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Briefing Report to the Chairman,
Committee on Post Office and Civil
Service, House of Representatives

July 1988

ETHICS

The Department of Justice's Ethics Program



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General Government Division

B-207916

July 19, 1988

The Honorable William D. Ford
Chairman, Committee on Post
Office and Civil Service
House of Representatives

Dear Mr. Chairman:

This report responds to your December 2, 1987, request that we review the Department of Justice's ethics program. The report contains information we provided the Subcommittee on Human Resources in a briefing on June 23, 1988.

Your Subcommittee on Human Resources asked us to determine whether the Justice ethics program included the basic elements and requirements prescribed by the Ethics in Government Act of 1978 and regulations issued by the Office of Personnel Management (OPM), of which the Office of Government Ethics (OGE) is a part. We focused our review on the design of the Justice program. We did not determine whether Justice had properly implemented the program or whether it was functioning in compliance with the law and regulations.

We gathered information by interviewing Justice officials responsible for administering the ethics program and analyzing various related documents that they and OGE officials provided. We limited the scope of our information gathering to eight Justice components selected by the Subcommittee.¹ (See app. I for details on our objective, scope, and methodology, and app. II for a chart showing Justice's major organizational components.)

¹The eight components are the Offices of Attorney General, Deputy Attorney General, and Associate Attorney General; the Executive Office for United States Attorneys; the Office of Professional Responsibility; the Justice Management Division; the Antitrust Division; the Land and Natural Resources Division; the Tax Division; and the Immigration and Naturalization Service.

RESULTS IN BRIEF

The Justice ethics program contains many of the basic elements required by the law and regulations. However, certain required elements are missing. Justice has not periodically evaluated the ethics program and not all of the Justice components have provided formal ethics training.

Justice allows each departmental component to exercise considerable discretion in administering the program. As a result, procedures established to implement the program varied among the eight Justice organizational components we reviewed. For example, some components' procedures for reviewing public financial disclosure reports were more comprehensive than others.

Unlike other executive branch agencies, Justice does not require any of its employees to file confidential financial disclosure reports. This deviation from the practice elsewhere in the government is based on Justice's view that there has been no legal authority to require confidential reports since January 1979, when the Ethics in Government Act of 1978 took effect. Justice said it did not have the authority to require confidential reports but would do so if and when OGE issued final regulations defining criteria for such reports. OGE published proposed regulations in December 1986, but as of June 1988 had not issued them in final form.

BASIC ETHICS PROGRAM ELEMENTS AND REQUIREMENTS

OPM regulations (5 C.F.R. 738) prescribe the basic elements and requirements of executive branch ethics programs and outline the duties and responsibilities of the "designated agency ethics official."² The regulations emphasize that the head of each agency is primarily responsible for administering the ethics program and is to exercise personal leadership in establishing, maintaining, and carrying out this responsibility. The regulations prescribe essential elements that each agency's ethics program must contain. These elements are summarized in appendix III.

Each agency head is required to select primary and alternate designated agency ethics officials. The officials selected must have demonstrated an ability to carry out certain tasks

²An officer or employee designated by the head of the agency to coordinate and manage the agency's ethics program.

essential to managing an agency ethics program. These include reviewing financial disclosure reports to identify and resolve actual or potential conflicts of interest; counseling agency personnel on ethics matters; and administering a system to periodically evaluate the ethics program. (The designated agency ethics official may, as necessary, select deputy ethics officials.)

THE STRUCTURE OF
JUSTICE'S ETHICS PROGRAM

The Attorney General selected the Assistant Attorney General for Administration as the Designated Agency Ethics Official for the Department of Justice. As such, the Assistant Attorney General is responsible for (1) managing Justice's public financial disclosure system, (2) providing training and counseling for other ethics officials, and (3) consulting with the OGE on a wide range of issues. OGE assists Justice and other agencies in developing and interpreting ethics policies, assuring compliance with ethics laws and regulations, and promoting an understanding throughout the executive branch of the laws and regulations.

The Assistant Attorney General for Administration heads the Justice Management Division and reports to the Deputy Attorney General, the second-highest ranking official in Justice. Along with ethics-related responsibilities, the Assistant Attorney General is responsible for Department-wide activities such as internal review and evaluation, payroll, procurement, and information systems.

The General Counsel for the Justice Management Division is the alternate Designated Agency Ethics Official. In July 1988, the General Counsel had two part-time attorney advisors under her supervision who were responsible for day-to-day direction of the Justice ethics program. The Division was at that time reviewing applications to hire another employee who would work full-time for the General Counsel monitoring the components' administration of the ethics program and developing a training program.

Justice's decentralized administration of its ethics program parallels the manner in which its other programs are administered.³ Justice has assigned 29 Deputy Designated

³A description of Justice's decentralized management structure and management support systems, including our recommended improvements, is contained in our report

Agency Ethics Officials located in various offices, boards, divisions, and bureaus throughout the Department the responsibility for administering the ethics program in their units. These officials are in high-ranking positions within the Justice components. Among other things, they are responsible for assuring that public financial disclosure reports are collected and reviewed and that training, counseling, and advice on ethics matters are provided to employees. The Deputy Designated Agency Ethics Officials for the six components in our review that are directly responsible for Justice's enforcement and litigation programs said they spend from less than 5 to 50 percent of their time on ethics-related work, as shown in appendix IV.

