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FEDERAL PERSONNEL AND COMPENSATION DIVISION

B-196996

December 7, 1979

The Honorable Abraham Ribicoff
Chairman, Committee on Governmental
Affairs
United States Senate

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Dear Mr. Chairman:

Subject: [Efforts by the Office of Government Ethics to Implement Certain Sections of the Ethics in Government Act] (FPCD-80-34)

The Ethics in Government Act, Public Law 95-521, was enacted into law on October 26, 1978. An important achievement of that statute was the establishment of the Office of Government Ethics within the Office of Personnel Management. The act charged the Office of Government Ethics with various responsibilities concerning conflicts of interest in the executive branch of Government.

P. 3070

The enclosed information responds to your request of October 24, 1979. You asked us to evaluate the present staff situation and organization of the Office of Government Ethics, including its relationship with the Office of Personnel Management. In addition, you asked us to comment on each of the following concerns:

- Whether the statutory deadlines have been met.
- The status of the regulations implementing the act as amended by Public Law 96-28.
- The procedures and designations pursuant to section 207(d)(1)(C).
- The procedures and decisions pursuant to section 207(e).
- The actions pursuant to section 207(j).

Restricted
(964154)
Letter report

As subsequently agreed with your office, we performed work solely at the Office of Government Ethics with no coverage of the Office of Personnel Management or the executive agencies. In addition, we agreed not to obtain agency comments.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of the report. At that time we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,



H. L. Krieger
Director

Enclosures - 4

EFFORTS BY OFFICE OF GOVERNMENT
ETHICS TO IMPLEMENT CERTAIN SECTIONS
OF THE ETHICS IN GOVERNMENT ACT

The Ethics in Government Act of 1978 (Public Law 95-521) was passed on October 26, 1978. Title IV of the act established the Office of Government Ethics (OGE) in the Office of Personnel Management (OPM) to carry out the provisions of the act. The statute requires that the Director of OGE be appointed by the President, with the advice and consent of the Senate. The major objectives of OGE are to:

- Design and implement a system for filing financial disclosure statements.
- Establish standards and regulations for the post-employment restrictions.
- Monitor and investigate the executive agencies' performance in implementing the act.

The Chairman, Senate Committee on Governmental Affairs requested us to evaluate OGE's current staffing and organization and to review its progress in implementing specific sections of title V (Post Employment Conflicts of Interest) of the act. We were specifically asked to review:

- Whether the statutory deadlines have been met.
- The status of OGE regulations implementing the act as adopted and as amended by Public Law 96-28.
- OGE procedures and designations pursuant to section 207(d)(1)(C).
- OGE procedures and decisions pursuant to section 207(e) and the separate agency or bureau provision in section 207(d)(1)(C).
- Agency actions pursuant to section 207(j).

As agreed with the committee staff, our review was to be limited to the OGE activities. We therefore discussed the specific matters with OGE officials, including the past Director whose appointment was only temporary, the recently nominated Director, and the various officials responsible

for implementing the different sections of title V. We also reviewed the files and documents in OGE supporting its actions.

PROVISIONS OF TITLE V OF THE ACT

Title V of the act as originally passed, placed restrictions on Federal employee post-employment activities in order to avoid conflict of interest situations. Title V, as originally passed, imposed certain post-employment restrictions on all former Federal employees. In addition, the act restricted certain former high-ranking employees (senior employees) from:

- Aiding, advising, or assisting in representing, for a 2-year period, a person involved in any formal or informal appearance before his/her former agency. This applies to matters the former employee had participated in personally and substantially or which were pending under the employees responsibility area during his/her final year in office (section 207 (b)(ii)).
- Acting as agent or attorney or otherwise representing any person in any formal or informal appearance before his/her former agency or making oral or written communications to his/her former agency with the intent to influence it, for a period of 1 year after employment ceases (section 207(c)).

The senior employees consisted of four categories outlined in section 207(d). The first two categories were automatically covered by the act. These were executive level employees and commissioned officers on active duty in the uniformed services holding the rank of 07 and above. The two other categories of senior employees required the OGE Director to designate the positions. One category required the position to be at a rate of pay equal to or greater than that of a GS-17 and also to have either significant decisionmaking or supervisory responsibility. The other category covered positions below the GS-17 pay level that had significant decisionmaking authority.

Section 207(e) of title V authorized the OGE Director to designate separate departments or agencies, within a parent department or agency, for the purposes of section 207(c).

The OGE Director under section 207(j) was required to consult with the individual departments and agencies in establishing their procedures for administrative enforcement of restrictions on post-employment activities.

The June 22, 1979, amendments, Public Law 96-28, changed the mandatory coverage of the act to only executive level positions and commissioned officers with a rank of 09 and above. It limited OGE's authority to designate as senior employees those within the Senior Executive Service (SES), those at a paygrade of GS-17 and above, or those commissioned officers on active duty holding the rank of 07 or above. It also authorized OGE to designate certain nonstatutory components of departments or agencies as separate from the parent agency.

