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00650 ~ [A0751057]

An Improved Financial Disclosure System. FPCD-77-14; B-103987; B-180228. January 26, 1977. 15 pp.

Report to the Congress; by Elmer B. Staats, Comptroller General.

Issue Area: Personnel Management and Compensation: Employee Conflicts of Interest (301).

Contact: Federal Personnel and Compensation Div.

Budget Function: General Government: Central Personnel Management (805); Natural Resources, Environment, and Energy: Energy (305).

Organization Concerned: Energy Research and Development Administration.

Congressional Relevance: House Committee on Science and Technology; Senate Committee on Interior and Insular Affairs; Congress.

Authority: Energy Reorganization Act of 1974 (P.L. 93-438). 18 U.S.C. 208. Executive Order 11222. 10 C.F.R. 0.735.

The financial disclosure system of the Energy Research and Development Administration (ERDA) was examined to determine if the agency adequately reviewed financial disclosure statements and detected and acted on any apparent or potential conflicts of interest. Findings/Conclusions: ERDA's financial disclosure system is effective for detecting and resolving questionable financial interests held by employees, and agency reviewers are detecting potential conflicts of interest. It appears that ERDA's regulations provide an adequate mechanism for avoiding conflicts in contracting with private industry for supplies and services. In some cases, employees have not been advised in writing of potential conflicts and necessary remedial action. Reviewing officials do not always report to the ethics counselor the results of efforts to resolve potential conflicts, and not all agency reviewing officials have taken action to insure that employees are disqualified from matters in which they have financial interests. In August 1976, ERDA issued new regulations tightening standards of conduct and requiring more information to be submitted in its financial disclosure system. (RRS)

REPORT TO THE CONGRESS



*BY THE COMPTROLLER GENERAL
OF THE UNITED STATES*

An Improved Financial Disclosure System

Energy Research and Development Administration

Standards of ethical conduct for Government officials are prescribed by an Executive order. In line with this order, the Energy Research and Development Administration established a financial disclosure system which is effective for resolving the problem of questionable financial interests held by employees.



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-103937
B-180228

To the President of the Senate and the
Speaker of the House of Representatives

Executive Order 11222 prescribes standards of ethical conduct for Government officials and directs the Civil Service Commission to establish guidelines for agency financial disclosure systems. Several Members of Congress requested that we review the effectiveness of Federal agencies' financial disclosure systems. This report discusses the financial disclosure system of the Energy Research and Development Administration.

We made our review pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

We did not obtain formal comments from the Energy Research and Development Administration. However, we did discuss the report informally with officials in the Administration's Office of General Counsel, which is responsible for the financial disclosure system. Their comments were considered and included in the report where appropriate.

We are sending copies of this report to the Director, Office of Management and Budget; the Administrator, Energy Research and Development Administration; and other interested parties.

A handwritten signature in black ink, appearing to read "James A. Atack".

Comptroller General
of the United States

Contents

	<u>Page</u>
DIGEST	i
CHAPTER	
1 INTRODUCTION	1
Scope of review	1
2 FINANCIAL DISCLOSURE REQUIREMENTS	3
Agency regulations	3
Conflict-of-interest restrictions	4
3 REVIEW OF FINANCIAL DISCLOSURE STATEMENTS	7
ERDA's action on questionable financial interests	7
Late submission of some statements	8
Agency action to strengthen its financial disclosure system	9
4 CONCLUSIONS	10
APPENDIX	
I Reports issued on agencies' financial disclosure systems	11
II ERDA memorandum on additional review procedures	13
<u>ABBREVIATIONS</u>	
AEC	Atomic Energy Commission
CSC	Civil Service Commission
ERDA	Energy Research and Development Administration
GAO	General Accounting Office

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

AN IMPROVED FINANCIAL
DISCLOSURE SYSTEM
Energy Research and Development
Administration

D I G E S T

THE SYSTEM WORKS

Energy Research and Development Administration programs are aimed at finding new supplies of energy and conserving available supplies. Because these programs depend on close cooperation and contracts with industry and universities, agency employees must maintain the highest standards of conduct. To help insure high standards of conduct, certain employees must fill out financial disclosure statements which the agency reviews.

The agency's financial disclosure system is effective for detecting and resolving questionable financial interests held by employees. Disclosure statements for 1,661 agency employees showed that agency reviewers were detecting potential conflicts. (See pp. 7 and 8.)

