

GAO

Report to the Chairman, Subcommittee
on Federal Services, Post Office, and
Civil Service, Committee on
Governmental Affairs, U.S. Senate

February 1990

GOVERNMENT ETHICS

HUD Financial Disclosure Reports Missing or Not Reviewed





United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-234672

February 6, 1990

The Honorable David H. Pryor
Chairman, Subcommittee on Federal Services,
Post Office, and Civil Service
Committee on Governmental Affairs
United States Senate

Dear Mr. Chairman:

In response to your request, we have been reviewing the government's use of expert and consultant employees. As part of that review, we have been determining whether experts and consultants are filing financial disclosure statements as required by the Ethics in Government Act of 1978 and implementing regulations issued by the Office of Personnel Management (OPM), the Office of Government Ethics (OGE), and individual federal agencies. Financial disclosure reporting is intended to identify and deter conflicts of interest between federal duties and responsibilities and personal financial interests and activities. Depending on such matters as the position held or the amount of compensation, disclosure statements are either to be made available to the public or kept confidential.

One of the agencies we have been reviewing is the Department of Housing and Urban Development (HUD). We found that HUD's system for obtaining and reviewing disclosure statements was extremely weak, for its regular employees as well as for expert and consultant employees.¹ Because of the significance of the problem and congressional concern about possible conflicts of interest at HUD, we agreed with the Subcommittee to report separately on HUD's system for obtaining and reviewing financial disclosure statements. This report responds to that agreement. Appendix I contains more details about our findings, objectives, scope and methodology.

Background

Under the Ethics Act and its implementing regulations, filers of financial disclosure statements must provide information about income, interest in properties, gifts and reimbursements, liabilities, and employment.

¹ During 1989, a series of congressional hearings that primarily involved problems with HUD's Moderate Rehabilitation Program were held. Much attention was focused on the role of "consultants" during those hearings. However, these persons were consultants retained by parties other than HUD and were not required to file financial disclosure statements. This GAO review did not involve those types of consultants; it involved persons HUD directly employed as experts or consultants.

In our opinion, a primary reason these conditions existed was that HUD's financial disclosure program lacked many key elements, including clearly defined responsibilities, formal written procedures, sufficient management information, adequate staff, and adequate leadership to manage the program. OGE, an independent agency that provides guidance on and oversight of financial disclosure matters, made HUD aware of many of these problems in 1986. Some problems dated back to a 1982 OGE report to HUD. This led us to believe that the Secretary of HUD did not hold the DAEO and his alternate sufficiently accountable for developing an effective financial disclosure system.

In commenting on a draft of this report, the Secretary agreed with our findings. He said that he had initiated reforms that address our recommendations and demonstrate his commitment to making wholesale improvements to HUD's ethics program a top priority. The reforms include the creation of a new Office of Ethics under HUD's Office of Administration and the complete restructuring of the financial disclosure system.

Disclosure Program Lacked Management Attention

In a March 1986 report, OGE said that HUD's ethics program was one of the "most ill managed" the OGE staff had ever seen and attributed the problem to "a severe lack of direction, management, interest, and initiative on the part of the General Counsel." Our work showed that significant problems remained in 1989.

Even though HUD's financial disclosure program was established more than 8 years ago, the people administering it were not given written definitions of their roles and responsibilities or a complete and approved set of procedures to follow. Program staff said that identifying who should file, providing them with disclosure forms, and collecting the completed statements were actions based on informal practices that had evolved over time.

In response to 1982 and 1986 OGE reports, HUD developed notification letters and mailed some to delinquent filers. However, it did not establish a time schedule for systematically sending these letters, and according to DAEO staff, there was no assurance that the letters were consistently issued to delinquent filers. HUD said in 1986, in response to an OGE recommendation, that it had automated the monitoring of public disclosure filers. As of October 1989 the monitoring was not automated.

clearly defined roles and responsibilities, written procedures for program implementation, and training of available staff.

According to DAEO staff, three employees had been key to the day-to-day functioning of the program—a paralegal who, the alternate DAEO estimated, spent about 50 percent of her time on the program; a part-time attorney who spent about 10 percent of her time on the program; and a supervisory attorney who spent about 25 percent of his time on the program. The paralegal transferred to another unit in January 1989. She was replaced in February 1989 with a paraprofessional who did not have experience in financial disclosure. The supervisory attorney resigned in March 1989. He had not been replaced as of September 1989, and a vacancy announcement was issued in October 1989. The alternate DAEO told us that the former supervisory attorney's work had been assigned to other attorneys on an ad hoc basis.

Problems in administering HUD's financial disclosure program have persisted for a long time even though they were identified and brought to HUD's attention. In addition to the previously discussed OGE reports, HUD's Office of Inspector General (OIG) in its Self-Evaluation report dated October 10, 1986, concluded that the DAEO did not have procedures in place to identify and follow up on required filers and that the DAEO's office took too long to clear disclosure statements. As a result, the Office of Inspector General developed and operated a disclosure system for its employees that was separate from HUD's system. The Inspector General said that because of its sensitive mission and need for independence, his office could not rely on the DAEO's ineffective system.

Conclusions

HUD had not been complying with financial disclosure provisions contained in the Ethics in Government Act or OPM's regulations and instructions. HUD had an ineffective system for collecting disclosure statements from experts and consultants and significant limitations existed in the financial disclosure program as a whole. HUD did not follow OPM's regulations and instructions concerning the deadlines for filing confidential disclosure statements and expert and consultant certifications. Without collecting or reviewing required financial disclosure statements, HUD was not in a position to address actual or potential conflicts of interest.