HISTORY AND STATUS OF OGE

A temporary Director, previously employed by the Department of Defense (DOD), was appointed on January 14, 1979. He served as full-time Director until the end of July when he began his transition to his new position in the Department of Energy. Since then his participation in the daily operations of OGE has been limited to policy decisions necessary to keep the office functioning. On November 26, 1979, the President nominated a new Director. His nomination is currently before the Senate for confirmation.

When the temporary Director was appointed he was faced with several immediate problems that had to be resolved quickly. The most difficult was the development of regulations to define the post-employment restrictions on senior-level officials defined in title V of the act. Confusion existed throughout the Government over what activities were restricted. Several agency heads feared the possibility of mass resignations and the difficulty of recruiting qualified replacements. In addition to the real or imagined fears being expressed directly or through the news media, the effective date for the restrictions, July 1, 1979, was rapidly approaching. As a result the regulation defining post-employment restrictions became the top priority.

At the same time, the Director was responsible for developing procedures and establishing policy to implement the financial disclosure requirements in title II of the act. The provisions of this title took effect on January 1, 1979, and the reports were to be filed by May 15, 1979. Our review did not include an assessment of this activity.

In addition to the statutory requirements, OGE performed several other time-consuming activities. For example, OGE received approximately 2,000 inquiries regarding various aspects of the act. Most of these were resolved immediately; however, 42 required an informal written opinion. Title IV of the act requires OGE to establish a formal advisory opinion service. At the time of our review, however, it had not done so.

OGE staff was also heavily involved in analyzing the proposed amendments to the Ethics Act and preparing testimony before various congressional committees.

Staffing history of OGE

We were told the volume of work and the short time frames did not provide sufficient time to design an organization and recruit a permanent staff. Therefore, qualified individuals were detailed from other Federal agencies to fulfill the obligations of OGE. Since its inception, OGE has operated with a temporary staff, which at the maximum strength consisted of 13 individuals (7 attorneys and 6 administrative staff). Most of the temporary staff were recruited from DOD. We were told that this was primarily because of the Director's personal contacts in the agency.

The following schedule shows the temporary staffing and the length of time served in OGE.

<u>Position</u>	<u>Parent organization</u>	<u>Date assigned</u>	<u>Date left</u>
Attorney	DOD	1-79	(a)
Attorney	DOD	1-79	-
Attorney	DOD	1-79	4-79
Attorney	OPM	1-79	-
Attorney	DOD	1-79	5-79
Administrative Officer	DOD	1-79	10-79
Administrative Officer	DOD	1-79	5-79
Attorney	<u>b</u> /HEW	2-79	3-79
Attorney	<u>c</u> /IRS	2-79	4-79
Attorney	DOD	4-79	-
Administrative Officer	DOD	5-79	9-79
Administrative Officer	DOD	5-79	8-79

a/Temporary Director of OGE.

b/Department of Health, Education, and Welfare.

c/Internal Revenue Service.

As can be seen from the table:

- Four of the five attorneys originally detailed to OGE came from DOD; the other came from OPM.
- Two attorneys detailed from HEW and IRS stayed less than 2 months.
- Three detailed attorneys are still assigned to OGE; two are from DOD and one is from OPM.

OGE did not submit the first proposed organization to the Deputy Director of OPM until May 29, 1979. The proposal requested 25 personnel positions, which was 5 more than originally estimated for the fiscal years 1979 and 1980 budgets. The five additional positions were requested to increase their audit capability for determining compliance with the act and establishing uniform methods of operations.

The proposed organization included a deputy director and three division chiefs. One division would be responsible for the financial disclosure requirements of title II, another would be responsible for the post-employment conflict-of-interest requirements of title V, and the third division would perform the audit and investigation work. The proposal also suggested that the deputy director, the financial disclosure chief, and the post-employment chief be classified in SES. The justification was based on the scope and sensitivity of the responsibility inherent in the positions.

The proposal was reviewed by OPM officials in the Office of Personnel and the Office of Management. These groups submitted formal reports to the Deputy Director of OPM, which included several recommendations. The concerns expressed in these reports included

- the necessity of a deputy director in so small an organization,
- the potential for combining the financial disclosure group and the post-employment group,
- limiting the number of auditors to 5 instead of the proposed 10, and
- the justification for an executive assistant and a management analyst in the Director's office.

In addition OPM's Office of Personnel submitted a letter to the Deputy Director of OPM questioning the justification for classifying the two division chiefs as SES positions.

The letter argued that the size of OGE limits the supervisory functions of these positions and should therefore be classified no higher than the GS-15 level.

According to OGE officials, several meetings were conducted to resolve these issues, and a revised proposal, was submitted to the Deputy Director of OPM on July 11, 1979. The only change in the new proposal was to reduce the number of SES positions to two--deputy director and financial disclosure chief. The Deputy Director of OPM approved the organization, but limited the total number of positions to 20. As a result of the ceiling, the 10 auditor positions were reduced to 5. The first permanent position in OGE was filled on July 16, 1979. The following table shows the status of OGE staff as of November 15, 1979.