The Department of Justice has standards of conduct regulations (28 C.F.R. 45) that are to be followed by current and former employees. We determined that the regulations include the elements required by OPM's regulations on employee responsibility and conduct. The Justice Management Division is responsible for updating and distributing the standards of conduct regulations.

Allegations of ethical misconduct arising in any Justice component are to be referred to the Office of Professional Responsibility (OPR). The head of this Office, who reports directly to the Attorney General, is responsible for overseeing, monitoring, and directing the investigations of allegations. However, the Office generally limits its investigations to allegations of misconduct by Justice employees who are not employed in the five components that have their own internal inspection units.⁴ These bureaus generally investigate any allegations against their employees.

entitled Justice Department: Improved Management Processes Would Enhance Justice's Operations (GAO/GGD-86-12), March 14, 1986.

⁴Justice's five bureaus--the Bureau of Prisons, the Drug Enforcement Administration, the Federal Bureau of Investigation, the Immigration and Naturalization Service, and the U.S. Marshals Service--all have internal inspection units.

FINANCIAL DISCLOSURE: PUBLIC
AND CONFIDENTIAL REPORTING

Public Reporting

The Ethics Act and OPM's implementing regulations require that certain officers and employees file public financial disclosure reports.⁵

The Justice Management Division maintains and updates monthly a master list of employees of each office, board, and litigating division who are required to file public financial disclosure reports. Each March, the Division sends each component a list of the employees. According to a Justice official, each of the five bureaus maintains its own list of report filers because the bureaus are generally larger than other Justice components.

All Justice components are responsible for: (1) notifying their employees who are required to file public disclosure reports, (2) assuring that the reports are filed on time, (3) reviewing the reports, and (4) certifying that the reports were reviewed and any apparent or potential conflict of interest resolved. Each component is required to report annually to the designated agency ethics official on whether all required disclosure reports were received and reviewed. The report must also identify individuals who did not comply with filing requirements or where other problems existed.

Each Justice component we reviewed (except for OPR, which had only two filers) had procedures for notifying persons who must file public financial disclosure reports and for helping to ensure that required reports were filed on time. We were told that for the eight components, 365 employees out of about 25,000 employees in these components were required to file public financial disclosure reports as of May 15, 1988. The number required to file ranged from 2 of 9 employees in OPR to 225 of 6,048 employees in the Offices of the U.S. Attorneys. Appendix V shows the number of employees required

⁵Generally, executive branch public financial disclosure reports are required to be filed by the President and Vice President, presidential appointees, and any officer or employee whose position is classified at or above GS-16 or who holds a position for which the rate of basic pay is fixed at a rate equal to or greater than the minimum rate of basic pay for GS-16.

to file and the total number of employees in each of the eight components.

OPM regulations require agencies to effectively and consistently review all employee financial disclosure reports. While the Department-wide regulations prescribe uniform procedures for reviewing the reports, the more detailed procedures prescribed by the eight Justice components for this purpose varied.

The position of the official who initially reviewed public financial disclosure reports varied from one component to another. Final review and approval of the reports was generally the responsibility of the head of the component. However, some components' procedures provided for more extensive review than others. The procedures for reviewing the reports, as described to us, are summarized in appendix VI. The review procedures of the Antitrust Division and the Executive Office for U.S. Attorneys illustrate the differences.

The Antitrust Division received public financial disclosure reports from 26 employees. The Deputy Designated Ethics Official personally compared each filer's current report to the previous year's report to ensure that any change between the 2 years was explained. The Official then compared the filer's holdings with his or her open cases and with cases completed during the previous year to identify any apparent or potential conflicts of interest. The Executive Office for U.S. Attorneys required disclosure reports from 225 employees. A staff assistant reviewed the reports to see that they were completely filled out and in conformance with regulations. She compared the filer's current report to the previous year's report, but she did not compare the report with open or recently closed cases to identify any possible conflicts, since the Office's procedures did not require that such comparisons be made.

Resolving Conflicts

When agency officials responsible for reviewing financial disclosure reports identify an apparent or potential conflict, they may direct the employee to take one of the remedial steps listed in the Ethics Act and the OPM regulations. Remedial action can include divestiture of the conflicting interest, recusal from participation in matters posing a conflict, establishment of a blind trust, submission

of a request for waiver of an insubstantial interest, acceptance of reassignment, or change of duties.

Justice officials said the reviews of disclosure statements seldom identify conflicts of interest requiring remedial actions. In this connection, an OGE survey of the actions taken by all major agencies showed that on public financial disclosure reports required by May 15, 1986, Justice took remedial action on 1 of the 602 reports it processed. This action was a waiver. Waivers of the basic conflict of interest statute, 18 U.S.C. 208(a), are required to be approved by the appointing official.