SOME PROBLEMS HAVE BEEN NOTED

In many cases, however, employees were not advised in writing of potential conflicts and necessary remedial action. Also, reviewing officials did not always report to the ethics counselor or deputy counselor the results of efforts to resolve potential conflict problems.

Many agency employees have financial interests in organizations doing energy-related work. The agency requires these employees to disqualify themselves from working on matters in which they have financial interests. However, not all agency reviewing officials have taken action to insure that disqualifications occurred. In addition, procedures for monitoring disqualifications have not been established. (See p. 8.)

AGENCY PLANS FOR IMPROVEMENT

On its own initiative, and before GAO announced its audit plans, the Energy Research and Development Administration began a comprehensive review of its entire Conduct of Employees regulations, including the financial disclosure system. Based on this review, the agency issued new regulations in August 1976 which tightened the standards of conduct and required more information to be submitted in its financial disclosure system. Included in the new regulations is an explicit requirement that reviewing officials report in writing to the counselor or deputy counselor on remedial actions taken.

GAO discussed, with representatives of the agency's Office of General Counsel, its concern over employees not being advised in writing of potential conflicts and necessary remedial action and the agency not having procedures for monitoring disqualifications. As a result, the agency ethics counselor issued a memorandum to all reviewing officials on November 5, 1976, instructing them to (1) advise employees--and the counselor--in writing of any necessary remedial action, including disqualification from a particular assignment, and (2) establish a means for monitoring disqualifications. (See app. II.)

CONCLUSION

In view of the agency's recent actions to strengthen its financial disclosure system, GAO is not making any recommendations. However, the agency should continue to give priority attention to its financial disclosure system, making the provisions in the November memorandum a part of its new Conduct of Employees regulations.

This is one in a series of GAO reports issued on financial disclosure systems in the Government. (See pp. 11 and 12.)

CHAPTER 1

INTRODUCTION

The Energy Research and Development Administration (ERDA) was established by the Energy Reorganization Act of 1974 (Public Law 93-438) and became operational on January 19, 1975. It was created by combining elements from existing agencies, such as the Atomic Energy Commission, National Science Foundation, Environmental Protection Agency, and the Department of the Interior.

ERDA brought together the major energy research and development programs of the Federal Government aimed at finding ways of increasing the supply of energy while conserving the energy already available. ERDA's mission, as defined by the Congress, is to:

- Increase the productivity of the Nation and make it self-sufficient in energy.
- Develop all sources of energy required to fulfill present and future needs.
- Restore, protect, and enhance the environment.
- Insure public health and safety.

The fulfillment of ERDA's mission depends on the eventual transfer of proven energy technology to private industry for commercial application. To achieve this goal, ERDA's programs are operated through cooperation and contracts with industry and universities. Because of this close interaction between industry and Government, ERDA's employees must maintain the highest standards of conduct.

SCOPE OF REVIEW

Our review, conducted at ERDA headquarters, Germantown, Maryland, and Washington, D.C., was made pursuant to requests from several Members of Congress. The primary concerns expressed in these requests were whether

- Federal agencies have effective financial disclosure systems for revealing conflicts of interest,
- all required financial disclosure statements are promptly and properly filed, and
- all required financial disclosure statements are adequately reviewed.

From February through April 19' 6, we examined the 1975 financial disclosure statements of 1,469 ERDA employees and 192 consultants. Field office statements which were filed and reviewed in their respective offices were sent to ERDA headquarters for us to review.

The main purpose of our examination was to determine if the agency adequately reviewed the financial disclosure statements and detected and acted on any apparent or potential conflicts. Thus, we did not contact any employees to determine if (1) they still owned reported interests or (2) their position descriptions were current. Neither did we obtain data on previous private sector employment of agency employees.

The confidentiality of disclosure statements was maintained at all times. Instead of names, we used codes traceable to employees and their questionable interests. Lists of these codes were given to ERDA at the completion of our audit.

In addition, we reviewed selected job descriptions of employees not currently required to file financial disclosure statements to determine whether they should be filing because of their duties. We also reviewed the regulations in effect at the time of our audit--and new regulations subsequently approved--governing employee standards of conduct.

Our review did not focus on statutory criminal provisions concerning the activities of Federal employees affecting their personal financial interests (18 U.S.C. 208 (1974)). We noted, however, that the requirements of the statute are no more stringent than the requirements in the agency's regulations.