<u>Position/grade</u>	<u>Date recruited</u>	<u>Remarks</u>
Deputy Director/SES	-	No recruiting for this position.
Executive Assistant/ GS-301-12	9/ 9/79	
Management Analyst GS-343-5/7/9	-	The temporary employee filling this position has applied for it.
Secretary/GS-318-7	-	Unfilled until deputy director's selection.
Secretary/GS-318-7	7/29/79	
Chief, Financial Disclosure/SES	9/ 9/79	A GS-15 permanent OGE employee is currently filling this position.
Attorney/GS-905-15(2)	-	The top qualified candidates have been identified, but no selection has been made.

ENCLOSURE I

ENCLOSURE I

Attorney/GS-905-13 9/ 9/79

Secretary/GS-318-6 9/18/79

Chief, Post Employment/
GS-905-15

-

A temporary employ-
ee is filling this
position.

Attorney/GS-905-13 9/21/79

Secretary/GS-318-6 7/16/79

Chief, Audit and Inves-
tigation/GS-343-15 9/23/79

Management Analyst/
GS-343-13 9/21/79

Management Analyst/
GS-343-12 11/05/79

Management Analyst/
GS-343-11(2)

-

Currently re-
cruiting for
these positions.

Secretary/SG-318-6

Currently re-
cruiting for
this position.

Excluding the director, OGE has hired 10 permanent employees. We were told that the selection of a deputy director and his secretary, the two division chiefs, and the two GS-15 attorneys has been delayed pending the appointment of a permanent director.

The following table shows the backgrounds of the professional staff already selected.

<u>Position</u>	<u>Background</u>	<u>Previous Employer</u>
Executive Assistant Administration GS-301-12	Administration	DOD (22 yrs.)
Attorney/Advisor GS-905-15	Attorney	General Counsel, OPM (4 yrs.)
Attorney/Advisor GS-905-13	Attorney	Self-employed (4 yrs.)
Attorney/Advisor GS-905-13	Attorney	State Ethics Committee State of Hawaii (3 yrs.)
Management Analyst GS-343-15	Analyst	GAO (10 yrs.)
Management Analyst GS-343-13	Analyst	IRS (10 yrs.)
Management Analyst GS-343-12	Auditor	HEW (2-1/2 yrs.)

OGE officials told us their relationship with OPM officials has been generally satisfactory. At the policy level--establishing regulations and providing interpretations of the ethics law--they have functioned relatively independently. In nonpolicy matters--position descriptions/classifications, office space, etc.--they have relied extensively on OPM for support.

The Director of OGE reports to and is subordinate to the Director of OPM. The extent that the Director of OPM will exercise his authority over OGE is unknown at this time. Future policy changes could affect their current relationship. For example, OGE officials told us of a recurring controversy over what authority the Office of General Council (OGC) has over the products of OGE. OGE officials believe any review by OGC should be advisory only, primarily because of their independent status that the legislation requires. OGC believes it should have review authority because the products of OGE are in reality the products of OPM. This issue has apparently been discussed on numerous occasions in the past, but at the time of our review had not been resolved.

OGE'S FULFILLMENT OF THE
STATUTORY DEADLINES OF TITLE V

The effective date for the title V provisions, as amended, was July 1, 1979, with the exception of the provisions for developing the administrative enforcement procedure, which is January 1, 1980. No other statutory deadlines were specified. However, the legislative history expresses the Congress' intention that the OGE Director designate the senior employee positions by no later than 12 months after the effective date of the act. This would imply a deadline of October 26, 1979.

OGE published an interim regulation on April 3, 1979, to implement the original provisions of title V. The regulation provides guidelines to the departments and agencies regarding their required recommendation for designating senior employee positions and separate statutory agencies. The regulation also provided basic guidelines for the administrative enforcement procedures of alleged violations of the law. It included the following deadline dates:

May 15, 1979 - Agency recommendations for designating senior employees and separate statutory agencies.

October 1, 1979 - Effective date for all designated senior employee positions. (OGE revised this to December 15, 1979, because it had not received all agency submissions by May 15, 1979).

On September 25, 1979, OGE published regulations in the Federal Register designating the senior employees of 60 departments and agencies. As of November 30, 1979, OGE had not published the designations for the approximately 36 remaining departments or agencies subject to the act, nor had it published the regulation designating the separate statutory and non-statutory agencies. OGE officials could not give us a firm publication date, but they said it would be shortly after the final regulation is published.

STATUS OF THE REGULATION IMPLEMENTING
TITLE V AS AMENDED

The interim regulation on the post-employment conflicts of interest, published in the Federal Register on April 3, 1979, provided a 45-day period for public comment. During this period OGE received comments from 28 Federal agencies, two law firms, one labor organization, and one employee

organization, recommending specific changes or clarification. The recently passed amendments to the act provided for significant changes to title V. These changes, in addition to those resulting from the comments to the interim regulation, have been incorporated into a draft of the final regulation. Since the Ethics Act provides for criminal penalties, the Department of Justice must review the regulation before it is published in the Federal Register. OGE officials did not know when this would occur.

THE RESULTS OF THE DESIGNATION PROCESS FOR
SENIOR EMPLOYEES (SECTION 207(d)(1)(C))

Our review of OGE's procedures for designating senior employees under section 207(d)(1)(C) showed that:

--Less than 60 of approximately 96 agencies met the filing deadline for designating senior employee positions. As of November 1, 1979, all but three of these agencies had submitted their recommendation.