The Ethics Act of 1978 and OPM's implementing regulations prescribe ethics agreement procedures. Ethics agreements are written statements in which presidential appointees subject to Senate confirmation agree to take actions to remove potential or actual conflicts of interest existing at the time of appointment. Justice has occasionally used ethics agreements. As required by OPM regulations, Justice reports to OGE on whether the action specified in the agreement was taken within 90 days after the agreement was made.

Confidential Reporting

Justice is the only executive agency that has not required any employees to file confidential financial disclosure reports. Confidential financial reports normally are required of employees who have significant duties and responsibilities and who are not already covered by the public reporting requirements. Confidential reports are designed to elicit information that is necessary to administer the conflict of interest laws, standards of conduct, and related agency-specific restrictions. Other agencies have found such reports to be a necessary part of their ethics programs.

Justice determined in 1980 that the Ethics in Government Act of 1978 had superseded the requirements for a system of confidential financial disclosure set forth in Executive Order 11222, issued in May 1965; and it held that no legal basis existed for requiring confidential reports. Legislation enacted on December 19, 1985, authorized the President to establish a confidential financial disclosure system. Executive Order 12565, issued on September 25, 1986, authorized OGE to develop a comprehensive system of confidential financial reporting for certain officers and employees of the executive branch.

In 1986, after reviewing Justice's ethics program, OGE advised Justice to develop a confidential reporting system and identify positions that it would cover. In response, Justice officials said they did not have the authority to implement such a system and would not do so until OGE issued final regulations.

Justice officials reaffirmed this position with us in July 1988. OPM published proposed regulations in December 1986 to establish a system of confidential financial reporting to be used throughout the executive branch. OGE officials told us in June 1988 that they were uncertain as to when final regulations would be issued. They attributed the delay to the difficulty of accommodating the financial disclosure needs of all agencies in one set of regulations.

TRAINING AND COUNSELING

OPM regulations require federal agencies to provide an ethics education program covering all ethics and standards of conduct matters, including post-employment restrictions. The purpose of training is to ensure that employees are aware of their responsibilities to avoid conflicts of interest and that designated agency ethics officials and officials responsible for reviewing financial disclosure reports effectively carry out their responsibilities. The regulations also require that ethics counseling be available to supplement the training by enabling agency employees to obtain specific advice and guidance on complying with relevant laws and regulations. Ethics counseling can include oral or written opinions in response to employee inquiries.

Justice Management Division officials said they provide ethics training for the 29 Deputy Designated Agency Ethics Officials at least once a year. They train reviewing officials on a less frequent basis. Justice does not require Department-wide ethics training for other employees, although Justice's Legal Education Institute and Advocacy Institute cover ethics in their training courses. Only two of the eight components--the Immigration and Naturalization Service and the Tax Division--have a formal program of regular ethics training for all employees.

Justice emphasizes education as a means of alerting employees to guard against conflicts of interest. All eight components disseminated ethics-related materials, such as standards of conduct regulations to employees. Other education and awareness efforts, however, varied among the components.

The Office of General Counsel in the Justice Management Division is responsible for providing ethics counseling when requested by deputy designated agency ethics officials, incoming presidential appointees, and Justice employees. Deputy designated agency ethics officials are also responsible for providing counseling to employees in their components when requested. An official in the Justice Management Division's Office of General Counsel and the Deputy Designated Ethics Officials in the eight components said they had been asked to issue few written opinions on questions involving possible conflict of interest situations.

Descriptions of the training and counseling services provided by the various components are included as appendix VI.

ETHICS ENFORCEMENT

The Designated Agency Ethics Official is required by OPM regulations to ensure that prompt and effective action is taken to remedy actual or potential standards of conduct violations and conflicts of interest. Justice's OPR is responsible for investigating allegations of such violations. The Deputy Attorney General issued a memorandum to component heads and U.S. Attorneys on February 18, 1987, saying that the Office of Professional Responsibility ". . . must be promptly notified whenever allegations of misconduct against any employee of the Department are received." If the allegation involves an employee in one of the five bureaus with internal investigation units, the allegation is referred to that unit for investigation.

If an investigation reveals criminal activity, it is to be referred by the investigating unit to the Criminal Division. Other matters that warrant examination but do not appear to involve a violation of law are to be referred to a "recommending official," such as the head of the office to which the employee is assigned and, in turn, a "deciding official" for possible administrative action. Justice has a schedule of disciplinary offenses and penalties that is to be used as a guide for determining appropriate action. Officials in OPR said they sometimes recommend the administrative action that should be taken in their referrals.

Agencies are required by OPM regulations to develop, maintain, and publish in the agency a list of circumstances or situations that have resulted or may result in noncompliance with ethics laws and regulations. This kind of information is included in reports prepared by OPR. These

reports, addressed to the Attorney General, are disseminated within the Department and are available to the public.

The most recent report showed that the Office received a total of 457 complaints of misconduct by Justice employees in calendar year 1986. Complaints of misconduct involving allegations of criminal behavior accounted for 184 (40 percent) of the 457 complaints; of these 184 cases, about 7 percent involved allegations of conflicts of interest. Of the 431 cases closed during the year, 57, or 13 percent, were substantiated. In addition, the five bureaus with internal inspection units opened a total of 1,305 cases involving allegations of serious misconduct in 1986. The units closed 1,176 cases in 1986, of which 681 (58 percent) were substantiated.