The Administrator of ERDA during our audit was Robert C. Seamans, Jr. His tenure was from January 1975 to the present.

We did not review the Administrator's financial disclosure statement. Executive Order 11222 requires his statement to be filed directly with the Civil Service Commission (CSC), and as part of ongoing work we are reviewing CSC implementation of the Executive order and the financial disclosure system for high-ranking Federal officials. We will be reporting separately to the Congress on the results of this work.

A list of other reports issued on agencies' financial disclosure systems is contained in appendix I.

CHAPTER 2

FINANCIAL DISCLOSURE REQUIREMENTS

The President, on May 3, 1965, issued Executive Order 11222 prescribing standards of ethical conduct for Government officials and employees and directing the Civil Service Commission to establish implementing regulations. In November 1965, CSC issued instructions requiring each agency to prepare employee conduct standards and to establish a system for reviewing employees' financial disclosure statements.

The CSC regulations require each agency to obtain statements of outside employment and financial interests from:

- Employees paid at a level of the Executive Schedule in subchapter II of chapter 53 of title 5, United States Code.
- Employees, classified at GS-13 or above, who are in decisionmaking positions or have duties which could involve conflict-of-interest situations.
- Employees classified below GS-13 who occupy a position otherwise meeting the above criteria. (An agency must obtain written CSC approval to require the employee to file.)

Special Government employees (experts and consultants) are also required to file financial disclosure statements.

AGENCY REGULATIONS

Under the Executive order, each agency is responsible for issuing regulations on standards of conduct for its employees, providing interpretations and advice to its employees, and enforcing its regulations. At the time of our audit, ERDA was operating under the Atomic Energy Commission's (AEC's) regulations which were published in the Federal Register on March 17, 1966, and codified as 10 C.F.R. 0.735.

ERDA, on its own initiative and before GAO announced its audit plans, undertook a comprehensive review of its entire Conduct of Employees regulations, including the financial disclosure system. As a result of ERDA's review, new regulations were issued which tightened the standards of conduct and required the submission of more information in the financial disclosure system than had previously been required. The new regulations were published in the Federal Register on August 17, 1976, and codified as 10 C.F.R. 735.

The AEC regulations required statements to be filed no later than 30 days after entrance on duty and updated annually as of June 30. ERDA's new regulations require that employees' statements be filed within 10 days after entrance on duty and updated annually as of September 30. Also, statements for employees assigned as heads of divisions, offices, or field organizations and statements for consultants and persons employed under professional term appointments must be submitted before appointment or assumption of duties.

ERDA's General Counsel is its ethics counselor and serves as its designee to CSC on conflict-of-interest matters. The counselor is authorized to designate deputy counselors for headquarters and field offices. He is responsible for assuring that counseling and interpretations on questions of conflict-of-interest matters are available to deputy counselors.

Employees financial statements receive a dual review. Initially the statements are submitted to and reviewed by the appropriate division, office, or field organization head--the official presumably most familiar with the employee's duties and the organizations with which the employee may deal. The reviewer must record, on the employee's financial statement, his opinion concerning possible conflicts and forward the statement to the counselor or deputy counselor for legal review.

If a conflict-of-interest question exists, the ERDA counselor or deputy counselor must notify the reviewer, who will then, with the employee, attempt to resolve the problem. CSC and ERDA regulations provide for remedial action which may include

- changes in assigned duties,
- divestment by the employee of his conflicting interests,
- disciplinary action, or
- disqualification from a particular assignment.

CONFLICT-OF-INTEREST RESTRICTIONS

ERDA's regulations on standards of conduct are issued to each employee. The regulations include prohibiting employees from

- having a direct or indirect financial interest that conflicts substantially, or appears to conflict

substantially, with his Government duties and responsibilities;

- engaging in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through his Government employment; or
- participating personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, or otherwise, in a contract, claim, application, controversy, or other matter in which, to his knowledge, he; his spouse; minor child; partner; organization in which he is serving as officer, director, trustee, partner, or employee; or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment has a financial interest.

However, agency regulations also provide for granting ad hoc exemptions, exemptions of remote or inconsequential financial interests, and special exemptions for special Government employees. These exemptions are allowed under the conflict-of-interest statute (18 U.S.C. 208).