--OGE officials relied upon the completeness and accuracy of the agencies submissions to designate the senior employee positions that will be subject to the act.

--OGE designated about 36 percent of the senior level positions submitted by the 60 agencies published in the regulation dated September 25, 1979.

To identify which agency-recommended positions should be designated, OGE officials evaluated each job description to determine if it had either of the two qualifying factors--significant supervisory responsibility or significant decisionmaking responsibility. OGE officials said they tried to be fair and designate only those positions with substantial responsibility so that officials in marginal positions would not be penalized. OGE officials believed it was not the legislative intent of the act to arbitrarily designate all the eligible positions in an agency. They consider this initial designation of senior employees a "rough cut" that will be carefully adjusted during future reviews of job descriptions. They intend to rely on the monitoring and compliance staff for this review.

OGE's procedures for designating senior employees

In addition to the basic guidelines in the interim regulation for title V, OGE issued additional instructions

for designating senior employees. The instructions redefined the criteria for designating senior employee positions and described conditions where some officials holding similar positions within an agency could be designated, while others would not. Agencies were requested to provide only summary job descriptions or concise statements where a position was requested for exemption.

The agencies were requested to submit their lists of all the positions at the GS-17 level and above and those in the SES and to justify any exclusions. The deadline of May 15, 1979, was reemphasized.

Two officials in OGE performed separate reviews of each agency's submittal. Disagreements over which positions should be designated were resolved through discussion. The agencies were contacted by phone to resolve any questions about the designations. If a serious problem arose they met with agency officials to resolve it.

OGE officials initially requested the SES section of OPM to review the agency submittals to determine the accuracy of the SES positions. This review was discontinued in September 1979 because it was not considered useful. We were told that most submittals came back with no comment.

With the exception of the SES review, OGE accepted the accuracy of the agencies' submissions. An OGE official told us he was aware of the possibility the agencies may have missed a few positions, but he had no reason to question their submissions. He believed that the actual number of positions would be verified when the OGE monitoring and compliance teams reviewed each agency. The designated positions will be adjusted at that time. We found no realistic schedule for these reviews.

Statistics on OGE designations of senior employee positions

OGE designated 1,195 (36.3 percent) of the 3,289 senior employee positions submitted by the heads of the 60 departments and agencies listed in the recently released regulations. We selected a nonstatistical sample of 20 agencies for detailed analysis. We found that the agencies listed 843 qualifiable positions, of which 309, or 36.7 percent, were designated. Of the 534 positions exempted by OGE, the agencies requested only 41 be exempted. In fact, 7 of the

20 agencies specifically requested that no submitted positions be exempted. The following table shows the seven agencies, the number of qualifying positions submitted, and the number of positions OGE exempted.

	<u>Number of qualified positions</u>	<u>No. of positions exempted by OGE</u>	<u>Percent exempted</u>
Department of Commerce	498	370	74.3
Equal Employment Opportunity Commission	36	30	83.3
Federal Deposit Insurance Corpora- tion	32	13	40.1
Civil Aeronautics Board	32	17	53.1
U.S. Consumer Product Safety Commission	15	3	20.0
Commodity Futures Trading Commission	14	3	21.4
Council on Wage and Price Stability	<u>4</u>	<u>2</u>	50.0
Total	<u>631</u>	<u>438</u>	69.4

We found only two cases where OGE questioned the requests for an exemption. OGE designated seven GS-18 Regional Commissioner positions that IRS wanted exempted and recommended that the Department of the Navy reevaluate its exemption of 19 positions.

We found considerable variance in OGE's designation of regional manager/director positions. In some agencies regional managers would be designated while in other agencies, they would not. We also found that, within an agency, some regional managers were designated and some were not. This situation is apparently the result of OGE instructions. In a memorandum to all agencies, OGE noted:

"An agency may distinguish among its regional offices in respect to the designation of senior employees. * * *It is possible that one regional office of an agency would constitute a 'major' operation, while another would not."

An OGE official provided us with the following information on the designations and exemptions of regional manager positions for the 60 agencies. We did not verify the accuracy or completeness of the information in this table.

OGE DESIGNATION OF REGIONAL MANAGER OR EQUIVALENT

POSITIONS FOR THE FIRST 60 AGENCIES (note a)