ETHICS PROGRAM MONITORING

OPM regulations require that designated agency ethics officials are to have demonstrated the ability to administer a system for periodically evaluating the ethics program. They are required to ensure that the agency's standards of conduct regulations, financial disclosure systems, and post-employment enforcement systems are evaluated periodically. They are also required to ensure that information developed by internal audit and review groups, such as Offices of Inspector General, is reviewed. In addition, OGE periodically reviews agency ethics programs.

The Justice Designated Agency Ethics Official did not have a formal plan or procedures for evaluating the Justice ethics program. For example, he did not have procedures for determining whether the various Justice components were properly reviewing and certifying public financial disclosure reports, nor did he have procedures for reviewing the quality of the components' counseling and training efforts.

Justice does not have a statutory Inspector General.⁶ The audit staff at the departmental level is in the Justice Management Division. The audit staff has not reviewed the ethics program.

⁶Our report entitled Justice Department: An Assessment of the Need for a Statutory Inspector General (GAO/AFMD-86-8) issued Feb. 24, 1986, recommends establishing a statutory Office of Inspector General at the Department of Justice.

OGE has reviewed and reported on the Justice ethics program. Its most recent agencywide review was done in 1986, and it did follow-up work in 1987. The 1986 report pointed out the need for training in matters relating to negotiation for employment and post-employment activities. In that report OGE said that Justice should develop a confidential reporting system. In addition, OGE stressed that the decentralized structure of the Justice public financial reporting system makes it important that the Designated Agency Ethics Official monitor the various components' administration of the system through improved status reports.

OGE recommended that Justice maintain status reports on all persons required to file public financial disclosure reports. OGE said these reports should include, at a minimum, the names of all filers within each Justice component; the date each financial disclosure report was received; the date the report was certified; and a description of any substantive problems, as well as how the problems were resolved. Justice agreed to obtain this type of information and said it would request, sometime in fiscal year 1988, the Justice internal audit staff to first determine the level of compliance with reporting requirements. As of July 1988 the audit had not been scheduled, and Justice had not implemented the OGE recommendation.

JUSTICE COORDINATION WITH OGE

Designated agency ethics officials are required by regulation to develop and maintain close liaison with OGE. An official in the Justice Management Division's Office of General Counsel said that Office consults almost daily with OGE on ethics matters. OGE officials confirmed that a close working relationship exists between OGE staff and that Office. OGE has participated in training Justice ethics officials as recently as March 1988. Other liaison activities between OGE and Justice have included the review by both organizations of public financial disclosure reports filed by presidential appointees and the sharing of information necessary to carry out each organization's responsibilities.

Designated agency ethics officials are required by OPM regulation to provide OGE with copies of written opinions on the conflict of interest statutes. Justice has not routinely done so, although it discusses opinions on significant matters with OGE before issuing them. OGE had requested all executive agencies to provide written opinions because it found that some agencies had issued opinions that differed from its own. Several Justice ethics officials said they had

issued written opinions but had not made them available outside the component. For example, the Deputy Designated Agency Ethics Official at the Immigration and Naturalization Service said he had not made his written opinions available to other ethics officials within Justice or to OGE.

CONCLUSIONS

Except as discussed below, the overall design of the Justice ethics program includes the principal elements prescribed in OPM regulations and summarized in appendix III.

Justice's program is administered on a decentralized basis, and the Designated Agency Ethics Official and support staff in the Justice Management Division exercise direction but limited operational control over the program. For this reason, it is particularly significant that Justice has not evaluated the adequacy or effectiveness of its standards of conduct regulations or its financial disclosure and post-employment enforcement systems. It is required by OPM regulations to periodically evaluate these elements of its ethics program.

Justice emphasizes education as a means of alerting employees to guard against conflicts of interest. OPM regulations, as well as OGE reviews at Justice, point to the need for specific education programs. Justice provides training at the departmental level for its ethics officials, but not all components have taken advantage of existing training programs in ethics and standards of conduct matters, including post-employment.

OPM regulations require agencies, including Justice, to provide OGE with written opinions on the criminal conflict of interest statutes. Some Justice components have not routinely provided OGE with copies of written opinions.

RECOMMENDATIONS

To ensure that the Justice ethics program includes the elements required by OPM regulations, we recommend that the Attorney General:

- Periodically evaluate the adequacy and effectiveness of Justice's standards of conduct regulations, financial disclosure system, and post-employment enforcement system.

-- Evaluate, in cooperation with OGE, the ethics education program to improve the training Justice employees receive in ethics and standards of conduct matters, including post-employment.

We also recommend that the Attorney General require Justice components to provide copies of written opinions on ethics matters to OGE in accordance with OPM regulations (5 C.F.R. 738.313).

We discussed this report with the Assistant Attorney General for Administration and the two members of his staff directly responsible for overseeing the Justice ethics program. They generally agreed with our conclusions and recommendations.

