

REPORT BY THE U.S.

General Accounting Office

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National Science Foundation Standards Of Employee Conduct Need Improvement

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

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

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



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FPCD-79-33
MARCH 29, 1979



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

IN REPLY
REFER TO:

PROGRAM ANALYSIS
DIVISION

B-148581

Dr. Richard C. Atkinson, Director
National Science Foundation

Dear Dr. Atkinson:

We have reviewed the development and implementation of standards of conduct for employees of the National Science Foundation as part of a multiagency review of 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. We plan to issue an overall report that will recommend actions which the new Office of Ethics needs to take to improve the development and implementation of standards of conduct Government-wide. This letter recommends ways we believe the Foundation can improve its development and implementation of standards of ethical conduct for employees.

We identified several issues at the Foundation which the standards did not adequately address. They are negotiating for employment while still employed with the Foundation, accepting honoraria, accepting gifts and gratuities, and accepting reimbursements for official travel from private sources. We also found that the Foundation could improve its programs for (1) making employees more aware of their responsibilities under the standards, (2) providing advice and guidance on questions of ethical conduct, and (3) identifying areas in which additional guidance is needed.

While our work consisted primarily of reviewing actions taken by the Office of General Counsel and the Division of Personnel and Management, it also included discussions with selected management officials in several of the program divisions. The standards we reviewed involved conflicts of interest matters of a financial nature and dealings with parties outside the Foundation involving employment situations.

THE STANDARDS DO NOT ADEQUATELY
ADDRESS SEVERAL ISSUES

The Foundation's standards of conduct were developed in response to Executive Order 11222 and initially issued in March 1966. Although the Foundation does not have a procedure for regularly reviewing and revising the standards, several revisions have been made and other guidance developed since 1966. For example, the standards were revised in 1968 to account for changes in financial disclosure procedures, and in 1974 the Office of General Counsel issued Bulletin 74-2 entitled, "Frequently Encountered Conflict of Interest Situations."

The most recent review of standards was initiated in March 1978 when the Management Council established an Ad Hoc Committee on Conflicts of Interest to resolve a series of questions that had come to management's attention. This Committee issued its report in November 1978 suggesting revisions to clarify the standards and to provide additional guidance to help resolve ethical problems. The Committee considered questions raised by the Management Council and others that arose during discussions.

The following comments present additional issues which we believe should also be addressed in a review of the standards.

Negotiating for employment

According to 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 whom he is negotiating for employment or has any arrangement concerning prospective employment has a financial interest. Under the Foundation's regulations, employees are required to notify their supervisor of any conflict of interest between their Foundation duties and any organization with which they are negotiating for employment and to divest themselves of those conflicting duties.

The Foundation defines "negotiating" as a display of serious consideration on the part of the potential employer. For example, a Foundation employee can send out resumes to several institutions, but could continue to deal in his

Government capacity with any of those institutions until a response has been received indicating a serious interest in employing him.

Discussions with program managers revealed that it is not considered unusual to be asked to interview with an organization for future employment while involved in reviewing grant proposals or monitoring ongoing work from that organization. In our opinion, an individual, knowing that he is being considered for a position--even if that consideration only means that he is one of a number of others being considered--and who indicates an interest in the position should be disqualified from taking part in any Foundation business being conducted with that organization or concerning that organization.

A November 12, 1976, Department of Justice memorandum provides guidance in the area of negotiation for employment which states that it is at least arguable that 18 U.S.C. 208 ("Acts Affecting a Personal Financial Interest") was intended to encompass some situations in which unilateral contacts have been made by either the employee or the prospective employer. It goes on to say that even if this interpretation of the statute is not followed, disqualification would be appropriate under Executive Order 11222 which requires employees to avoid actions which create the appearance of impropriety. Our major concern is not necessarily with the legality of this issue which is covered in 18 U.S.C. 208 but with situations that could create (or lead to) improprieties or the appearance of conflicts of interest.

In one case, a high-level employee received notice that he was being considered for a position at a grantee university. The employee was asked for and submitted a resume and letters of recommendation to the university. He was interviewed, and was offered the position which he accepted. Between the time the employee submitted a resume and the additional letters, and interviewed for the position, he was involved in actions concerning two ongoing contracts with that university. The contracts involved research in an area in which he would be involved in his new position.

Foundation officials told us that this case was not referred to the Department of Justice as a possible violation of 18 U.S.C. 208 because the employee's actions were unintentional and there were additional mitigating circumstances.