Under the ad hoc exemption provisions, an ERDA employee can request an exemption from the prohibitions by informing the head of his division, office, or field organization of the nature and circumstances of the particular matter and of the financial interests involved. He may then approve the employee's participation after determining that

- the financial interest is not so substantial as to be deemed likely to affect the integrity of the employee's services and
- no provision of law and no regulation would appear to be violated by the employee's participation.

Other action which may be taken on a case-by-case basis includes advising an employee in writing that he is relieved from participation in a particular matter in which he has a financial interest. This action is generally referred to as "disqualification."

Also, in this connection, a general exemption adopted in 1964 by AEC permitted an employee or consultant to participate in a matter in which he had a financial interest in an enterprise not exceeding \$7,500--market value--and not exceeding 1 percent of the dollar value of the particular class of holding. Under this general exemption, employees were not required to report information on remote financial interests.

ERDA's revised regulations lowered the exemption level to \$5,000 but kept the 1-percent dollar value and required employees to report all financial interests even though they are exempted. Other changes in the new regulations clarify policy and the procedures for administering ERDA's ethical conduct program.

CHAPTER 3

REVIEW OF FINANCIAL DISCLOSURE STATEMENTS

Some 1,469 Energy Research and Development Administration employees, including headquarters and field staff, and 192 consultants were required to file financial disclosure statements as of June 30, 1975. These statements listed creditors, property interests, and business entities in which the employees or consultants had a financial interest.

During a review of the statements, we noted that 204 employees (includes headquarters and field employees and consultants) listed employment and/or financial interests in organizations with energy-related business. Corporations included major oil, gas, and electric companies; public utilities; solar energy; and nuclear research-related industries. Some of these corporations had contractual dealings with ERDA, and several employees owned securities in corporations whose business related to the mission of the division in which the employee was working.

ERDA'S ACTION ON QUESTIONABLE FINANCIAL INTERESTS

Of the 204 employees who listed employment and/or financial interests in energy-related organizations, ERDA decided that some action was necessary for 195 employees. For the other nine employees, ERDA advised us that the employees' responsibilities did not, and were not likely to, involve participation in matters in which they had employment or financial interests.

Actions taken on the 195 employees included granting ad hoc exemptions to 21 employees. In these cases, ERDA determined on a case-by-case basis that the financial interest of the employee was not so substantial as to be deemed likely to affect the integrity of the employee's services. ERDA also determined that no provision of law and no regulation would appear to be violated by the employee's participation in matters in which he had the financial interests. ERDA required two other employees to divest themselves of certain financial interests.

For 172 other employees, an ERDA deputy counselor routinely sent memorandums to the respective reviewing officials indicating employees' names and the organizations they listed with which ERDA has or is likely to do business and noted that care should be taken to insure that the employees do not participate in a matter in which they have employment or financial interests.

The files showed that only 13 of those 172 employees were directed not to participate in matters involving organizations in which they have a financial interest. Ten were informed in writing and three were informed verbally and a record was made on their financial disclosure statements. For 158 employees, although the counselor or deputy counselor had detected potential conflicts and brought them to the attention of reviewing officials, no record indicated that the employees had been advised of the results of the review.

Also, nothing in the files indicated that the reviewers reported to the counselor or deputy counselor (as required by agency regulations) the results of efforts to resolve potential conflicts.

At the time of our review, 49 heads of divisions, offices, or field organizations in ERDA were designated as reviewing officials. Of 17 reviewing officials interviewed, 10 said they did not closely monitor employees' holdings or take action to insure disqualifications other than cautioning the employees at the time statements were filed and reviewed. Also, procedures for monitoring disqualifications had not been established.

LATE SUBMISSION OF SOME STATEMENTS

We noted that 48 individuals in the Fossil Energy Division failed to submit statements until that division's reviewing official was notified of the GAO audit in February 1976. The division is made up of personnel who were transferred from the Department of the Interior. The reviewing official responsible for collecting the statements indicated that the division and the rest of ERDA had little communication because of confusion resulting from the transfer.

ERDA requires the heads of divisions, offices, and field organizations to identify those employees required to file statements, prepare a list of such employees, provide the employees with blank statements, and collect completed statements.

The Fossil Energy Division had followed the Department of the Interior's procedures in which the notifications to file come from the main personnel office. The ERDA deputy counselor for legal review said he was unsuccessful in getting the division to follow ERDA's procedures because of the disorganization following the transfer of personnel.

