fund reminding him that this does

not comply with Agency policy on accepting honoraria. Thereafter, the secretary for the fund sent a memo to all regional personnel offices advising them of the new procedures and attached a copy of the Agency counselor's memorandum.

--The differing interpretations placed on the requirement for prior administrative approval of outside employment activities. (See p. 3.)

A lack of employee awareness of the Agency's ethical standards was recognized in March 1975 when the Administrator issued a memorandum to all employees to heighten employee awareness of the legal and ethical concepts which govern their actions. However, no further communication on ethics was forthcoming for the next 3 years. In March 1978 the Office of General Counsel conducted a series of briefings in the Agency's regional offices and laboratories to heighten awareness of field personnel to potential ethical problems. This program was discontinued however, because of the expense of sending a representative of the General Counsel's Office to each of the Agency's field offices.

In April 1978 the Office of Inspector General produced a film presentation dealing with employee standards of conduct because of several problems which had come to its attention. The film included information on accepting gifts, outside employment activities, use of Government property, and improperly claiming travel expenses. It generally reflects the information contained in the Standards of Conduct regulation, and is designed to increase the employees' awareness of their responsibilities under the standards. While the film does not provide guidance to assist employees in dealing with specific situations, there is a question and answer session immediately following the film at which time specific matters can be discussed.

We believe the film is a positive step toward increasing the employees' awareness of the standards of conduct. Additional areas such as accepting honoraria and negotiating for employment which are not presently being covered could be included in the film or covered in the question and answer session.

We believe additional measures are necessary to increase the employees' awareness of the standards. Actions, in

addition to the film, should include making employees aware of all Agency documents relating to ethical conduct during employee orientation and emphasizing their importance.

Recommendations

We recommend that the Administrator have the Agency counselor oversee the preparation of a package that includes all the pertinent Agency documents relating to employee ethical conduct, have the personnel officer provide that package to all newly hired employees, and establish a procedure for emphasizing the importance of standards of conduct during new employee orientation. In addition, the Administrator could have the Inspector General's Office supplement the film presentation with additional information to cover all segments of the Standards of Conduct regulation.

Inconsistent application of Agency standards

Implementation of the standards of conduct in terms of providing advice and guidance is handled by the Deputy General Counsel who serves as the Agency counselor and a staff of 49 deputy counselors including Assistant Administrators, Deputy Assistant Administrators, and Regional Administrators. Most of the deputy counselors and the Agency counselor spend a minimal amount of time on ethics matters. It is a duty in addition to their primary function of managing the Agency's programs to assure accomplishment of its mission.

In carrying out their responsibilities in the ethics area, deputy counselors are not subject to administrative review by the Agency counselor due to their relative position in the Agency's organization. Instead, they respond to employees' questions and resolve problems based on their own interpretations of the regulations. They seek advice and guidance from the Agency counselor when they need assistance. The Agency counselor does not routinely provide any documented interpretive guidance and only gives advice on specific matters when requested to do so. As a result, standards are inconsistently applied throughout the Agency.

For example, inconsistent application of certain restrictions was brought out as a major problem in the report of the House Subcommittee on Oversight and Investigation. The report indicated several factors causing the inconsistency.

- The Agency counselor provides minimal guidance to deputy counselors.
- The general language of the statute and regulations provide little direction as to the proper standards to be applied.
- The conflict of interest function is a low-level priority for most deputy counselors.

While the subcommittee's report focused on problems created by financial holdings, our review disclosed inconsistencies in interpreting and applying the standards of conduct in other areas. For example:

- The type and extent of restrictions on accepting gifts, gratuities, etc., differs depending on the individual deputy counselor's interpretation. In some cases, nothing is acceptable. In other cases, nominal gifts and gratuities are acceptable. In another case, nominal gifts are acceptable but meals are not acceptable. (See p. 8.)
- The approval system for outside employment is applied differently by various deputy counselors and the Agency counselor. The Agency counselor stated that all outside employment should be reported and approved. Some of the deputy counselors think that clearance should be obtained for only certain types of employment. (See p. 3.)
- Negotiating for employment is not adequately addressed in regulations. With the exception of three divisions which provide written guidance to their employees on negotiating for employment, Agency employees as a whole, have not been given any type of guidance in this area. While we were told that the Agency adheres to the policies established by the Department of Justice in 1976, there has been no agencywide attempt to pass this information along to employees and deputy counselors. Consequently, employees became aware of Agency policies on negotiating for employment only when seeking specific advice. (See pp. 6 and 7.)