<u>Agency/ Department</u>	<u>Number of Regional Manager or equivalent positions</u>	<u>Number of positions designated</u>	<u>GS grades</u>	<u>Number of positions exempted</u>	<u>GS grades</u>
Environmental Protection Agency	10	10	10-GS-17s	0	-
Federal Home Loan Mortgage Corporation	1	1	Above GS-17 pay scale	0	-
Department of Commerce:					
Maritime Affairs/Commercial Development	2	2	2-GS-18s	0	-
Economic Development Corp.	5	0	-	5	5-GS-16s
NOAA	5	0	-	5	5-GS-16s
National Weather Service	5	0	-	5	5-GS-16s
Commodity Futures Trading Commission	2	2	2-GS-16s	0	-
Housing and Urban Development:					
Federal Disaster Administration	9	9	OGE did not know grades	0	-
General Services Administration	11	11	1-GS-18 2-GS-17s 8-GS-16s	0	-
National Credit Union Administration	1	1	1-GS-16	0	-
Office of Personnel Management	10	6	6-GS-17s	4	4-GS-16s
Securities and Exchange Commission	10	3	3-GS-17s	7	7-GS-16s
Small Business Administration	10	10	3-GS-17s 7-GS-16s	0	-
Department of Treasury:					
Internal Revenue Service	7	7	7-GS-18s	0	-
Office of the Comptroller of the Currency	14	0	-	14	1-GS-17 13-GS-16s
Equal Employment Opportunity Commission (note b)	17	0	-	17	17-GS-16s
Federal Deposit Insurance Corporation (note c)	10	0	-	10	8-GS-17s 2-GS-16s
Interstate Commerce Commission (note d)	4	0	-	4	4-GS-15s
National Labor Relations Board	<u>33</u>	<u>0</u>	-	<u>33</u>	<u>33-GS-16s</u>
Total	<u>166</u>	<u>62</u>	10-GS-18s 25-GS-17s 18-GS-16s 9--Unknown	<u>104</u>	9-GS-17s 91-GS-16s 4-GS-15s

a/All positions listed are SES positions, except for the Federal Home Loan Mortgage Corporation position which is administratively determined.

b/EEOC had four non-SES GS-15 Regional Director positions which are not included because they do not qualify for designation.

c/FDIC had four non-SES-GS-16 Regional Director positions which are not included because they do not qualify for designation.

d/ICC had two non-SES GS-14 Regional Director positions which are not included because they do not qualify for designation.

The table shows that regional manager position designations appear to correlate with the GS-grade levels. All GS-18s, 73.5 percent of the GS-17s, 16.5 percent of the GS-16s, and none of the GS-15s were designated. OGE officials gave two reasons for exempting over 60 percent of the regional manager positions:

- Job descriptions were described in terms of implementing policies and did not include significant decisionmaking or supervisory responsibility.
- The agency had not experienced any post-Federal employment problems in the past.

RESULTS OF THE DESIGNATION PROCESS FOR
SEPARATE STATUTORY AND NON-STATUTORY
AGENCIES (SECTIONS 207(e) AND 207(d)(1)(C))

In our review of OGE's progress in designating the separate statutory and nonstatutory agencies prescribed in sections 207(e) and 207(d)(1)(C). We found that:

- OGE's review of the agency submissions was informal and largely undocumented.
- OGE officials did not know if all agencies had submitted their separate statutory agency breakdowns under section 207(e). These were due by May 15, 1979.

OGE's procedures for designating separate agencies

Because OGE's review was largely informal and undocumented, we relied on discussions with OGE officials to determine their procedures. Agency officials told us that the burden of proof for separate agency designations is on the requesting department or agency, and they would approve any separate agency designation if sufficient evidence is provided. The interim regulation for implementing title V required each agency to notify the OGE Director by May 15, 1979, of any proposals for separate statutory agency status. As of November 1, 1979, OGE officials did not know if all departments and agencies had submitted their proposals for separate agency designations. They said that they were only concerned with submissions that proposed separate designations and were not concerned with nonrespondents. For separate non-statutory designations, OGE has left it up to each agency head to request

such designations. OGE's regulation as currently drafted for final approval makes submission of separate nonstatutory component designations voluntary.

The draft regulation designates 35 statutory agencies in 8 parent agencies under section 207(e) and 17 separate nonstatutory components in 5 parent agencies under section 207(d)(1)(C). The following table shows the agencies involved.

Separate Statutory & Non-Statutory Agencies
Designated in Draft Regulations
(sections 207(e) & 207(d)(1)(c))

<u>Parent Agency</u>	<u>Separate Statutory Agencies</u> <u>(section 207(e))</u>	<u>Separate Non-Statutory Agencies</u> <u>(section 207(d)(1)(c))</u>
(1) Department of the Treasury	(a) Bureau of Alcohol, Tobacco, and Firearms (b) Bureau of Engraving and Printing (c) Bureau of the Mint (d) Comptroller of the Currency (e) Internal Revenue Service (f) U.S. Customs Service (g) U.S. Secret Service	None
(2) Federal Emergency Management Agency	(a) U.S. Fire Administration	None
(3) Office of Personnel Management	(a) Office of Federal Procurement Policy	None
(4) Department of Health, Education and Welfare	(a) Education Division (b) Food and Drug Administration (c) Public Health Service (d) Social Security Administration	(a) Health Care Financing Administration
(5) Department of Transportation	(a) Federal Aviation Administration (b) Federal Highway Administration (c) Federal Railroad Administration (d) National Highway Traffic Safety Administration (e) Saint Lawrence Seaway Development Corporation (f) U.S. Coast Guard (g) Urban Mass Transportation Administration	(a) Alaska Railroad
(6) Department of Labor	(a) Bureau of Labor Statistics (b) Mine Safety and Health Administration (c) Occupational Safety and Health Administration	(a) Employment and Training Administration (b) Employment Standards Administration (c) Labor-Management Services Administration
(7) Department of Justice	(a) Bureau of Prisons (including Federal Prisons Industries, Inc.) (b) Community Relations Service (c) Drug Enforcement Administration (d) Federal Bureau of Investigation (e) Law Enforcement Assistance Administration (f) Immigration and Naturalization Service (g) U.S. Parole Commission	(a) Antitrust Division (b) Civil Division (c) Civil Rights Division (d) Criminal Division (e) Land and Natural Resources Division (f) Office of U.S. Attorney (g) Office of U.S. Marshal (h) Tax Division
(8) Department of Defense	(a) Department of the Army (b) Department of the Navy (c) Department of the Air Force (d) Defense Civil Preparedness Agency (e) Defense Mapping Agency	(a) Defense Communications Agency (b) Defense Intelligence Agency (c) Defense Nuclear Agency (d) National Security Agency