While the alternate DAEO generally attributed the problems found to insufficient staff resources, we believe the primary cause to be more fundamental—namely, that he and the DAEO had not adequately discharged their duties. The Secretary is ultimately responsible for seeing

Further, the Secretary should

- require HUD's Office of Personnel to follow OPM's instructions regarding financial disclosure review certification for experts and consultants, and
- obtain the data needed for holding program leadership accountable for results.

Agency Comments and Our Evaluation

In written comments on a draft of this report (see complete text in app. II), the Secretary of HUD agreed with our findings concerning HUD's (1) lack of an adequate system for obtaining and reviewing disclosure statements for its employees, including experts and consultants and (2) low percentage of financial disclosure statements that were reviewed for potential conflicts of interest. He said that he had already initiated most of the reforms recommended in our report and cited the following actions:

- The Secretary ordered creation of a new Office of Ethics under HUD's Office of Administration to improve the entire ethics program at HUD. Based on supplemental information provided by HUD, this office became operational on January 2, 1990, and is in the process of establishing written procedures for distributing, collecting, reviewing, and approving financial disclosure statements. This office is also developing a plan to enable HUD to comply with upcoming filing deadlines.
- The Secretary ordered review of outstanding public and private financial disclosure statements to be completed by January 15, 1990, and February 15, 1990, respectively.

The Secretary also said that, prior to our report, he had made it a top priority to improve every employee's compliance with ethical standards of conduct and to eliminate ethical abuses at HUD. He gave examples of actions to demonstrate his commitment, such as

- initiating mandatory ethics training for all 13,000 HUD headquarters' and field office employees;
- publishing a comprehensive ethics manual to guide higher level employees on ethics law and standards of conduct;
- designating 47 senior positions subject to the entire range of ethics laws; and
- involving himself, the Under Secretary, and the General Counsel in meetings with the OGE to discuss reforms to HUD's ethics program.

Contents

Abbreviations

DAEO	Designated Agency Ethics Official
FPM	Federal Personnel Manual
HUD	Department of Housing and Urban Development
OGE	Office of Government Ethics
OIG	Office of the Inspector General
OPM	Office of Personnel Management

Appendix I
HUD Financial Disclosure Reports Missing or
Not Reviewed

- maintaining liaison with OGE;
- establishing effective procedures and systems for collecting, filing, and reviewing financial disclosure reports;
- ensuring disclosure reports are maintained and reviewed in compliance with applicable laws and regulations; and
- evaluating the financial disclosure program and taking prompt action to remedy violations of agency standards of conduct and potential or actual conflicts of interest.

The DAEO can delegate to one or more deputy ethics officials duties not specifically prohibited under 5 C.F.R. part 738.204(a). A deputy ethics official may also serve as the alternate DAEO.

At HUD, the General Counsel was designated to serve as the DAEO. The Associate General Counsel for Equal Opportunity and Administrative Law served as the alternate DAEO and was one of HUD's deputy ethics officials. The other deputy ethics officials were the regional counsels, who administered the confidential financial disclosure program for employees in the regions, and the Inspector General, who has developed a separate administrative procedure for his employees.²

The alternate DAEO told us that he administered the public financial disclosure system. In addition, his office reviewed the confidential disclosure statements of regional counsels and headquarters' employees. He said that for the past 3 years the financial disclosure staff consisted of three to five people working part-time. The Office of Personnel assisted the DAEO's staff by providing information on new and terminated employees, including experts and consultants.

Objectives, Scope, and
Methodology

Our review of HUD's financial disclosure system determined whether

- the Department has been collecting and reviewing disclosure statements for its expert and consultant employees,
- the conditions found in our review of experts and consultants were indicative of problems in the system for HUD's regular employees, and
- the Department had addressed weaknesses identified in past investigations done by OGE.

²HUD's regulations use the term "deputy counselors" instead of deputy ethics officials.

Most Expert and Consultant Disclosure Statements Not Collected

Regulations contained in 5 C.F.R. part 2634 (old part 734) require those experts and consultants who must submit public financial disclosure statements to do so within 30 days of employment and to file annual reports on or before May 15th. Confidential disclosure statements are required from all other experts and consultants upon employment and as of June 30th of each year. (5 C.F.R. part 735). Further, as a means of fostering the proper use of experts and consultants, OPM instructs agencies in Federal Personnel Manual (FPM) chapter 304 to certify that the agency has obtained the expert's or consultant's statement of employment and financial interests and determined that there is no conflict of interest. The FPM requires that such certification be maintained in the expert's or consultant's official personnel file.

HUD made 99 expert and consultant appointments between January 1986 and early August 1989. As shown in Table I.1, we reviewed the files on 62 of them and found no disclosure statements for 52, or 84 percent. This included 19 experts and consultants who were on HUD's employee roll as of August 6, 1989.

Table I.1: Financial Disclosure Reports Received as of September 8, 1989 for a Sample of Experts and Consultants Employed at HUD

	1986-88		1989 ^a		1986-89	
	No.	%	No.	%	No.	%
Total required to file ^b	36 ^c	100	26	100	62	100
Found reports	3	8	7	27	10	16
Missing reports	33	92	19	73	52	84

^aRefers to experts and consultants on HUD's employee roll as of August 6, 1989.

^bRefers to the sample we selected for this report.