Foundation officials told us that since this incident there have been several meetings with program staff to tell them of the need to exercise caution in negotiating for employment. More specific criteria on what activities constitute negotiations is needed as part of the Foundation's official guidance on ethical conduct.

Acceptance of honoraria
by Foundation employees

Employees acceptance of honoraria, although not specifically addressed in the Foundation's regulation, is discussed in several other Foundation documents relating to ethical standards. The policy differentiates between employees on duty and employees on leave.

While on duty, an employee is not allowed to accept an honorarium unless to decline would be embarrassing or be taken as an insult by the offerer. In such cases, the employee may accept the honorarium on behalf of the Foundation for deposit to the Special Trust Fund.

The acceptance of honorariums while not on official duty is allowed subject to the following restrictions.

- An honorarium cannot be paid from a Foundation award.
- The reason for the honorarium cannot be related to the employee's responsibilities.
- The reason for the honorarium cannot normally draw on information derived from Government sources not publicly available.

There are no specific restrictions on employee acceptance of an honorarium from an institution receiving or seeking to receive Foundation funds. We believe that acceptance of an honorarium from an organization receiving or seeking to receive Foundation funds can lead to the

appearance of a conflict of interest and without explicit guidance to employees, may result in actual conflicts--where employees receive payments from organizations whose proposals they can affect.

In addition, Foundation policy does not incorporate the restrictions on honoraria contained in Public Law 94-283 (2 U.S.C. 441i)--that no Federal employee can accept an honorarium of more than \$2,000 (excluding amounts for travel and expenses) and honoraria totaling more than \$25,000 in any one calendar year.

Foundation officials agreed that the restrictions on honoraria contained in Public Law 94-283 should be made part of the standards of conduct. They expressed concern, however, about introducing a more restrictive policy on accepting honoraria because it could hinder employee efforts to maintain excellence in their chosen fields.

While recognizing that Foundation officials may be expressing a legitimate concern, we believe it must be balanced against the concern that honoraria from organizations receiving or seeking to receive Foundation funds could be viewed as an attempt to influence agency officials. We believe employees could take part in outside activities and maintain their professional excellence without accepting honoraria or the honoraria could be donated for Foundation use. As another possibility, restrictions on accepting honoraria could be subject to a waiver in unusual circumstances. We believe, however, that the potential for an apparent conflict of interest is significant enough to require consideration of the problem as part of the Foundation's standards of conduct.

Accepting gifts and gratuities

Foundation employees are prohibited from accepting such things as gifts, gratuities, or favors which might be reasonably interpreted by others as being of such a nature that it would affect their impartiality. The standard allows acceptance of promotional material of nominal value and, on infrequent occasions, items such as food in the course of a luncheon or dinner meeting, site visit, or professional conference when the employee is properly in attendance.

In our opinion, the standard is not adequate because it allows employees to accept gifts and gratuities from

institutions that may be seeking or receiving Foundation funds. The restriction is only on gifts, etc., that the employee believes may be interpreted by others as affecting his impartiality. Making a judgment of this nature could in itself be classified as a conflict since the decision will have a direct effect on the employee's financial interests--he will receive or reject a gift.

A second problem with the standard is the lack of guidance on how to define terms such as nominal and infrequent. Nominal is defined as pens, pencils, calendars, etc., and infrequent is not defined. Foundation officials told us they consider the terms common and the ordinary meanings of the words easily understood. However, several officials and program managers with whom we discussed the standards disagreed on the acceptable value of a "nominal" gift. One indicated it could mean a gift worth up to \$50. We also found that acceptance of meals during site visits is a common practice. One official explained that he commonly accepts meals from grantee or potential grantee institutions and tries to reciprocate when the opportunity arises.

Foundation officials told us that acceptance of meals during site visits is a practice they believe should continue, to prevent the impression that Foundation employees are so biased against an individual institution that normal courtesy must be rejected.

We believe more explicit guidance on how to define nominal is needed because of the wide range of values being applied. Further, the Foundation's position on common acceptance of meals during site visits is inconsistent with its standards which indicate acceptance of meals will be on "infrequent" occasions. Accepting these courtesies over an extended period of time may result in individual employees feeling obliged to reciprocate.

The individual who stated that he commonly accepts meals and that he attempts to reciprocate has already implied a certain "sense of obligation" which while it may not directly affect his impartiality in a particular instance, may affect his overall attitude.