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

Sincerely yours,



Richard L. Fogel
Assistant Comptroller General

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ABBREVIATIONS

OPM	Office of Personnel Management
OGE	Office of Government Ethics
OPR	Office of Professional Responsibility
INS	Immigration and Naturalization Service

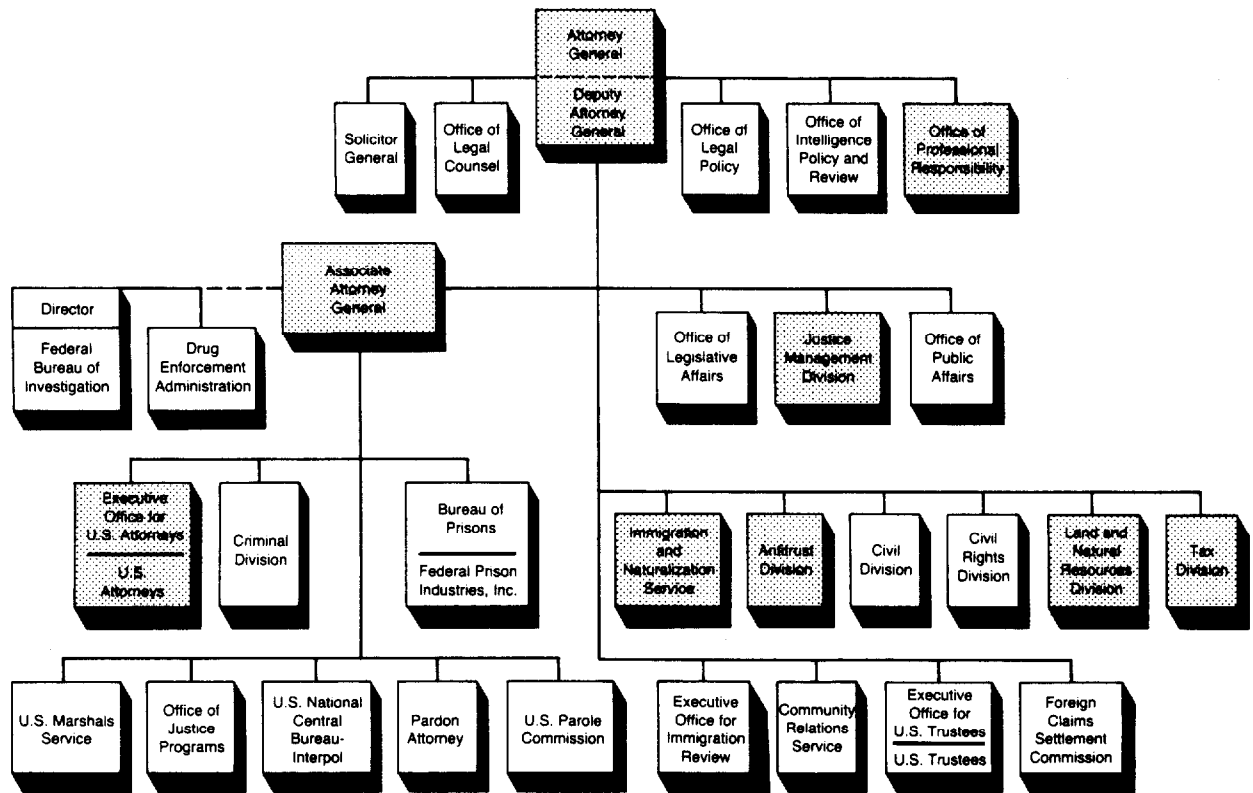
OBJECTIVE, SCOPE, AND METHODOLOGY

The objective of our review was to determine whether the Justice ethics program included the basic elements and requirements prescribed by the Ethics in Government Act of 1978 and regulations issued by the Office of Personnel Management. To accomplish our objective, we gathered information at eight Justice components selected by the Subcommittee. These components were the Offices of Attorney General, Deputy Attorney General, and Associate Attorney General; the Executive Office for United States Attorneys; the Office of Professional Responsibility; the Justice Management Division; the Antitrust Division; the Land and Natural Resources Division; the Tax Division; and the Immigration and Naturalization Service.

We interviewed OGE officials and Justice officials responsible for administering the ethics program. We analyzed documents provided by Justice and OGE related to the administration of Justice's program. These documents included reports, memorandums, and Justice Department orders. We also researched ethics statutes, governmentwide regulations, and Justice standards of conduct regulations. In addition, we reviewed ethics guidelines used by other executive agencies. Our work was done between January and June 1988 in accordance with generally accepted government auditing standards.

DEPARTMENT OF JUSTICE
ORGANIZATION CHART

Department of Justice



Note: Shaded boxes denote components we reviewed.
Source: U.S. Government Manual.