In addition to the number of apparent conflicts of interest because of employee holdings of financial interests

identified by the subcommittee staff, we found that the Agency's resolution of identified conflicts is also subject to inconsistencies. While the Agency considers disqualification, divestiture, and waivers as acceptable remedies for resolving conflicts, it has not provided criteria for use in determining when any of the resolutions should be applied. The decision is left to the deputy counselors to decide which resolution should be applied in any particular case. In addition, the Agency has not established followup procedures to determine that recommended resolutions are put into effect.

We noted several cases where Agency employees were given divestiture as an option to resolve a conflict of interest, but only one instance, where an employee chose to use divestiture as a resolution. In none of the cases noted did the file contain any documentation as to the actual disposition of the case. In the case in which divestiture was chosen, the employee requested and was given 2 months to divest. The file did not indicate that the employee should disqualify himself from any activities in the interim.

Information obtained from deputy counselors disclosed that they had various concepts of the length of time that should be allowed to implement a divestiture once it had been agreed on as an acceptable resolution by the employee and the deputy counselor. These ranged from less than 30 days to over 120 days. The Agency counselor told us the length of time should be dependent on the circumstances involved, but we found relating the time to the circumstances is left to the discretion of the deputy counselor. The Agency has not provided any criteria for them to use. An assistant to the Agency counselor expressed the opinion that carrying out the agreed on resolution of a conflict was primarily the responsibility of the employee.

Standard procedures for using disqualification as a remedy for a conflict of interest have not been established. We were told by an assistant to the Agency counselor that sometimes a memorandum may be written detailing a disqualification while in other cases an oral agreement will be reached. We noted six instances where disqualification was allowed as a remedy for a conflict. In five of the six cases, a memorandum was contained in the Agency counselor's file documenting the disqualification. However, disqualifications based on oral agreements would not be part of the record and would depend on the memories of the participants to the agreement for enforcement.

The granting of waivers for otherwise prohibited financial holdings as provided for in 18 U.S.C. 208(b) is done by the Agency counselor on a case-by-case basis. The Agency has not developed specific criteria to be followed. The Agency counselor told us he would not grant a waiver if the situation was obviously a conflict of interest and leans toward denying waivers when there is a strong appearance of conflict. He said he does not consider the dollar value to be the major determining factor in whether or not a waiver should be granted, although this was used at one time.

A review of Agency files disclosed that since 1975, the Agency has received and acted on seven requests for waivers. Three of the requests were denied--two because of the appearance of conflict and the other because no waiver was needed. The remaining four requests were granted based on the financial holdings being too remote and insubstantial. In two of the four cases, the employees were given specific instructions regarding the life of the waivers. One was told that the waiver would be recinded if the value of the stock exceeded \$5,000. The other employee was advised that should his holdings increase substantially or his work activities change, he should alert the Agency counselor for a reassessment of the waiver.

In discussions with the Agency counselor, he agreed with us that a periodic review of the conditions surrounding waivers to determine whether changes have occurred which affect the waiver would be a good course of action.

Conclusions

(The Environmental Protection Agency's system for implementing standards of conduct results in inconsistencies because the standards are interpreted by 49 deputy counselors with only minimal central guidance or review.) This inconsistency was noted in terms of ownership of financial interests by the staff of the House Subcommittee on Oversight and Investigation. We found the same inconsistency exists in applying other parts of the standards of conduct.

In our opinion, the Agency counselor needs to provide guidance to the deputy counselors so that they apply the standards consistently. Conditions which warrant different applications of the standards should be recognized and accounted for with specific guidance for a particular division

or office. In addition, we believe the Agency counselor should provide criteria to assure that resolutions to conflict of interest problems are consistently applied. Some specific actions which could improve the consistency of resolving conflicts of interest are establishing

- control procedures for divestiture actions which include follow up to assure divestiture has taken place,
- criteria for the time allowed to resolve a conflict under divestiture or other possible resolution,
- a control list of disqualifications which could be maintained by deputy counselors and made available to supervisors to assure disqualifications take place when situations arise, and
- a periodic follow up for waivers of financial holdings.

Also, we believe the Agency counselor should meet periodically with the deputy counselors to discuss Agency policies on ethics to assure consistency in interpretation and implementation of the standards.

The Agency counselor in commenting on this letter indicated that arranging a meeting that included all of the deputy counselors would be nearly impossible because of the many important demands on the time of these individuals. We believe that although a physical meeting may not be feasible, the importance of consistency in applying the standards requires that some procedure for regular communications between the Agency counselor and deputy counselors should be established.

Recommendations

We recommend that the Administrator of the Environmental Protection Agency have the Agency counselor (1) develop guidance for use by deputy counselors in applying the standards of conduct, (2) develop criteria for applying various resolutions to conflict of interest problems, and (3) establish a procedure for regularly communicating with deputy counselors to assure consistent application of the standards.