Reimbursements for travel and subsistence expenses while on official duty

Some Federal agencies including the Foundation are permitted to accept reimbursements from private groups for the official travel expenses of their employees. Although the standards of conduct do not address travel reimbursements or acceptance of services in kind, the Foundation has recognized that reimbursements for travel expenses can present ethical problems. Guidance is contained in Office of General Counsel Bulletin 74-2. According to the Bulletin (1) an employee is not to accept cash reimbursement and (2) reimbursements normally cannot be paid from a Foundation award. There are no specific restrictions on accepting travel expenses or services in kind from Foundation award recipients.

In our opinion, accepting reimbursements for travel expenses or allowing an employee to accept services in kind from organizations having or seeking awards from the Foundation are practices that could lead to the appearance that awards may be affected by the extent of services in kind provided. In addition, Foundation employees could be placed in a position of accepting services in kind that to an outsider would appear excessive.

We also found that controls for assuring that employees abide by the above restrictions are not adequate. For example, the Foundation does not require that travel orders indicate that travel is to be reimbursed or that services in kind are to be accepted. In addition, determining that reimbursements or services in kind are not being paid from Foundation awards is left to the employee.

During our discussions of standards with program officials, we were told of three instances where program officials had traveled on official business and received direct cash payments from private organizations without knowing that this constituted a violation of agency standards of conduct and travel regulations. In two of the instances, voucher examiners had identified the acceptance of cash payments as a violation of travel regulations because the employees reported it on travel vouchers. The third instance had not been identified because the traveler was not charging any costs to the Government and therefore did not file a voucher. In the cases identified, the Foundation required that the reimbursements be turned over to the Director's Special Trust Fund.

During an exit interview, Foundation officials agreed that more control over acceptance of reimbursed travel or services in kind should be established. One method which could prevent the unwitting acceptance of cash reimbursements from private groups would be requiring reimbursements to be specifically authorized on the travel order and comparing subsequent vouchers against this authorization. In these cases, travelers could be made aware of the regulations by the need to obtain specific authorization and the Foundation could keep track of reimbursements being received.

CONCLUSIONS

The Ad Hoc Committee which recently completed its review of the standards addressed a large number of questions and suggested needed revisions to the standards of conduct, but it did not address the issues we raised. The Ad Hoc Committee should further review the standards in terms of the issues we have raised and suggest needed revisions to those sections of the standards.

In addition, although the Foundation has recognized the need for reviewing and revising its standards on occasion, the Foundation has not established a procedure for periodically evaluating the effectiveness of its standards. Reviews of the standards occur in response to an accumulation of unanswered questions or unresolved problems. We believe a more regular review and evaluation would assure that questions are addressed promptly and possibly forestall major problems by an early identification of weaknesses in the standards.

RECOMMENDATIONS

We recommend that the Director of the National Science Foundation correct the deficiencies in the standards that we identified and establish a procedure for periodic review and evaluation to identify needed revisions and resolve outstanding issues pertaining to standards of employee conduct. Revisions to the standards should be coordinated with the Office of Government Ethics because of its responsibilities in this area. We also recommend that the Director determine the extent that Foundation employees are receiving travel reimbursements and services in kind from private groups and establish improved controls over such receipts.

FOUNDATION STANDARDS COULD BE
MORE EFFECTIVELY IMPLEMENTED

Effective standards of conduct require that (1) employees be aware of their responsibilities under the standards, (2) the agency provide complete and consistent advice when questions arise, and (3) the agency identify problem areas so that corrective action can be taken.

We found, however, that

- Foundation employees are not always aware of their responsibilities under the standards of conduct;
- advice and guidance is provided by a variety of individuals with varying degrees of knowledge of the standards and as a result is sometimes incomplete and inconsistent; and
- personnel responsible for implementing the standards of conduct are not taking advantage of available information to identify areas in which additional guidance is needed.

The Foundation's programs for making
employees aware are not adequate

Ethical problems and conflicts of interest because of a lack of awareness on the part of Foundation employees have occurred in the past and, based on our work are still occurring. In an October 1974 memorandum, the Foundation Director stated

"Certain serious conflict of interest situations have recently been brought to my attention. Apparently most of them have resulted from lack of familiarity of some Foundation employees with the law and Foundation regulations regarding conflict of interests."

Our review identified three Foundation employees accepting direct cash reimbursements from private sources for travel and accommodation expenses associated with official business. (See p. 7.) Foundation regulations strictly prohibit employees from accepting cash. However, in all three cases the employee did not know there was such a regulation.