^cTen of these experts and consultants were subsequently converted to other positions (see p. 14).

Source: HUD, Office of the General Counsel.

The alternate DAEO said that "to the extent the forms cannot be found represents a flaw in our system or a mistake in a particular case." We believe that the lack of written procedures for implementing the disclosure program may have been a contributing factor. According to the DAEO staff, procedures for identifying, distributing, and collecting financial disclosure statements for experts and consultants, as well as for regular HUD employees, were based on informal practices that evolved over time. They said that official written procedures defining the roles and responsibilities of all the parties in HUD's public and confidential financial disclosure system had not been prepared. As a result, staff involved in the collection and review of financial disclosure statements had an

reports from these employees for the political positions to which they were converted, but not for the expert or consultant positions they held previously. The Ethics in Government Act requires these employees to submit disclosure statements for the expert or consultant position.

Problems Persisted in Collecting Public Disclosure Statements From New and Terminating HUD Employees

OPM regulations state that qualifying new employees and certain employees leaving the agency must file public financial disclosure statements within 30 days. As shown in table I.2 as of September 8, 1989, 11 (15 percent) new employees and 16 (20 percent) terminated employees had not filed the required statements.

In 1982 and 1986, OGE reported that a relatively large number of new entrants and terminees at HUD had not filed required public disclosure statements. OGE concluded that the DAEO's followup on overdue reports was not as active as it should be and was based on an incomplete log. OGE recommended in 1986 that the DAEO establish a formal system for ensuring that all new and terminating employees receive public disclosure forms and instructions on how to file them.

In a July 1986 response to OGE's report, the alternate DAEO said that standardized procedures had been adopted for all parts of HUD's public disclosure system except for ethics agreements. A June 1987 OGE memorandum reported that DAEO staff told OGE staff during 1986 and 1987 that (1) new procedures were developed that would result in more timely and useful reports on required filers, (2) a schedule and a package of delinquent notification letters had been developed to follow up on untimely filers, and (3) the monitoring of public disclosure filers had been automated.

However, we found that problems persisted. As discussed on page 15, written procedures for the collection and follow up of financial disclosure statements had not been developed, and the responsibilities of the participants remained unclear. HUD developed two types of notification letters and mailed some to delinquent filers. However, it did not have time schedules for systematically sending the letters. DAEO staff told us that there was no assurance that the letters were consistently sent to delinquent filers on time. Finally, HUD's public financial disclosure system had not been automated as of October 1989.

We also found that some names of new required filers were missing from the log that the DAEO's office used to monitor the collection and review of public disclosure statements. For example, the log did not include Dr.

**Appendix I
HUD Financial Disclosure Reports Missing or
Not Reviewed**

Table I.2: Status of Regular Employees' 1989 Public Financial Disclosure Reporting and Reviewing Activities (As of September 8, 1989)

	Required filers ^a	Not filed	Filed	Reviewed/ approved	Not reviewed	Review overdue ^c
Incumbents	111	0	111	0	111	111
New entrants	74	11 ^b	63	22	41	39
Subtotal	185	11	174	22	152	150
Terminations	79	16 ^b	63	12	51	51
Total	264	27	237	34	203	201

^aCertain experts and consultants must submit public financial disclosure statements (see p. 12). However, experts and consultants have been excluded from this table to avoid double counting the experts and consultants included in table I.1.

^bAt least 30 days had elapsed from the date when the disclosure forms were due.

^cAs of December 29, 1989, at least 60 days had passed from the filing date.

Source: HUD, Office of the General Counsel.

According to the alternate DAEO, staff shortages had been the primary cause for delays in the review and approval of public disclosure statements. He expected these staff shortages to be resolved as the new administration looks more favorably on the DAEO's informal efforts to increase the staff resources devoted to financial disclosure activities. We agree that the alternate DAEO did not have sufficient staff to administer HUD's ethics program. However, in our opinion the staffing problem went beyond the lack of sufficient number of staff. The problem involved the priority assigned to financial disclosure work, training of paraprofessional staff, and delays in filling an important staff vacancy.

**Competing Priorities and
Untrained Staff**

Competing priorities required that the alternate DAEO and his staff split their time with other duties. The alternate DAEO cited a heavy workload in such areas as the Freedom of Information Act and contracts.

The alternate DAEO told us that he spent about 1 1/2 to 3 hours a week reviewing and approving disclosure forms and that most of the time he spent on the ethics work was providing opinions on controversial issues. According to DAEO staff, throughout 1986 to 1988 the day-to-day financial disclosure functions were performed by the following three key staff persons:

- A paralegal devoted about 50 percent of her time to the program and initially reviewed disclosure forms; maintained a log on forms received, reviewed, and approved; documented the status of actions taken to

No Monitoring of Agencywide Confidential Disclosure Activities

The DAEO's office had not been monitoring agencywide confidential disclosure activities. As of September 6, 1989, HUD did not have 1989 data on the status of confidential disclosure statements required, filed, and reviewed. From 1985 to 1988, the DAEO's staff prepared a log for tracking the confidential financial statements that were reviewed at headquarters. However, the DAEO's office did not require status reports from each region. We believe an agencywide monitoring system is needed to ensure effective compliance with the confidential financial disclosure reporting requirements.