AGENCY ETHICS PROGRAM ELEMENTS REQUIRED
BY OPM REGULATIONS (5 C.F.R. 738)

1. Close liaison with the Office of Government Ethics on the agency's ethics program.
2. An effective system and procedure for collecting, filing, reviewing, and, when applicable, providing for public inspection of financial disclosure reports required by Title II of the Ethics in Government Act and other applicable statutes and regulations.
3. A system to maintain financial disclosure reports of presidential appointees nominated to agency positions submitted prior to Senate confirmation hearings pursuant to 734.604(c) of Part 734 certified personally by the designated agency ethics official or alternate.
4. A system to maintain all financial disclosure reports submitted by employees and filed in bureaus and regional offices, as well as those submitted and filed at the agency's headquarters; properly maintained and effectively and consistently reviewed for conformance with all applicable laws and statutes.
5. A list of those circumstances or situations that have resulted or may result in noncompliance with ethics laws and regulations developed, maintained, and published within the agency as required by Section 205(b)(7) of the act and made available for public inspection.
6. An education program for agency employees covering all ethics and standards of conduct matters, including post-employment matters, developed and conducted in cooperation with the education program of the Office of Government Ethics.
7. A counseling program for agency employees covering all ethics and standards of conduct matters, including post-employment matters.
8. Record keeping, when appropriate, on advice rendered.
9. Prompt and effective action, including administrative action, to remedy
 - violations or potential violations, or appearances thereof, of the agency's standards of conduct including post-employment regulations;

- failure to file a financial disclosure report or portions thereof;
 - potential or actual conflicts of interest, or appearances thereof, which were disclosed on a financial disclosure report; and
 - potential or actual violations of other laws governing the conduct or financial holdings of offices or employees of the agency, and that a follow-up is made to ensure that actions ordered, including divestiture and disqualification, have been taken.
10. Periodic evaluation of the agency's standards of conduct regulations, financial disclosure systems, and post-employment enforcement systems to determine their adequacy and effectiveness in relation to current agency responsibilities.
 11. Review of information developed by internal audit and review staff, the Office of the Inspector General, if any, or other audit groups to determine whether such information discloses a need for revising agency standards of conduct or for taking prompt corrective action to remedy actual or potential conflict of interest situations.
 12. Use of the services of the agency's Office of the Inspector General, if any, when appropriate, including the referral of matters to and acceptance of matters from that Office.
 13. A list of those persons to whom delegations of authority on ethics matters are made pursuant to Section 738.204(a), maintained and made available to the Office of Government Ethics, upon request.
 14. Provision in a complete and timely manner of information required by the act or requested by the Office of Government Ethics in the performance of its responsibilities.

Source: Section 738.203 of Office of Personnel Management Regulations, "Office of Government Ethics" (5 C.F.R. 738).

DEPARTMENT OF JUSTICE
DEPUTY DESIGNATED ETHICS OFFICIALS'
ESTIMATED TIME SPENT ON ETHICS PROGRAM

<u>Justice component</u>	<u>Position title</u>	<u>Estimated percentage of time spent on ethics program^a</u>
Offices of the Attorney General Deputy Attorney General, and Associate Attorney General	Assistant Attorney General of the Office of Legal Counsel	5
Executive Office for U.S. Attorneys and U.S. Attorneys' Offices	Legal Counsel	33
Antitrust Division	Chief of the Legal Advisory Unit	50
Land and Natural Resources Division	Chief of the Policy Legislation and Special Litigation Section	5
Tax Division	Deputy Assistant Attorney General	Less than 5
Immigration and Naturalization Service	Associate General Counsel	10 to 15

^aEstimates provided by the Deputy Designated Agency Ethics Officials that do not include time spent by staff assigned to assist these designated officials.

DEPARTMENT OF JUSTICE
PUBLIC FINANCIAL DISCLOSURE REPORTING
AS OF MAY 1988

<u>Justice component</u>	<u>Total officers and employees</u>	<u>Number of public financial disclosure report filers</u>
Office of Attorney General	26	8
Office of Deputy Attorney General	16	7
Office of Associate Attorney General	<u>12</u>	<u>3</u>
Total	<u>54</u>	<u>18</u>
Executive Office for U.S. Attorneys	168	6
U.S. Attorneys' Offices	<u>6,048</u>	<u>225</u>
Total	<u>6,216</u>	<u>231</u>
Office of Professional Responsibility	9	2
Justice Management Division	1,065	18
Antitrust Division	535	26
Land and Natural Resources Division	582	16
Tax Division	610	22
Immigration and Naturalization Service	<u>16,006</u>	<u>32</u>
Total	<u>25,077</u>	<u>365</u>

PROCEDURES FOR REVIEWING PUBLIC FINANCIAL DISCLOSURE REPORTS
AND FOR TRAINING AND COUNSELING EMPLOYEES¹

OFFICES OF THE ATTORNEY GENERAL,
DEPUTY ATTORNEY GENERAL, AND
ASSOCIATE ATTORNEY GENERAL

Financial Disclosure Review

A staff assistant to the Deputy Attorney General is responsible for collecting the reports filed by employees in these three offices. The staff assistant reviews the reports to see if they are filled out completely and signed by the filer.

Reviewing officials' procedures differ among the three offices. The Office of the Associate Attorney General does its own review of the reports, whereas the Deputy Attorney General arranged for the reports to be reviewed by the Office of General Counsel in the Justice Management Division. The Office advises the Deputy Attorney General in writing if any apparent problems exist. The Deputy Attorney General then reviews the reports for possible conflicts of interest.