Foundation regulations require that each employee acquaint himself with the standards of conduct and any applicable Federal statutes relating to his conduct. However, the standards which apply are contained in a variety of documents rather than available to employees in one source and the Foundation has not developed adequate programs to make its employees aware of these sources and their responsibilities.

The Foundation's standards of conduct are made available as follow.

1. Circular No. 54--developed in response to Executive Order 11222 and incorporating the restrictions imposed by chapter 11, Title 18, United States Code, and other standards of conduct statutes.
2. Circular No. 139--developed to implement section 10 of the National Science Foundation Authorization Act, fiscal year 1978 (Public Law 95-99).
3. Director's Office Memoranda and an Office of General Counsel Bulletin.

Circular No. 54--issued in March 1966 and most recently revised in 1978, among other things, establishes a financial disclosure system and sets restrictions on accepting gifts, entertainment, and favors; outside employment activities; and misuse of official information. The circular incorporates the Foundations' official standards as published in the Federal Register and approved by the Office of Personnel Management.

In August 1977 the Congress passed Public Law 95-99 to prevent conflicts of interest not only from financial holdings but also from academic associations. To implement the law, the Foundation issued Circular No. 139 requiring all employees performing a decisionmaking function in the handling of proposals to determine whether they have any academic affiliation or financial interest with the applicants or the organizations the applicants are representing, to disclose that affiliation or interest, and in certain cases, to disqualify themselves from dealing with the proposal.

The Office of General Counsel issued Bulletin 74-2 in 1974 to provide additional guidance to employees on situations that are only covered in generalities in the standards of conduct documents and guidance on some situations that are not covered in the official circular. References to possible conflicts of interest and ethical problems are also contained in other Foundation documents. For example, Office of the Director memorandums discuss restrictions on outside activities and participation of National Science Board members in Foundation projects.

New Foundation employees are provided a copy of Circular 54 and Bulletin 74-2 in an orientation package containing 12 other circulars, numerous Office of Personnel Management brochures, tax and savings bond withholding forms, an educational questionnaire, and various employee life insurance and health benefits information. During orientation, employees are told to acquaint themselves with all of the information contained in the orientation package. Circular 54 and the bulletin are not specifically called to their attention. Circular 139, which had been in effect for over 6 months, was not being included in the package at the time of our review. In addition, the Foundation has not annually reminded employees about the restrictions contained in Circular 54 as required by Foundation procedures.

Conclusions

The Foundation's standards of conduct are provided for in several different Foundation documents. As a result, an employee must be aware of several different sources of standards and guidance before he can become fully informed and understand his ethical conduct responsibilities. The Foundation has not taken adequate action to make employees aware of their responsibilities. Specifically, the Foundation has not

- provided new employees with all of the Foundation's standards of conduct documents, nor indicated the additional sources which contain Foundation policies on ethical conduct;
- emphasized to new employees the importance of reading, understanding, and complying with the standards of conduct regulations and policies; and
- reminded employees of the standards of conduct annually as required.

Recommendations

We recommend that the Foundation Director have the Division of Personnel and Management

- prepare a separate orientation package containing all relevant documents relating to the standards and provide the package to each new employee,
- emphasize the importance of the standards during new employee orientation, and
- remind employees of their responsibilities under the standards of conduct annually and alert them to any new procedures or guidance which have been implemented since the last reminder.

Inconsistent agency advice and guidance

Most questions that arise concerning the Foundation's standards of conduct are answered by managers within the operating divisions without consulting or informing the Ethics Counselor of the questions or the responses. One division manager told us that about 80 percent of the questions that come up are answered without reference to the Ethics Counselor.

We found that operating managers disagree on interpretations of specific sections of the standards. For example, one official believed that the nominal value criteria for acceptance of foreign gifts also applied to domestically received gifts. The official believed that this criteria was \$50. (The nominal value criteria for accepting gifts from foreign governments was raised from \$50 to \$100 beginning January 1, 1978.) This same official did not realize that certain Foundation employees must disclose outside employment on the financial disclosure statement. Another official thought that an employee must obtain approval to accept an honorarium. Still another stated that he was not aware that the Foundation even had a formal standards of conduct program.

Since 1970, the Ethics Counselor has held seminars to explain changes which have occurred in agency conduct policies on only two occasions. Attendance at these seminars was voluntary. The Foundation also provides a supervisory training course for new managers which contains a

discussion of the standards of conduct. In our opinion, because the discussion lasts for only 1 hour, it cannot provide these managers with the kind of training, such as case studies, necessary for them to learn how to interpret and apply the standards of conduct. Also, we estimate that only about 50 percent of the Foundation's program managers have taken the course.