We believe this situation is unlikely to occur in the future as ERDA's new regulations are clear concerning procedures for identifying those employees required to file and for collecting completed statements.

AGENCY ACTION TO STRENGTHEN ITS
FINANCIAL DISCLOSURE SYSTEM

We discussed, with representatives of ERDA's Office of General Counsel, our concern over not advising all employees in writing of potential conflicts and necessary remedial action and not having procedures for monitoring disqualifications. As a result, ERDA's ethics counselor, in November 1976, issued instructions to all reviewing officials to advise employees in writing--and to send a copy to the counselor--of any necessary remedial action, including disqualification from particular assignments, and to establish a means for monitoring disqualifications. (See app. II.)

Also, the new ERDA regulations now make explicit a requirement that the reviewing official report in writing to the counselor or deputy counselor regarding the remedial action taken. This requirement should provide the counselor with insight into the reviewing official's application of the legal advice required.

CHAPTER 4

CONCLUSIONS

Unlike regulatory agencies whose rulings generally have broad, industrywide impact, the actions of agencies, such as the Energy Research and Development Administration, generally are more limited in effect. Most of ERDA's actions involving private industry take the form of contracts for supplies or services, and these generally affect only the parties involved. We believe ERDA's regulations provide an adequate mechanism for avoiding conflicts in these situations.

Since many of ERDA's employees have financial interests in organizations with which ERDA has or is likely to do business, reviewing officials must notify and counsel these employees regarding the results of the review of their financial interest statements. Reviewing officials must also take appropriate action throughout the year to insure that employees do not participate in matters in which they have a financial interest and must not limit their actions to when the statements are filed and reviewed.

ERDA reviewing officials had not been effectively following through in cases where the deputy counselor identified interests likely to be affected by an employee's duties. Results of reviews were seldom communicated in writing to employees. Also, reviewing officials seldom reported in writing to the counselor or deputy counselor the results of efforts to resolve employee conflicts or potential conflict problems. And, not all reviewing officials monitored employees' holdings or took action to make sure disqualifications occurred other than cautioning the employees at the time disclosure statements were filed and reviewed.

ERDA's revised regulations and subsequently added review steps (see p. 13) strengthen the financial disclosure system, particularly in the areas noted above. We believe this system is effective for detecting and resolving questionable financial interests held by employees.

In view of the positive actions taken, we are not making any recommendations. However, ERDA should continue to give priority attention to its financial disclosure system and include in its new Conduct of Employees regulations the provisions of the November 5, 1976, memorandum. (See app. II.)

REPORTS ISSUED ON AGENCIES'
FINANCIAL DISCLOSURE SYSTEMS

<u>Agency</u>	<u>Report title, number, and issue date</u>
Federal Power Commission	Need for Improving the Regulation of the Natural Gas Industry and Management of Internal Operations, B-180228, 9/13/74.
Department of the Interior	Effectiveness of the Financial Disclosure System for Employees of the U.S. Geological Survey, FPCD-75-131, 3/3/75.
Civil Aeronautics Board	Effectiveness of the Financial Disclosure System for Civil Aeronautics Board Employees Needs Improvement, FPCD-76-6, 9/16/75.
Federal Maritime Commission	Improvements Needed in the Federal Maritime Commission's Financial Disclosure System for Employees, FPCD-76-16, 10/22/75.
U.S. Railway Association	Improvements Needed in Procurement and Financial Disclosure Activities of the U.S. Railway Association, RED-76-41, 11/5/75.
Department of the Interior	Department of the Interior Improves Its Financial Disclosure System for Employees, FPCD-75-167, 12/2/75.
Department of Health, Education, and Welfare	Financial Disclosure System for Employees of the Food and Drug Administration Needs Tightening, FPCD-76-21, 1/19/76.
Department of the Interior	Letter report to Congressman John Moss on U.S. Geological Survey employees' divestiture, FPCD-76-37, 2/2/76.