Inconsistency Between HUD's and OPM's Regulations

On August 31, 1989, DAEO staff told us that the 1989 headquarters' log had not been developed because the confidential disclosure statements that are reviewed at headquarters were not due until September 1, 1989, and the statements were just starting to come in. This date was set by the alternate DAEO and communicated to the heads of units at headquarters and to regional counsels by memoranda.⁵

The alternate DAEO believes that because HUD's regulations do not specify the time when the confidential statements are due, it is not necessary for HUD to comply with OPM regulations, which require incumbents to file as of June 30th. According to OGE, HUD personnel are subject to OPM financial reporting requirements unless OPM authorizes a different date.

No Action Taken on OGE's 1986 Recommendation

In 1986, OGE recommended that DAEO obtain periodic status reports from each region. An OGE memo dated June 1, 1987, stated that the DAEO's office did not monitor the regions' activities. The DAEO staff told OGE that they did not want to make changes because (1) resources were scarce and (2) HUD was waiting for OGE to issue final regulations on the confidential disclosure statements. On November 1, 1989, OGE officials told us that they have not issued final regulations. We believe that this does not preclude the DAEO from obtaining periodic status reports on regional financial disclosure collection and review activities.

⁵The DAEO's office reviews the regional counsels confidential disclosure statements but not the statements of other employees in the regions.

**Appendix I
HUD Financial Disclosure Reports Missing or
Not Reviewed**

made specific recommendations for improving both the public and confidential financial disclosure systems.

As discussed in the preceding sections of this report, we found that many of these problems continued.

Appendix II
Comments From the Department of Housing
and Urban Development

2

other federal agencies that were suggested by OGE. Thereafter, as part of our review of the entire ethics program, we developed a proposal for a new system for the collecting, monitoring, and reviewing of the financial disclosure forms. I have approved that proposal for immediate implementation. The Office of Ethics at HUD will continue to assess, monitor, and, where needed, refine that proposed system.

GAO's second concern has similarly been resolved. The GAO report properly described that under the previous financial disclosure system the public and private financial disclosure forms collected at HUD headquarters were not timely reviewed for potential conflicts of interest. No later than January 15, 1990, all public forms will be reviewed by HUD lawyers. No later than February 15, 1990, all private forms will be reviewed.

Additionally, the Office of Ethics is developing a plan to enable HUD to comply with future filing deadlines for submissions of financial disclosure forms. This Office is in the process of establishing written procedures for distributing, collecting, reviewing and approving these forms, and on my General Counsel's suggestion, considering incorporating the procedures separately established by the Inspector General at HUD.

The premature release of the GAO report unfairly created the serious misimpression that HUD had made no effort to rectify these problems. In other words, that it was ethical "business as usual" at HUD according to GAO. Nothing could be further from the truth.

During our meeting with GAO in December, we gave examples of HUD's commitment to restructure entirely the collection and review of financial disclosure forms and the creation of an ethics training program. Despite budgetary and staffing constraints and a plague of systemic flaws in HUD programs, I have made it a top priority to improve every employee's compliance with ethical standards of conduct and to eliminate ethical abuses at HUD. Some demonstrative evidence of this commitment includes:

- o mandatory ethics training for all 13,000 employees at HUD headquarters and in the field offices is continuing;
- o a comprehensive ethics manual to guide higher-level employees on the ethics law and standards of conduct, has been published;
- o OGE designated, at my request, 47 positions as senior employees, who, as such, are subject to the entire range of ethics laws;

Comments From the Office Government Ethics



United States
Office of Government Ethics
Suite 500, 1201 New York Avenue, N.W.
Washington, D.C. 20005-3919

December 20, 1989

Mr. Richard L. Fogel
Assistant Comptroller General
General Accounting Office
Washington, D.C. 20548

Dear Mr. Fogel:

This is in response to your letter of December 13, 1989, requesting our review and comment on your draft report entitled Government Ethics: HUD Financial Disclosure Reports Missing or Not Reviewed.

In response to a recent phone call from your office, the Chief of our Monitoring and Compliance Division indicated that the references in the draft to OGE's HUD audits were correct. We can also confirm that representatives of the HUD General Counsel's office have met with OGE staff members within the past few months to obtain guidance in correcting their ethics program deficiencies, which your draft notes at page 13 that they had promised to do, and we have referred them to those agencies which we consider to have model ethics programs.

As to the substance of your draft report, it should be noted that experts and consultants are only required to file financial disclosure reports on a government-wide basis if, in addition to other statutory or regulatory requirements, they are appointed to serve as federal employees. As you know, not all experts and consultants who are hired by federal agencies are automatically deemed federal employees, since, for example, they may be independent contractors. It was not clear from your draft whether all of the 62 HUD experts and consultants whose files you examined were actually determined to be federal employees and therefore required by government-wide rules to file.

Please let us know if we may be of further assistance in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Donald E. Campbell".

Donald E. Campbell
Acting Director

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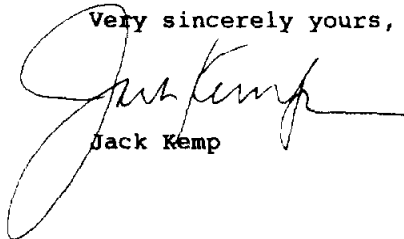
Appendix II
Comments From the Department of Housing
and Urban Development

3

- o the Secretary, the Under Secretary, and the General Counsel have been actively involved, and met with OGE officials, to discuss reforms to the ethics program.