Information is not being used to
identify weaknesses in the standards

The Agency expects compliance with its standards of conduct from all employees. However, the standards do not always provide adequate information, and advice and guidance provided by deputy counselors is not always consistent. The extent of these problems is not known because the Agency does not use available information to identify (1) weaknesses in the standards and (2) areas where employees and deputy counselors need more explicit guidance to prevent ethical problems.

In our review we identified several sources of information already available within the Agency that could be used to identify areas where additional guidance could correct problems or where changes are needed in a particular standard. We found, however, that these information sources are generally not being used. These sources include

- financial disclosure statements,
- approvals of outside employment,
- reports on negotiating for employment situations in three divisions, and
- reports and investigations conducted by the Office of Inspector General.

Certain Agency employees are required to submit a confidential statement of employment and financial interests--generally GS-13 and equivalent and above--under Executive Order 11222. In addition, under the Environmental Research, Development, and Demonstration Authorization Act of 1978, the Toxic Substances Control Act, the Solid Waste Disposal Act, and the Clean Air Act, public disclosure of known financial interests is required of persons subject to or receiving benefits under the acts.

Statements from the above sources contain information on the financial holdings and interests of an employee and members of the employee's family and employment interests of the employee. They could be used to measure the need for additional guidance on financial holdings for employees or to monitor the consistency with which deputy counselors

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apply the standards. However, the Agency does not centrally collect or review information on financial holdings or identified conflicts. The statements are reviewed and maintained by individual deputy counselors and only referred to the Agency counselor if the deputy counselor believes he needs assistance to resolve a problem.

If the Agency counselor had been aware of the activities of the deputy counselors in allowing financial holdings that created conflicts or the appearance of conflicts, he would have been able to identify the need for better guidance and revisions to the standards. Instead, this problem came to light only as a result of the review of Agency financial statements by the House Subcommittee on Oversight and Investigations' staff. Information from the statements could also be used to review the effectiveness of the approval system on outside activities. However, this information is not being used for this purpose.

According to the regulations, employees are to obtain administrative approval for certain types of outside employment. The procedure calls for a review of the request by the appropriate Agency counselor or deputy counselor and written notification of the actions taken. However, approvals are generally made at the deputy counselor level and maintained as individual cases independent of other requests for employment approval. The Agency counselor does not attempt to use this information to identify any potential areas which require more explicit guidance or changes to the standards.

The three divisions which have issued additional guidance on ethical conduct require that employees report any contact by a regulated company or one that does business with the division before responding to the contact. However, the Agency counselor has not used this information to determine if any changes are needed to the Agency's regulation or if other divisions should consider requiring employment contacts to be reported by all Agency employees.

Investigations are conducted by the Inspector General's Office based on accusations of wrongdoing or requests for investigations by Agency officials. When criminal matters are uncovered, the case is referred by the Inspector General's Office to the Department of Justice. When violations of Agency regulations occur, the matter is referred to the

appropriate program official for action. There is no regular procedure for reporting information developed during investigations or even the number of investigations that are undertaken relating to any particular area to the Agency counselor.

Conclusions

(Sources of information that can be used to evaluate the adequacy of Agency standards of conduct are available but have not been used for this purpose. These data bases could be tabulated in a usable format, and through analysis by the Agency counselor or under his direction, be used to determine needed changes to the standards of conduct or additional guidance needed because of specific problems confronting Agency employees.)

In commenting on the collection and use of information sources such as those discussed above, the Agency counselor indicated that the most logical group to use this information for evaluating the standards would be the Agency's Office of Inspector General. This office would have the expertise because the type of analysis required would be very similar to its other work.

RECOMMENDATIONS

We recommend that the Administrator

- designate the Inspector General as the focal point for identifying information sources such as those discussed above and
- require a periodic evaluation of the effectiveness of the standards of conduct with recommendations for improvement directed to the Agency counselor.

We have discussed the above matters with your Agency counselor in the Office of General Counsel and representatives of your Office of Inspector General. We would appreciate being advised of the actions you plan to take on our recommendations.

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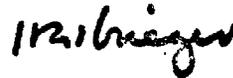
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As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions taken on our recommendations to the Senate Committee on Governmental Affairs and the House Committee on Government Operations 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. We are also sending copies of this report to the chairmen of other interested committees and subcommittees of the House and Senate; the Directors of the Office of Personnel Management, Office of Government Ethics, and the Office of Management and Budget; and to your General Counsel and Inspector General.

We appreciate the courtesies and cooperation extended to our staff.

Sincerely yours,



H. L. Krieger
Director

(964121)

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