Of the eight parent agencies listed, only the Department of Treasury has been formally notified of their proposed separate agency designations. We could not determine if OGE contacted the remaining seven parent agencies, informally notifying them of their status.

The table also shows that OGE is proposing separate nonstatutory designations for the six divisions of the Department of Justice, even though Justice did not request them. These designations are contrary to the intent of the draft regulation which implies that OGE will designate only upon request by an agency. An OGE official told us that the designations were made because Justice was mentioned in the legislative history of the amendments as being a case that would qualify for designation under 207(d)(1)(C).

RESULTS OF THE IMPLEMENTATION OF THE
ADMINISTRATIVE ENFORCEMENT PROCEEDINGS
(SECTION 207(j))

We found that OGE has made little progress in fulfilling the requirements of section 207(j) of the act. This section requires OGE in consultation with the departments and agencies to establish administrative procedures to enforce violations of title V. OGE officials developed administrative enforcement procedures in the interim regulations, which were intended to provide the minimum requirements an agency must meet to enforce the post-employment restrictions on Federal employees.

In accordance with the act, the interim regulation requires each agency to submit its procedures for administrative enforcement to OGE by January 1, 1980. In consultation with the agency, OGE officials will review the procedures to assure that they meet the requirements in the regulation. Several agencies have contacted OGE for further clarification of the law. However, as of November 1, 1979, no agency had submitted its procedures. OGE officials told us that they have taken no action to assure this requirement is met. A memorandum reminding agencies of the requirement in the regulation is being considered, however, it is not known when it will actually be sent.

During our review of the interim regulation, we identified several issues that need to be clarified. For example:

- Coordination procedures between the Department of Justice and the agencies must be further defined, and reasonable time frames established.

--The qualifications for an administrative hearing examiner have not been defined.

--Appropriate disciplinary actions an agency may enforce must be defined.

OGE officials agreed that these points should be resolved, but they plan to wait until the agencies respond to the regulations.

ABRAHAM RISECOFF, CONN., CHAIRMAN
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RICHARD A. WEGMAN
 CHIEF COUNSEL AND STAFF DIRECTOR

United States Senate

COMMITTEE ON
 GOVERNMENTAL AFFAIRS
 WASHINGTON, D.C. 20510

October 24, 1979

The Honorable Elmer B. Staats
 Comptroller General of the
 United States
 441 G Street, N.W., Room 7000-A
 Washington, D.C. 20548

Dear Elmer:

The Ethics in Government Act, P.L. 95-521, was enacted into law about one year ago. An important achievement of that statute was the establishment of the Office of Government Ethics, within the Office of Personnel Management. The Act charged OGE with various responsibilities concerning conflicts of interest.

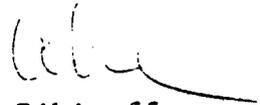
Specifically, your evaluation of the present staff situation and organization of the Office would be of interest to the Committee. That would include discussion of the existing relationship between OGE and OPM. In addition, it would be appreciated if GAO would address the following specific matters, each of which concern title V of the Act:

- (1) Have the statutory deadlines been met?
- (2) The status of OGE regulations implementing the Act, as adopted, and as amended by P.L. 96-28.
- (3) An analytic review of OGE procedures and designations pursuant to section 207(d)(1)(C).
- (4) An analytic review of OGE procedures and decisions pursuant to section 207(e) and the "separate agency or bureau" provision contained in section 207(d)(1)(C).
- (5) An analytic review of agency actions pursuant to section 207(j).

I recognize that a careful review of these matters will require time. However, it would be very helpful if the Committee received at least a preliminary, written assessment of GAO's findings and recommendations within 30 days of receipt of this letter. Should there be any questions concerning this request, please contact Jim Graham of the Committee staff at 224-4751.

Thank you for your assistance.

Sincerely,



Abe Ribicoff

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(2) not to exceed \$2,000,000 for each of the four fiscal years thereafter.

ANNUAL PAY

SEC. 406. Section 5316 of title 5, United States Code, is amended by adding at the end the following new paragraph:

“(146) Director of the Office of Government Ethics.”.