We appreciate the opportunity to respond to GAO's report as well as to advise you on other reforms we have initiated to improve the overall ethics program at HUD. As I stated in my response to the Washington Post article recently filed on the GAO report, these dramatic achievements in the entire ethics program at HUD are only the beginning. We have devoted staff resources and top management oversight to this program. In short, under my leadership ethical conduct is the only way of "doing business" at, or with, HUD.

Very sincerely yours,



Jack Kemp

Comments From the Department of Housing and Urban Development



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
THE SECRETARY
WASHINGTON, D.C. 20410

January 9, 1990

Mr. Charles A. Bowsher
Comptroller General of the United States
Housing and Community Development Issues
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Bowsher:

This letter will confirm the oral comments which we provided on December 22, 1989 to the GAO reviewers, concerning GAO's report entitled "Government Ethics: HUD Financial Disclosure Reports Missing or Not Reviewed." Perhaps the most significant point is that I have already initiated substantially all of the reforms recommended in the GAO report. However, we did find the report helpful in enabling us to assess the extent of the problem and the effectiveness of our intended reforms.

GAO's report focused on one part of the ethics program at HUD -- the system for collection and review of financial disclosure forms to monitor potential conflicts of interest among HUD employees and consultants. GAO had two concerns (1) the lack of an adequate system for obtaining and reviewing disclosure statements for employees as well as for experts and consultants, and (2) the low percentage of financial disclosure forms that were actually reviewed for potential conflicts of interest. While we do not disagree with these findings, it is important to emphasize again that the independent actions I have already initiated will assure that GAO's concerns will have been substantially satisfied by January 15, 1990.

In early fall, after reviewing reports from the Office of Government Ethics ("OGE") covering periods for 1982 and through 1986, I ordered the creation of a free standing ethics office under the Office of Administration. This office, which was the first in HUD's history, has been created to effect the wholesale improvement of the entire ethics program at HUD, including the complete restructuring of the financial disclosure system.

In September to accomplish this goal, I along with the Under Secretary Al DelliBovi and General Counsel Frank Keating met with top officials from the Office of Government Ethics to discuss improvements to HUD's ethics program. Starting in October, my staff reviewed the effective financial disclosure systems of

OIG Developed Its Own Confidential Disclosure Procedures

The Office of Inspector General has developed its own procedures for collecting and reviewing its confidential disclosure statements. The Office of the Inspector General found in its October 10, 1986, self evaluation study that the DAEO did not have procedures in place to identify and follow up on required filers. The study also found that the DAEO's office took too long to clear disclosure statements. For example, 10 disclosure statements filed by Inspector General staff in September 1985 had not been cleared by July 16, 1986. Even though the DAEO's office had identified possible conflict of interest on these statements, they had not taken action to complete the clearance process or notify the OIG of potential problems. The Inspector General told us that the OIG, because of its sensitive mission and need for independence, could not rely on the DAEO's ineffective system.

To address these problems, the OIG issued its own procedures for administering the confidential financial disclosure statements of its staff. The procedures specify required filers, reporting time frames, and responsibilities of the parties involved in administering the system.

Longstanding Problems Indicated Lack of Top Management Attention

Many of the financial disclosure problems we found were reported by OGE in 1986, and some go back to 1982. According to OPM regulations, the DAEO's office is responsible for ensuring that information resulting from reviews done by audit entities, such as OGE, is reviewed to identify improvements needed and to take prompt corrective action. The fact that many of the deficiencies reported in previous OGE studies had not been corrected indicates that the Secretary did not provide adequate direction and did not hold the DAEO and his alternate accountable for establishing an effective financial disclosure program.

In March 1986, the OGE Director sent a strongly worded letter to HUD's General Counsel expressing concern about, among other things, the lack of attention that HUD had given to correcting deficiencies reported by OGE in 1982. OGE's Director urged the General Counsel to "exercise the management, direction, and interest inherent in the duties and responsibilities of your position as HUD's Designated Agency Ethics Official."

The OGE report concluded that HUD's ethics program was poorly managed and lacked "direction, management, interest, and initiative on the part of the General Counsel." The team preparing the report considered recommending removal of the DAEO duties from the General Counsel, but proposed to allow him final opportunity to make changes. Instead, they

resolve potential conflict of interest; coordinated with other HUD units; and contacted required filers.

- A part-time attorney mainly provided advice to the paralegal and reviewed the presidential nominees' financial disclosure forms, which have to be approved by the DAEO and OGE. HUD staff estimated that about 10 percent of her time was spent on these functions.
- A supervisory attorney served as the Assistant General Counsel and spent about 25 percent of his time on financial disclosure. He also supervised the work of the other two staff persons, reviewed forms to detect actual or potential conflict, and assisted the alternate DAEO on any matter related to the financial disclosure program.

Because the paralegal moved to another unit in January 1989, the alternate DAEO brought in a paraprofessional from the Administrative Law Division in February 1989 to assist with disclosure work. However, this new staff person was not officially assigned financial disclosure duties until September 1989. According to an OGC attorney, this employee required training in financial disclosure, but as of September 25, 1989, no formal training had been provided.

Delay in Filling the Supervisory Vacancy Due to Staff Reduction Goals

The supervisory attorney resigned in March 1989 and his position has remained vacant. According to the alternate DAEO, the attorney's work was assigned to other attorneys on an ad hoc basis. The alternate DAEO told us that he informally discussed the need for a replacement with the Deputy Associate General Counsel for Operations and, on October 6, 1989, was authorized to recruit a replacement. The alternate DAEO said that he did not have documentation as to when the request for replacement was made because it was handled informally. In October 1989, the Office of the General Counsel advertised the position.

