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Testimony



138915

For Release
On Delivery
Expected at
10:00 a.m. EST
Tuesday
June 13, 1989

The President's Ethics Proposals

Statement of
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Before the Subcommittee on Human Resources
Committee on Post Office and Civil Service
House of Representatives



Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to appear before the Subcommittee to discuss the President's proposals for ethics reform as set forth in H.R. 2337 and S.765, the "Government-wide Ethics Act of 1989." The 97-page bill proposes major revisions to the Ethics in Government Act of 1978 (the Ethics Act) and the conflict of interest statutes (18 U.S.C. 202-209). These revisions cover a broad spectrum of complex issues and incorporate many of the recommendations of the President's Commission on Federal Ethics Law Reform (the Ethics Commission).

We have done extensive work on the administration and enforcement of current ethics laws over many years. My comments will be based largely on that work, plus the work done by the Ethics Commission.

We have long supported high standards of ethical conduct for all federal officials and employees. At their most important level, ethics standards reflect fundamental values of morality and honesty in the work place on which there is a broad consensus and which permit no compromise. Standards which incorporate these fundamental values must be clearly stated in the law, communicated in an understandable way to all employees, and subjected to vigorous and effective enforcement.

Our work has documented certain areas of vagueness in the law and administrative shortcomings that have created uncertainty and confusion. This makes it difficult to communicate and enforce those standards which reflect basic values of morality and honesty. It also tends to blur the distinction between these fundamental standards and other aspects of ethics administration which do not reflect basic values but may result in imposing substantial burdens and adversely affecting the recruitment and retention of federal employees.

The President's proposals provide a good framework for examining ethics issues and alternatives. We support many of the President's proposals for reform but believe that others require refinement and further discussion. We considered the President's proposals in the context of financial disclosure requirements, current employee restrictions, post-employment restrictions, and administration and enforcement issues.

FINANCIAL DISCLOSURE

We have several comments with respect to the President's proposals in the area of financial disclosure. First, the bill would impose on all three branches of the federal government essentially the same system for reporting and review of financial interests. While consistency in reporting seems desirable, we believe that the review aspect of the bill requires close

scrutiny in terms of the fundamental differences in the three branches. For example, Members of Congress and judges do not function in a hierarchy like that of the executive branch in which supervisors can make decisions about particular financial holdings.

Second, the bill will replace current public reporting of financial interests by category of value with reporting of "the actual value of such interest rounded to the nearest thousand dollars." It is not evident from our work or the Ethics Commission's report that reporting actual values would serve any purpose that outweighs the added burden imposed on filers. Indeed, the Commission recommended retention of reporting by category of value.

Another related issue is the extent to which public reporting, as opposed to confidential reporting, should continue to be required for career officials above the GS-16 level. The Office of Government Ethics (OGE) has recommended that public disclosure be limited to individuals holding elective or appointed positions because there is little public interest in reports filed by career civil servants.

Finally, we note that the President's bill deals only with public financial reporting but does not address consistency in confidential financial reporting among the three branches. We

believe that, like public disclosure, standards for confidential financial disclosure are appropriate for all three branches.

CURRENT EMPLOYEE RESTRICTIONS

The President's proposals would extend to the legislative and judicial branches many of the employment restrictions that are now applicable only to the executive branch. While we have not done much work in this area, more uniform restrictions throughout the government seem desirable in concept. At the same time, we believe it is essential that such restrictions be understandable. Unlike financial disclosure requirements, which are generally well understood, the conflict of interest restrictions have generated confusion. For example, both GAO and the Ethics Commission have pointed to the need to clarify the term "particular matter" used in 18 U.S.C. 208, which prohibits current officers and employees from participating in "particular matters" affecting a personal financial interest.

POST-EMPLOYMENT RESTRICTIONS

We have found post-employment restrictions to be the most vague and confused area of the current ethics system. This probably results, in part, from a lack of a consensus as to what such restrictions should be. Furthermore, because violations of these restrictions can result in criminal sanctions, it is essential

that current and prospective employees be able to understand up front what the restrictions are.