In our opinion, if managers are to provide advice and guidance on questions of ethics, then training is necessary to assure consistent and correct interpretations of the standards agencywide.

Recommendation

We recommend that the Director of the Foundation have the Division of Personnel and Management identify those individuals generally called on to provide advice and guidance to employees and develop training on interpreting the standards for those individuals.

The Foundation does not use available information to identify the need for additional guidance

The Foundation expects compliance with its standards of conduct from all employees. However, the Foundation does not monitor compliance to identify weaknesses in the standards. Although, in some instances, monitoring compliance would require the collection of information in addition to that already being obtained, the Foundation has information available in the following areas which could and should be used to identify problems in applying the standards.

--Financial conflicts of interest.

--Outside employment and other activities.

--Travel reimbursements.

According to Circular 54, statements of employment and financial interests are required annually from all employees in GS-14 positions, and in certain offices, GS-13s, or equivalent, and above. They are reviewed in the Division of Personnel and Management. The Ethics Counselor has no involvement with the review of these statements and does not review the information contained

on the statements as a means for identifying potential conflict of interest situations or to monitor compliance with the standards.

Since January 1978, Foundation employees performing a decisionmaking role in the review of proposals must disclose any academic affiliations and financial interests they have with either the applicants or the applicants' organization. There is no requirement that the Ethics Counselor review these disclosures and although asked for advice on many of the reported affiliations and interests, the Counselor does not make use of this information for identifying potential problem areas which should be addressed by the standards.

Travel is reviewed and approved by program officials. Although the Foundation's travel regulations require that all cash reimbursements be remitted to the trust fund and services received in kind be reported on a travel voucher, the Ethics Counselor is not told of reimbursed travel unless the employee taking the trip or the reviewing official see a potential conflict of interest. The Ethics Counselor does not use the information available from these reports to determine the extent of reimbursements or whether services in kind are being accepted according to the guidance provided.

Conclusions

There is available to the Foundation Ethics Counselor several data bases that could be used to monitor compliance with standards of conduct or identify areas in which guidance is needed. However, these data bases are not being tabulated in a usable form or are not being used to monitor the standards of conduct program. In our opinion, this data could be made available to monitor employees' awareness of the standards and whether or not they are experiencing problems in complying.

Agency officials agreed that the above data is not presently being used to identify and monitor compliance with standards of conduct. The Ethics Counselor indicated that advice on how to better use the financial statements to resolve potential conflicts of interest would be welcome. The Director of the Audit and Oversight Office told us that compiling information on academic affiliations and other information being reported in response to Circular 139

was the responsibility of the Audit and Oversight Office and further involvement by the Ethics Counselor would be a duplication of effort.

Information on using the financial statements is contained in over 20 reports we have issued on financial disclosure systems in the executive branch. We suggest that the Foundation Ethics Counselor review our report on executive branch financial disclosure systems, "Action Needed to Make the Executive Branch Financial Disclosure System Effective" (FPCD-77-23), issued February 28, 1976, and examine the Foundation's present disclosure system in terms of the problems and solutions identified in that report.

The information on academic affiliations should not be recollected or retabulated by the Ethics Counselor. However, since its collection and tabulation is already a requirement, this information should be used to determine whether these affiliations present significant problems for agency employees.

Recommendations

We recommend that the Director of the Foundation have the Ethics Counselor identify information sources such as those discussed above that could be used to monitor compliance with the standards of conduct or identify potential problem areas and use that information to determine what additional guidance and direction is needed by Foundation employees.

We have discussed the above matters with the Foundation's Ethics Counselor, representatives of the Office of Audit and Oversight and the Division of Personnel and Management. While they agreed that the Foundation's programs for implementing the standards could be made more effective, they expressed concern about questioning the employees' judgment on standards of conduct while carrying out the agency's statutory mission. We recognize this concern and have attempted to address their specific comments while recommending actions intended to create a better frame work within which employees can exercise judgment and within which the agency can maintain consistency in handling and resolving potential ethical problems.

We would appreciate being advised of what actions you plan to take on our recommendations. As you know, section 236 of the Legislative Reorganization Act of 1970

requires the head of a Federal agency to submit a written statement on actions taken on our recommendations to the 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 and to other interested committees and subcommittees of the House and Senate. Copies are also being sent to the Directors of the Office of Personnel Management and the Office of Management and Budget and to your General Counsel and the Director of your Audit and Oversight Office.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "H. Havens", written in dark ink.

Harry Havens
Director

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