If apparent conflicts of interest are noted in the reviews, the three offices require the financial disclosure reports to be annotated to show how the conflicts were resolved. If potential conflicts involving presidential appointees subject to Senate confirmation are noted, written ethics agreements are to be prepared showing how the conflicts will be resolved. These agreements are handled primarily by the Justice Management Division.

The Deputy Attorney General has Department-wide responsibility for approving requests for waivers under 18 U.S.C 208(b)(1). The Special Counsel in the Office of Legal Counsel reviews the requests before sending them to the Deputy Attorney General.

¹Descriptions are included in our review for the six components that are directly responsible for Justice's enforcement and litigation programs. The descriptions are based on interviews with officials in each component. We did not verify the information provided us. The Justice Management Division and the Office of Professional Responsibility, the other two components in our review, have Department-wide ethics responsibilities and are not included.

Training and Counseling

A senior attorney in the Office of Legal Counsel is responsible for training and counseling employees in the three offices. New employees in the three offices do not receive formal training on ethics matters, but the senior attorney on occasion arranged sessions to discuss ethics problems they might encounter. A package called "Leaving Government" was available for departing employees. Both the new employee sessions and the package for departing employees are provided as requested.

The senior attorney is responsible for providing ethics advice and for preparing written opinions for the Deputy Designated Agency Official's signature on controversial ethics matters.

ANTITRUST DIVISION

Financial Disclosure Review

The Antitrust Division's Resources Management Unit is responsible for ensuring that all required reports are filed on time. The Unit forwards completed reports to the Deputy Designated Agency Ethics Official, who reviews them to ensure they are completed correctly and analyzes them for possible conflicts of interest. The analysis includes comparisons of the reports with the filers' previous reports to ensure that any changes are explained and with the filers' case assignments to identify potential conflicts. For the latter analysis, the Official has access to a computerized listing of the Division's open and closed cases. The Official then forwards the reports to the Assistant Attorney General for review and signature.

Training and Counseling

The Antitrust Division has not provided formal ethics training to its employees. It gives new employees a summary of the various ethics statutes and regulations identifying sources of advice on ethics questions, along with the name and telephone number of the Division's Deputy Designated Agency Ethics Official.

The Division annually notifies employees of the Department's standards of conduct regulations and of their responsibilities to avoid conflicts of interest. A post-employment package is given to departing employees as part of the check-out procedure.

The Deputy Designated Ethics Official provides ethics counseling to current and former employees. While most of the counseling is done by telephone, the Official also meets with employees on difficult matters. The Official said she had provided written opinions on ethics questions to current and former employees, mostly involving post-employment matters. She said she writes about two opinions a year.

TAX DIVISION

Financial Disclosure Review

The administrative section of the Tax Division maintains a list of employees required to file public financial disclosure reports and is responsible for ensuring that timely and complete financial disclosure reports are received. The financial disclosure reports are first reviewed for substantive and technical correctness by the Division's Executive Officer. Upon correction of any deficiencies found by the Executive Officer, the reports are sent through the Principal Deputy Assistant Attorney General to the Assistant Attorney General for review and signature. When any substantive or technical reporting deficiencies are found in the reports, the Executive Officer and the Principal Deputy Assistant Attorney General are responsible for ensuring that amended reports are prepared, reviewed, and filed and that corrective actions taken are explained in writing. The Deputy Designated Agency Ethics Official is also responsible for reviewing the disclosure reports.

Training and Counseling

The Tax Division provides new attorneys with a copy of the American Bar Association's Model Rules of Professional Responsibility and the Justice Department's standards of conduct. Ethics issues are discussed at the new attorney orientation program and are the subject of instruction at sessions of the Attorney General's Advocacy Institute. In addition, attorneys are notified of new developments on ethics matters by formal or informal memorandums. Other staff members are provided ethics information by their Section Chiefs. The Tax Division's Deputy Designated Agency Ethics Official provides informal oral and formal written opinions on standards of conduct questions raised by current and former employees. With the exception of routine inquiries, the Division maintains a written record of the resolution of ethics questions.

The Tax Division recently established an Office of Training and was incorporating ethics training into the program at the time of our review. Terminating employees are provided with post-employment regulations and have an exit interview with one of the Division's Deputy Assistant Attorney Generals, during which questions on ethics matters can be discussed.

IMMIGRATION AND NATURALIZATION SERVICE

Financial Disclosure Review

The Associate Commissioner for Management is the reviewing official for financial disclosure reports. The Immigration and Naturalization Service's (INS) Personnel Division collects, files, and maintains the reports.

INS' Office of Executive Personnel maintains a list of employees required to file. Thirty-two employees were required to file reports in 1988. The Chief of the Employee Relations Section reviews the reports for completeness and accuracy. She then forwards the reports to the Deputy Agency Ethics Official for review.

The Deputy Agency Ethics Official reviews the reports to identify and resolve technical and substantive reporting problems. He checks income sources and holdings against companies with whom the employees may have contact in carrying out INS duties. He then forwards the reports to the Associate Commissioner for Management for signature. The signed reports are returned to the Employee Relations Section.