Proposal Lacks Sufficient Specificity

We are particularly concerned with the vagueness of the President's proposal to create a new 2-year post-employment bar against the use and disclosure of certain non-public information. Some of the classes of non-public information to be protected from disclosure under the proposal lack sufficient specificity. For example, we believe that the proposed definitions of trade secret/confidential statistical data and negotiation positions are far too broad and unclear to attach criminal penalties to disclosure.

We also question providing OGE with the authority to designate any information beyond the three proposed categories of non-public information, the disclosure of which would result in criminal penalties, fines, and/or debarment. We believe that any such additional categories should be considered by Congress and established by legislation.

We support the general intent of this proposal to protect the interests of the government by prohibiting employees leaving the government from harmful "side switching" and providing vital non-public information to an outside party dealing with government.

Our concerns are primarily with the need to specifically define the information to be protected and the process for doing so.

DOD Post-Employment Restrictions

The President's proposed bill would make several changes to recently-enacted laws which impose certain post-employment requirements and restrictions on former Department of Defense employees -- 10 U.S.C. 2397, 2397a, 2397b, and 2397c. For example, the bill proposes to repeal section 2397b which prohibits certain post-employment with defense contractors for certain DOD personnel.

The Ethics Commission had recommended revisiting the employment prohibition in section 2397b because it potentially covers so few people yet its precise application is difficult to determine. We question whether section 2397b should be repealed out right. A better approach might be to clarify its meaning.

The President's proposal would also significantly change section 2397c, the requirement that major defense contractors report annually to DOD on former DOD personnel to whom they paid compensation. The proposal would permit DOD to define the elements of the reports to be submitted under section 2397c. However, in the past, DOD asked for little more than job titles which were not a sufficient basis for detecting potential

conflicts of interest. We believe that the amendments by the Congress to require that DOD obtain more detailed information were appropriate and should be retained.

Finally, we note that these post-employment restrictions in 10 U.S.C. 2397-2397c apply only to the Defense Department. We believe the conflict of interest situations addressed in these laws could occur in other agencies and departments of the federal government as well. Thus, if these DOD post-employment restrictions are continued, Congress may wish to consider extending similar post-employment prohibitions to other agencies.

ADMINISTRATION AND ENFORCEMENT

With regard to enforcement, we fully support the President's proposal to establish civil and misdemeanor penalties for violations of the conflict of interest statutes. As we testified last year, this would give more latitude to those responsible for enforcing the ethics requirements. Our work shows that the Department of Justice has prosecuted very few conflict of interest cases under the existing felony statutes. Civil penalties could facilitate enforcement of the conflict of interest laws and possibly have a greater deterrent effect as a practical matter.

Further, we have reported on a variety of problems and concerns associated with OGE's administration of the "compartmentalization" process by which agencies are divided into designated subunits for application of the 1-year "no contact" restrictions. While the bill addresses the White House compartmentalization, it does not sufficiently deal with this issue for other agencies.

We also believe that ethics requirements must be communicated in a straightforward manner through regulations and interpretive rulings that can be understood by the persons they affect. Another useful aid would be a handbook for all officials which explains the ethics rules in lay terms.

One other aspect of the President's proposal which is a great concern to us deals with our access to records authority. Section 208 of the current Ethics Act grants GAO access to all financial disclosure reports filed under the Act--both public and confidential. The President's bill would amend section 208 to limit GAO to "publicly available" reports. It is essential that GAO have full access to both public and confidential financial disclosure reports in order to assist Congress with oversight and, indeed, to carry out the review requirements that the President's bill would impose on GAO. Therefore, we strongly recommend that GAO's access authority under section 208 of the current law be retained.

IMPACT ON RECRUITMENT AND RETENTION

Since 1983, we have issued three reports that address aspects of the impact of current ethics laws on recruitment and retention. In general, we did not find the impact of ethics laws to be a major concern. However, the information in these reports is quite limited and somewhat dated. A variety of changes in ethics laws have been proposed since these studies which might make their results different today. For example, many recent news articles have described employees leaving government early because of certain restrictive provisions in the new procurement policy law.

We believe that this is an issue that merits further study, particularly in relation to SES members and potential presidential appointees. Along these lines, we think it would be particularly appropriate to attempt to determine the extent to which concern about ethics laws may result from a general sense of confusion and a lack of adequate training and education on the part of federal employees.

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That concludes my prepared statement. I will be happy to answer any questions you may have.