The alternate DAEO said that in the past he had asked for additional staff to work in the ethics area but had not been very successful. He explained that HUD had been cutting back on staff resources since 1986. He added that many employees left the Office of the General Counsel and were not replaced due to the agency's staff reduction goals. The alternate DAEO also said that during 1987 and 1988 priority was given to hiring attorneys for the Office of Litigation to address workload created by the 1988 amendment to the Fair Housing Act.

June Q. Koch, who was appointed as a consultant on January 25, 1988, and terminated on January 20, 1989, after two extensions. Dr. Koch held the position of Assistant Secretary for Policy, Development and Research at HUD from July 1984 through October 1987.

As discussed in our April 1989 testimony before the Employment and Housing Subcommittee, House Committee on Government Operations about Dr. Koch's post-employment activities⁴, HUD did not obtain a financial disclosure report from Dr. Koch for her consultant position. In our testimony, we concluded that Dr. Koch's post-employment activities appear to have violated the Ethics in Government Act and, we recommended referring her case to the Department of Justice for further investigation. In our opinion, HUD would have been better able to identify potential conflicts of interest had it obtained Dr. Koch's financial disclosure statement. Dr. Koch's case was recently referred to the Department of Justice for further investigation.

Public Disclosure Statements Late and/ or Not Reviewed

In addition to the initial submission, public financial disclosure statements for qualifying incumbents must be filed annually, on or before May 15. OPM's regulations require agencies to review public disclosure statements within 60 days of the date of filing.

HUD's log showed that of the 111 employees required to file the annual public disclosure statement, HUD received 62 (56 percent) by the May 15 deadline. Of the 49 statements not received on time, 38 were received between May 16 and July 15, 1989; and 11 were received after July 15, 1989. As of September 8, 1989, the DAEO's office had not reviewed and approved any of the 111 statements. As shown in table I.2, HUD's log also indicated that at least 60 days had passed without review of most of the disclosure statements from new and terminated employees.

⁴Post-Employment Activities of Dr. June Q. Koch, Former Assistant Secretary for Policy Development and Research, Department of Housing and Urban Development (GAO/T-RCED-89-19, April 26, 1989).

Appendix I
HUD Financial Disclosure Reports Missing or
Not Reviewed

incomplete understanding of their responsibilities and of financial disclosure reporting requirements.

For example, personnel office staff said that they identified new employees and distributed disclosure forms to the required new filers, including experts and consultants, but program offices and the Office of the Secretary sometimes distributed disclosure forms also. Personnel office staff also said that completed forms were sent to the DAEO's office through their office, program offices, the Office of the Secretary, or directly from the filers themselves. Personnel staff said that if they did not hear from the DAEO's office they assumed the statements had been received.

Contrary to OPM instructions, HUD did not document in the Official Personnel Folder that the expert's or consultant's disclosure statement had been obtained and reviewed to determine that there was no conflict of interest. Our random sample of experts and consultants at eight other agencies we reviewed in our comprehensive study on the government's use of experts and consultants indicated that these agencies have followed OPM's instructions regarding the certificate.

The Deputy Assistant Secretary for Administration said that the former Assistant Secretary for Administration waived the FPM instruction concerning certification. He said the former Assistant Secretary believed the certification was unnecessary because the Secretary was approving the requests for experts and consultants, and personnel staff would ensure that the paperwork sent to the Secretary met all the regulatory requirements. Our review of official personnel files and interviews with HUD officials indicated that the paperwork sent to the Secretary for the approval of experts and consultants did not state whether HUD had obtained and reviewed the financial disclosure statements. The Deputy Assistant Secretary for Administration told us that HUD will reinstate the certification process as a result of our work. However, as of October 12, 1989, the forms that were being printed for personnel staff use did not contain language for certifying that the disclosure statements had been obtained and reviewed.

Ten of the 52 experts and consultants who did not submit financial disclosure statements were later converted or reinstated to another HUD position. Four of the 10 converted to political positions that required Senate approval.³ The alternate DAEO said that HUD obtained disclosure

³See page 14 for details on the other six conversions.

**Appendix I
HUD Financial Disclosure Reports Missing or
Not Reviewed**

Our analysis focused on HUD's financial disclosure collection and review process. We reviewed HUD's policies, procedures, and practices for its financial disclosure program but did not determine whether actual or apparent conflicts of interest existed.

We asked HUD's Office of General Counsel to provide financial disclosure reports for a sample of 62 experts and consultants. The sample included 36 of 66 experts and consultants appointed at HUD between January 1986 and December 1988 and 26 of 33 expert and consultant employees on the employee roll as of August 6, 1989. (The 33 included 19 appointments made in 1987 for a 2-year term). Except for two experts and consultants brought to our attention by HUD's OIG and seven advisory committee member appointments that we were unable to review due to time constraints, the sample was randomly drawn from data contained in OPM's Central Personnel Data File and HUD's employee roster.

To determine whether problems found with the expert and consultant disclosure reports also applied to HUD employees who are required to file financial disclosure statements, we took a two-step approach. First, we obtained the disclosure reports for 10 employees who had been converted or reinstated from expert and consultant positions. Four were conversions to political positions requiring Senate approval. Five conversions were to administrative law judge, Schedule C, and SES positions. The remaining one was a reinstatement to a career position. Second, we reviewed HUD logs on the status of departmentwide public financial disclosure filing and reviewing activities. However, HUD did not have information on the current status of filing and reviewing activities for confidential financial disclosure statements.