APPENDIX I

APPENDIX I

<u>Agency</u>	<u>Report title, number, and issue date</u>
Inter-American Foundation	Inter-American Foundation's Financial Disclosure System for Employees and its Procurement Practices, ID-76-69, 6/30/76.
Department of Transportation	Problems with the Financial Disclosure System, Federal Aviation Administration, FPCD-76-50, 8/4/76.
Department of Commerce	Problems Found in the Financial Disclosure System for Department of Commerce Employees, FPCD-76-55, 8/10/76.
Small Business Administration	Management Control Functions of the Small Business Administration--Improvements Are Needed, GGD-76-74, 8/23/76.
Export-Import Bank	Export-Import Bank's Financial Disclosure System for Employees and its Procurement Practices, ID-76-81, 10/4/76.
Federal Communications Commission	Actions Needed to Improve the Federal Communications Commission's Financial Disclosure System, FPCD-76-51, 12/21/76.
Tennessee Valley Authority	Tennessee Valley Authority: Information on Certain Contracting and Personnel Management Activities, CED-77-4, 12/29/76 (Restricted).

COPY

UNITED STATES
ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION
WASHINGTON, D.C. 20545

Nov 5 1976

Heads of Divisions and Offices, HQ

REVIEW PROCEDURES - EMPLOYEES' CONFIDENTIAL STATEMENT OF
EMPLOYMENT AND FINANCIAL INTERESTS - ERDAM APPENDIX 4124

The recent revision to ERDA's Conduct Regulations will require revised procedures for processing employees' Confidential Employment and Financial Interest Statements.

As you know, the reporting system utilizes a dual review procedure -- the first by the head of the division or office head (reviewing official) and the second by the legal office (General Counsel or his designee). This dual review of statements takes advantage of the knowledge and expertise of both management and the legal office. Through this procedure, the familiarity of management with the employee's duties and responsibilities as they relate to the interests of those having or seeking business with the agency is initially utilized. This knowledge is coupled with the knowledge of the legal office to identify conflicts or potential conflicts problems. Following this second (legal) review, advice as to actual or potential conflicts situations is given in writing to the reviewing official by the legal office. In the past, communication of that advice to the employee was left to the judgment of the reviewing official. The result was that some employees may not have received notice of potential conflicts problems and therefore may not have fully benefited from the program. The objective of the program is essentially to provide advice and counseling to employees to assist them in avoiding conflict of interest situations.

To strengthen our financial interest statement program, each reviewing official is requested to do the following in connection with the review of financial interest statements:

1. Review each financial interest statement in the light of the particular duties and responsibilities of the individual employee, as to the existence or likelihood of conflicts. If there are any questions, note them on the form under the section for the reviewer's action. Sign and send the form to the legal office, (John Cho, Assistant General Counsel) in accordance with the instructions on the form;

Multiple Addressees

2. Following review by the legal office, the reviewing official will receive written advice. Assess the advice received. If there are any questions concerning the advice, discuss them with the conflicts counselor. Advise the employee in writing on necessary remedial action (e.g., disqualification from particular assignments, divestment of interest) with a copy to the conflicts counselor:
3. Require the employee to report when remedial action for which he is responsible, such as divestment of interests, is completed. Unless it appears at the action taken is inadequate, (in which case the reviewing official should pursue the matter with the employee), the outcome should be reported by the reviewing official in writing to the conflicts counselor.
4. Establish a means for monitoring the observance of any disqualification from particular assignments without compromising the confidentiality of the information. For example, the employee may be instructed to avoid participation in certain, specific areas related to the employee's financial interest; and the employee's immediate supervisor be informed of the disqualification without necessarily revealing the details of the financial interest giving rise to the disqualification.

Note: Underscored language represents additional steps.

All correspondence indicated above should, of course, be by sealed envelopes marked "Confidential -- Personal Financial Information -- Open By Addressee Only."

Clarification appears necessary as to who should review the confidential statements of employees. The regulation designates the recipients of statements (in general, Heads of Divisions and Offices, Headquarters and of Field Offices) and identifies them as reviewing officials.

It is realized that the review function can be time-consuming, particularly when large numbers of employees are reporting. On the other hand, an efficient conflicts program is critical to the continued well-being of the agency. Personal attention by the designated officials will assure review of employees' statements at a high level, by someone with overall knowledge of the activities of the Division or Office, while

minimizing the number of persons having access to the personally sensitive information as to employees' interests. For these reasons, it is strongly urged that the review function be delegated only for the most compelling reasons, and then only to the deputy or other second-ranking official in the organization. To the extent forms have already been reviewed by other delegated senior staff, there will be no need to repeat the process. However, future reviews should be on the above basis.

**James A. Wilderotter
General Counsel**