TITLE V—POST EMPLOYMENT CONFLICT OF INTEREST

SEC. 501. (a) Section 207 of title 18, United States Code, is amended to read as follows:

18 USC 207.

“§ 207. Disqualification of former officers and employees; disqualification of partners of current officers and employees

“(a) Whoever, having been an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, after his employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of any other person (except the United States) to—

“(1) any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

“(2) in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and

“(3) in which he participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, while so employed; or

“(b) Whoever, (i) having been so employed, within two years after his employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of any other person (except the United States) to, or (ii) having been so employed and as specified in subsection (d) of this section, within two years after his employment has ceased, knowingly represents or aids, counsels, advises, consults, or assists in representing any other person (except the United States) concerning any formal or informal appearance before—

“(1) any department, agency, court, court-martial, or any civil, military or naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

“(2) in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in

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which the United States or the District of Columbia is a party or has a direct and substantial interest, and

“(3) which was actually pending under his official responsibility as an officer or employee within a period of one year prior to the termination of such responsibility, or in which he participated personally and substantially as an officer or employee; or

“(c) Whoever, other than a special Government employee who serves for less than sixty days in a given calendar year, having been so employed as specified in subsection (d) of this section, within one year after such employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, anyone other than the United States in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of anyone other than the United States, to—

Penalty.

“(1) the department or agency in which he served as an officer or employee, or any officer or employee thereof, and

“(2) in connection with any judicial, rulemaking, or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter, and

“(3) which is pending before such department or agency or in which such department or agency has a direct and substantial interest—

shall be fined not more than \$10,000 or imprisoned for not more than two years, or both.

“(d) Subsection (c) of this section shall apply to a person employed—

“(1) at a rate of pay specified in or fixed according to subchapter II of chapter 53 of title 5, United States Code, or a comparable or greater rate of pay under other authority;

5 USC 5301.

“(2) in a position for which the basic rate of pay is equal to or greater than the basic rate of pay for GS-17 of the General Schedule prescribed by section 5332 of title 5, United States Code, and who has significant decision-making or supervisory responsibility, as designated by the Director of the Office of Government Ethics, in consultation with the head of the department or agency concerned;

“(3) on active duty as a commissioned officer of a uniformed service assigned to a pay grade of O-7 or above as described in section 201 of title 37, United States Code; or

“(4) in a position designated by the Director of the Office of Government Ethics. Within twelve months from the date of enactment of this subsection, the Director of the Office of Government Ethics shall designate positions, which are not included under paragraph (2) of this subsection and which involve significant decision-making authority, or other duties which are substantially similar to those exercised by persons covered by paragraph (2) of this subsection. On an annual basis, the Director shall review the positions designated pursuant to this paragraph, making additions and deletions as are necessary to satisfy the purposes of subsection (c). Departments and agencies shall cooperate to the fullest extent with the Director of the Office of Government Ethics in exercising his responsibilities under this paragraph.

Departments and agencies, cooperation.

“(e) For the purposes of subsection (c), whenever the Director of the Office of Government Ethics determines that a separate statutory

Rule.

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agency or bureau within a department or agency exercises functions which are distinct and separate from the remaining functions of the department or agency, the Director shall by rule designate such agency or bureau as a separate department or agency: except that such designation shall not apply to former heads of designated bureaus or agencies, or former officers and employees of the department or agency whose official responsibilities included supervision of said agency or bureau.

Consultation.
Publication in
Federal Register.

“(f) The prohibitions of subsections (a), (b), and (c) shall not apply with respect to the making of communications solely for the purpose of furnishing scientific or technological information under procedures acceptable to the department or agency concerned, or if the head of the department or agency concerned with the particular matter, in consultation with the Director of the Office of Government Ethics, makes a certification, published in the Federal Register, that the former officer or employee has outstanding qualifications in a scientific, technological, or other technical discipline, and is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the participation of the former officer or employee.

Penalty.

“(g) Whoever, being a partner of an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, acts as agent or attorney for anyone other than the United States before any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter in which the United States or the District of Columbia is a party or has a direct and substantial interest and in which such officer or employee or special Government employee participates or has participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of his official responsibility, shall be fined not more than \$5,000, or imprisoned for not more than one year, or both.

“(h) Nothing in this section shall prevent a former officer or employee from giving testimony under oath, or from making statements required to be made under penalty of perjury.

“(i) The prohibition contained in subsection (c) shall not apply to appearances or communications by a former officer or employee concerning matters of a personal and individual nature, such as personal income taxes or pension benefits: nor shall the prohibition of that subsection prevent a former officer or employee from making or providing a statement, which is based on the former officer's or employee's own special knowledge in the particular area that is the subject of the statement, provided that no compensation is thereby received, other than that regularly provided for by law or regulation for witnesses.

Notice, hearing
opportunity.

“(j) If the head of the department or agency in which the former officer or employee served finds, after notice and opportunity for a hearing, that such former officer or employee violated subsection (a), (b), or (c) of this section, such department or agency head may prohibit that person from making, on behalf of any other person (except

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the United States), any informal or formal appearance before, or, with the intent to influence, any oral or written communication to, such department or agency on a pending matter of business for a period not to exceed five years, or may take other appropriate disciplinary action. Such disciplinary action shall be subject to review in an appropriate United States district court. No later than six months after the effective date of this Act, departments and agencies shall, in consultation with the Director of the Office of Government Ethics, establish procedures to carry out this subsection."

Departments and
agencies,
consultation.