To examine disclosure procedures and improvements made since OGE last reviewed HUD's ethics program, we interviewed officials in HUD's Office of General Counsel and Office of Personnel. We also interviewed the Deputy Assistant Secretary for Administration and several program officials, including Deputy and General Deputy Assistant Secretaries, the Inspector General, and OGE staff. We sent a draft of this report to OPM, OGE, and HUD. Their comments were evaluated and incorporated where appropriate.

Our work was done during August through October 1989, in Washington, D.C., in accordance with generally accepted government auditing standards.

HUD Financial Disclosure Reports Missing or Not Reviewed

To ensure the proper performance of government business and the maintenance of citizens' confidence in their government, it is essential that government employees, including experts and consultants, maintain high standards of honesty, integrity, impartiality, and conduct. Accordingly, the Ethics in Government Act of 1978 (P.L. 95-521) and its implementing regulations require financial disclosure statements for reporting income, interest in properties, gifts and reimbursements, liabilities, and employment relationships. Financial disclosure reporting is intended to identify and deter conflicts of interest between the employees' federal duties and responsibilities and their personal financial interests and activities.

Title 5 of the Code of Federal Regulations (C.F.R.) parts 735 and 2634 supplement and implement the financial disclosure reporting requirements set forth in the act.¹ These regulations allow agency heads to issue their own implementing regulations, as long as they are consistent with 5 C.F.R. regulations and the act. OGE approves agencies' regulations and monitors compliance with financial disclosure requirements. HUD's implementing regulations are contained in 24 C.F.R. part 0.735.

There are two kinds of financial disclosure statements: public and confidential. Generally, the Ethics in Government Act and 5 C.F.R. regulations require federal employees (including experts and consultants working more than 60 days a year) whose positions are classified at GS-16 or above, or whose rate of pay is equal to the basic rate of pay for GS-16, to file public financial disclosure statements. In addition, section 207 of the Ethics in Government Act authorizes the President to require certain government employees to submit confidential disclosure statements. In accordance with this section of the act, 5 C.F.R. and HUD regulations require certain personnel below grade GS-16, and experts and consultants who do not meet the requirements for filing a public disclosure statement to file confidential financial disclosure statements.

Regulations contained in 5 C.F.R. assign primary responsibility for administering the ethics program to the head of each agency. The agency selects the DAEO and an alternate DAEO and is responsible for providing the staff resources needed to carry out the program. The DAEO is responsible for managing financial disclosure reporting and reviewing activities. Specific DAEO duties include the following:

¹With the establishment of OGE as a separate executive agency, certain regulations of the office dealing with government ethics have recently been transferred to 5 C.F.R., Chapter XVI. Old part 734 was redesignated as 5 C.F.R. part 2634, effective December 5, 1989.

Contents

Letter		1
Appendix I		12
HUD Financial Disclosure Reports Missing or Not Reviewed	Most Expert and Consultant Disclosure Statements Not Collected	15
	Problems Persisted in Collecting Public Disclosure Statements From New and Terminating HUD Employees	17
	Public Disclosure Statements Late and/or Not Reviewed	18
	No Monitoring of Agencywide Confidential Disclosure Activities	21
	OIG Developed Its Own Confidential Disclosure Procedures	22
	Longstanding Problems Indicated Lack of Top Management Attention	22
Appendix II		24
Comments From the Department of Housing and Urban Development		
Appendix III		27
Comments From the Office Government Ethics		
Appendix IV		28
Major Contributors to This Report		
Tables	Table I.1: Financial Disclosure Reports Received as of September 8, 1989 for a Sample of Experts and Consultants Employed at HUD	15
	Table I.2: Status of Regular Employees' 1989 Public Financial Disclosure Reporting and Reviewing Activities (As of September 8, 1989)	19

According to the supplemental information provided by HUD, on January 18, 1990, the Secretary approved the reorganization of the ethics program, including the decentralization of the financial disclosure system. Under the reorganization, the new Office of Ethics will develop, operate, and monitor all ethics program systems. HUD's OGC will provide legal advice and assistance. The General Counsel remains the DAEO while the Assistant Secretary for Administration is now the alternate DAEO; he is responsible for program operations. The Director of the new Office of Ethics is the Deputy Agency Ethics Official for Administration. The Associate General Counsel for Equal Opportunity and Administrative Law is now the alternate Deputy Agency Ethics Official for OGC.

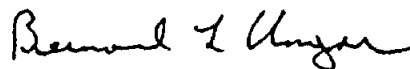
At the time of our review—August through October 1989—HUD was not complying with financial disclosure provisions contained in the Ethics in Government Act and its implementing regulations. We believe, however, the Secretary's recent initiatives should result in an improved financial disclosure program at HUD if they are effectively implemented.

In addition to HUD, OGE provided written comments (see app. III), and OPM and HUD's OIG commented orally on our draft report. They expressed no objections to our findings and recommendations. However, OGE and HUD's OIG suggested we clarify that the report deals with consultant employees rather than consultants hired under contract by private parties. All 62 experts and consultants that we reviewed were federal employees required to file financial disclosure statements. We clarified the report to distinguish between the two types of consultants.

Copies of this report are being sent to the Secretary of HUD, Director of OGE, Director of OPM, and others upon request.

Other major contributors are listed in appendix IV. If you have any questions about this report, please call me at 275-5074.