Training and Counseling

INS' Office of Professional Responsibility is responsible for providing ethics training for new and current employees. An INS employee assigned to the Federal Law Enforcement Training Center gives sessions on ethics as part of the Center's basic training classes. Also, the Office developed a videotape on ethics matters for INS regional offices to show to employees. The Office also offers ethics seminars when requested by the various INS district offices.

The Personnel Office annually circulates the Justice Department's standards of conduct regulations to employees. New employees receive the regulations upon arrival. In December 1987, INS began giving seminars on negotiating for employment and post-employment restrictions to senior

employees. The Office of Professional Responsibility provides other ethics information to INS employees, including a memo from the Deputy Attorney General on the notification of misconduct; a copy of the Office of Government Ethic's booklet, How to Keep Out of Trouble; and a quarterly report to increase ethics awareness.

The Deputy Designated Ethics Official is responsible for counseling incoming, current, and former employees on ethics matters. He maintains a file of opinions and notes any new questions arising on an ethics subject. He does not make written opinions available to ethics officials in other components.

LAND AND NATURAL RESOURCES DIVISION

Financial Disclosure Review

The Personnel and Training Group in the Executive Office of the Land and Natural Resources Division maintains a list of employees required to file public financial disclosure reports and is responsible for notifying the employees when the reports are due.

Employees return the completed reports to the Group, where they are compared with previously filed reports, position descriptions, and reports listing parties involved in current litigation from the Division's litigating sections. The reports are then forwarded to the Assistant Attorney General for further review and signature. After the reports are signed, they are returned to the Group and then forwarded to Justice's Management Division.

If a reporting deficiency or possible conflict of interest is noted by either the Personnel and Training Group or the Assistant Attorney General, they are expected to contact the employee involved and resolve the problem. We were told that no apparent or potential conflicts of interest were identified, and all questions raised in reviewing the reports involved minor reporting errors.

Training and Counseling

The Deputy Designated Agency Ethics Official for the Division often speaks at orientation sessions, informing employees of their ethics responsibilities and of the need to contact her office on ethics questions. She had also spoken on ethics issues at the Division's management meetings. The Policy, Legislation and Special Litigation Section also prepared two

memorandums on post-employment restrictions, which departing attorneys were urged to obtain.

The Deputy Designated Agency Ethics Official and a staff attorney provide ethics counseling, including oral and written opinions, interpreting the Department-wide standards of conduct. Written opinions are generally reviewed and signed by the Assistant Attorney General. If an employee requests nonroutine substantive advice, INS seeks the views of Justice's Management Division before counseling the employee. All ethics inquiries and their resolution are recorded.

EXECUTIVE OFFICE FOR U.S. ATTORNEYS

Financial Disclosure Review

A staff assistant to the Deputy Designated Ethics Official (the Legal Counsel) is responsible for processing and reviewing the public financial disclosure reports of employees in the Executive Office for U.S. Attorneys and the U.S. Attorneys' Offices. The Director of the Executive Office is the reviewing official for the reports.

The staff assistant reviews the reports to determine whether they are complete and are filled out correctly. The staff assistant said that in reviewing the reports, she uses the employees' previous report and a booklet called Help that she prepared. The Help booklet includes information on how to fill out the disclosure report, criteria on information that must be disclosed, and ethics laws and regulations.

When the staff assistant has any questions on a report, she contacts the employee. She modifies or adds to the report with the filer's permission and notes these changes on the report. She includes as "background notes" with the report any information that she believes might be helpful to the reviewing official. She said she would discuss any problems that could not be resolved with the Legal Counsel and, if necessary, the Director. However, she said she had not encountered any problems she and the filer could not resolve. She forwards the reports to the Director of the Executive Office for signature.

The Deputy Designated Agency Ethics Official estimated that about 15 to 20 recusals are required each year to resolve potential conflicts of interest. A copy of the recusal statement is sent to the division in Justice that is involved in the matter.

Training and Counseling

The Executive Office does not have a formal ethics training program for its employees or employees in U.S. Attorneys' Offices. However, the Legal Education Institute and the Attorney General Advocacy Institute include components in their training courses on attorneys' canon of ethics and other ethics matters. The Deputy Designated Ethics Official said he provides ethics information through the monthly U.S. Attorney's Bulletin.

The administrative officer at each U.S. Attorney's office provides the Department's standards of conduct regulations to each new employee. The Executive Office also sends a memorandum twice a year to employees reminding them of Justice's standards of conduct. Employees leaving the U.S. Attorney's offices are not given specific information on post-employment restrictions. Rather, all employees are expected to be familiar with the U.S. Attorney's Manual and the Justice standards of conduct, which identify post-employment restrictions.

The Executive Office gives employees other ethics guidance, including a memorandum requiring that allegations of misconduct be reported to the Department's Office of Professional Responsibility and a booklet published by the Merit Systems Protection Board entitled Political Activity and the Federal Employee.

The Deputy Designated Ethics Official counsels staff in the U.S. Attorneys' offices on ethics matters. Generally, employees are asked to submit questions on ethics matters in writing, and the Official responds in writing. The Official also documents advice given over the telephone when he authorizes an employee to take some action. The Official contacts Justice's Management Division before he issues written opinions and when he needs assistance or advice on ethics questions.

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