(b) The item relating to section 207 in the table or sections at the beginning of chapter 11 of title 18, United States Code, is amended to read as follows:

18 USC 201.

"207. Disqualification of former officers and employees; disqualification of partners of current officers and employees."

APPLICABILITY

SEC. 502. The amendments made by section 501 shall not apply to those individuals who left Government service prior to the effective date of such amendments or, in the case of individuals who occupied positions designated pursuant to section 207(d) of title 18, United States Code, prior to the effective date of such designation; except that any such individual who returns to Government service on or after the effective date of such amendments or designation shall be thereafter covered by such amendments or designation.

18 USC 207 note.

EFFECTIVE DATE

SEC. 503. The amendments made by section 501 shall become effective on July 1, 1979.

18 USC 207 note.

TITLE VI—AMENDMENTS TO TITLE 28,
UNITED STATES CODE

SPECIAL PROSECUTOR

SEC. 601. (a) Title 28 of the United States Code is amended by inserting immediately after chapter 37 the following new chapter:

28 USC 581.

"Chapter 39.—SPECIAL PROSECUTOR

"Sec.

- "591. Applicability of provisions of this chapter.
- "592. Application for appointment of a special prosecutor.
- "593. Duties of the division of the court.
- "594. Authority and duties of a special prosecutor.
- "595. Reporting and congressional oversight.
- "596. Removal of a special prosecutor; termination of office.
- "597. Relationship with Department of Justice.
- "598. Termination of effect of chapter.

"§ 591. Applicability of provisions of this chapter

28 USC 591.

"(a) The Attorney General shall conduct an investigation pursuant to the provisions of this chapter whenever the Attorney General receives specific information that any of the persons described in subsection (b) of this section has committed a violation of any Federal criminal law other than a violation constituting a petty offense.

Investigation.

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PUBLIC LAW 96-28—JUNE 22, 1979

Public Law 96-28
96th Congress

An Act

June 22, 1979
S. 301

To amend section 207 of title 18, United States Code.

Ethics in
Government Act
of 1978,
amendment.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That subsection (b) of section 207 of title 18, United States Code, as amended by the Act of October 26, 1978 (Public Law 95-521, section 501(a); 92 Stat. 1864) is amended as follows: In clause (ii), strike "concerning" and insert "by personal presence at"; and in subparagraph (3), before "which was" insert ", as to (i)," and after "responsibility, or" insert ", as to (ii)".

Sec. 2. Subsection (d) of section 207 of title 18, United States Code, is amended to read as follows:

"(d)(1) Subsection (c) of this section shall apply to a person employed—

5 USC 5301.

"(A) at a rate of pay specified in or fixed according to subchapter II of chapter 53 of title 5, United States Code, or a comparable or greater rate of pay under other authority;

"(B) on active duty as a commissioned officer of a uniformed service assigned to pay grade of O-9 or above as described in section 201 of title 37, United States Code; or

5 USC 5332 note.

"(C) in a position which involves significant decision-making or supervisory responsibility, as designated under this subparagraph by the Director of the Office of Government Ethics, in consultation with the department or agency concerned. Only positions which are not covered by subparagraphs (A) and (B) above, and for which the basic rate of pay is equal to or greater than the basic rate of pay for GS-17 of the General Schedule prescribed by section 5332 of title 5, United States Code, or positions which are established within the Senior Executive Service pursuant to the Civil Service Reform Act of 1978, or positions of active duty commissioned officers of the uniformed services assigned to pay O-7 or O-8, as described in section 201 of title 37, United States Code, may be designated. As to persons in positions designated under this subparagraph, the Director may limit the restrictions of subsection (c) to permit a former officer or employee, who served in a separate agency or bureau within a department or agency, to make appearances before or communications to persons in an unrelated agency or bureau, within the same department or agency, having separate and distinct subject matter jurisdiction, upon a determination by the Director that there exists no potential for use of undue influence or unfair advantage based on past government service. On an annual basis, the Director of the Office of Government Ethics shall review the designations and determinations made under this subparagraph and, in consultation with the department or agency concerned, make such additions and deletions as are necessary. Departments and agencies shall cooperate to the fullest extent with the Director of the Office of Government Ethics in the exercise of his responsibilities under this paragraph.

5 USC 1101 note.

Departments
and agencies,
cooperation.

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"(2) The prohibition of subsection (c) shall not apply to appearances, communications, or representation by a former officer or employee, who is—

"(A) an elected official of a State or local government, or

"(B) whose principal occupation or employment is with (i) an agency or instrumentality of a State or local government, (ii) an accredited, degree-granting institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, or (iii) a hospital or medical research organization, exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1954, and the appearance, communication, or representation is on behalf of such government, institution, hospital, or organization."

20 USC 1141.

26 USC 301.

Approved June 22, 1979.

LEGISLATIVE HISTORY:

SENATE REPORT No. 96-115 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 125 (1979):

Apr. 9, considered and passed House Senate.

May 16, 21, considered and passed House, amended.

June 14, Senate concurred in House amendments, with an amendment.

June 15, House concurred in Senate amendment to House amendment No. 1 and receded from House amendment No. 2.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 15, No. 25:

June 22, Presidential statement.