Sincerely yours,



Bernard L. Ungar
Director, Federal Human Resource
Management Issues

that HUD has an effective program and for holding the DAEO and other officials accountable for adequately discharging their delegated responsibilities. The fact that the problems we are reporting existed for so long demonstrates to us that the HUD Secretary did not hold the DAEO and his alternate sufficiently accountable for developing and administering an effective financial disclosure system.

We agree with the OGE Director's 1986 assessment that the program needs strong leadership, direction, and accountability. The lack of leadership, direction and accountability resulted in a financial disclosure reporting and reviewing system that lacked basic elements, such as clearly defined responsibilities; formal written procedures; management information on the status of collection, review, and approval of confidential financial disclosure reports; and adequate staff.

Recommendations to the Secretary of HUD

We recommend that the Secretary ensure that HUD's financial disclosure program complies with the requirements set forth in the Ethics in Government Act and implementing regulations. The Secretary should also ensure that there is strong day-to-day leadership, written guidance, and adequate staff resources—time, people, or both—applied to the program. The Secretary should also ensure that the program's leadership is held accountable on a regular basis for the program's condition.

To help accomplish these objectives, the Secretary should require the DAEO to do the following:

- Develop written procedures for distributing, collecting, reviewing, and approving public and confidential financial disclosure forms. These procedures should clearly outline the financial disclosure roles and responsibilities of HUD's Office of Personnel, regional counsels, program units, and DAEO's staff.
- Establish due dates for the submission of confidential financial disclosure statements that are consistent with OPM's regulations.
- Ensure that all filed public financial disclosure statements are reviewed within 60 days of the filing date as required by the Ethics in Government Act and implementing regulations.
- Develop effective systems for monitoring the collection and approval of confidential disclosure forms.

Although OPM instructs agencies to certify that among other things, they have obtained the statement of employment and financial interests from the expert or consultant and determined that there is no conflict of interest, HUD did not do this. A HUD official said HUD was planning to reinstate the certification process as a result of our work. However, as of October 12, 1989, the forms that were designed for the staff to use did not provide for certification that a financial disclosure statement had been reviewed and that no conflict of interest existed.

Although the OGE recommended in 1986 that the DAEO obtain periodic reports on the status of confidential disclosure statements from each HUD region, the DAEO, as of September 1989, was not receiving information on any regular basis for monitoring the regions' activities.

HUD's regulations do not specify the date the confidential statements are due. Further, HUD has not adhered to OPM's regulations, which require regular employees who must file annual confidential disclosure statements to do so by June 30th. (See p. 21.)

Under HUD's administration of the financial disclosure program, we found no evidence that HUD received a disclosure statement for about 84 percent of the experts/consultants whose files we reviewed. HUD had made 99 expert/consultant appointments from January 1986 to early August 1989. We reviewed the files on 62 of them and found no disclosure statements for 52.

HUD had 111 regular employees who also were required to file a public disclosure statement by May 15, 1989. Our review of the files showed that although all 111 employees had filed, about 44 percent (49 employees) missed the May 15 deadline.

The Ethics Act requires public statements to be reviewed and approved within 60 days of filing. For the 62 statements that were filed by May 15, none had been reviewed after over 100 days later.

The alternate DAEO said staff shortages caused the delay in reviewing the public statements. We recognize that the alternate DAEO did not have a large staff to help administer HUD's ethics program. However, we believe that the number of staff was not the only factor behind HUD's ineffective financial disclosure program. The situation was more complicated in that it involved the broader question of the adequacy of management attention and priority given to HUD's financial disclosure program. This is reflected by the staffing level assigned and the lack of

Each agency's financial disclosure program is administered by the Designated Agency Ethics Official (DAEO). At HUD, the Secretary appointed the General Counsel as the DAEO; the DAEO in most agencies is the general counsel. The HUD DAEO was assisted by an "alternate DAEO," the Associate General Counsel for Equal Opportunity and Administrative Law. The same person held the alternate DAEO position from March 15, 1982 to January 17, 1990. Since 1986 three people have held the General Counsel/DAEO position. The current General Counsel was appointed in July 1989.

From a practical perspective, the Associate General Counsel administered the day-to-day operations of the program more than the DAEO. Other members of the administrative law unit also spend part of their time working on the ethics program.

HUD has 10 regional offices, and the Regional Counsel in each is a deputy DAEO, administering the confidential financial disclosure system for that region. HUD's personnel office also assisted the DAEO and deputy DAEOs to identify certain persons who should file disclosure statements—experts, consultants, and new and terminating employees.

Results in Brief

HUD did not effectively collect and review financial disclosure statements or oversee the disclosure system.

- The Ethics in Government Act of 1978 requires experts and consultants to file financial disclosure statements. From a sample of 62 experts and consultants (out of 99 appointments made since 1986), HUD did not receive disclosure statements from 52 of them.
- The Ethics Act requires public disclosure statements to be reviewed within 60 days of filing for completeness and discrepancies and to identify potential conflicts of interest. HUD had received 62 public disclosure statements from its regular employees by May 15, 1989. As of September 8, 1989, over 100 days later, none of the 62 statements had been reviewed.
- Confidential statements also are to be filed and reviewed at least annually. Unlike the system for public disclosure statements, HUD operated the confidential system in a decentralized manner. But the HUD headquarters office that was responsible for the financial disclosure program did not monitor regional compliance with confidential financial disclosure reporting requirements. Therefore, it did not know whether regions were ensuring compliance with applicable laws and regulations.
