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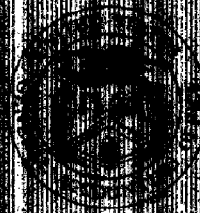
United States General Accounting Office

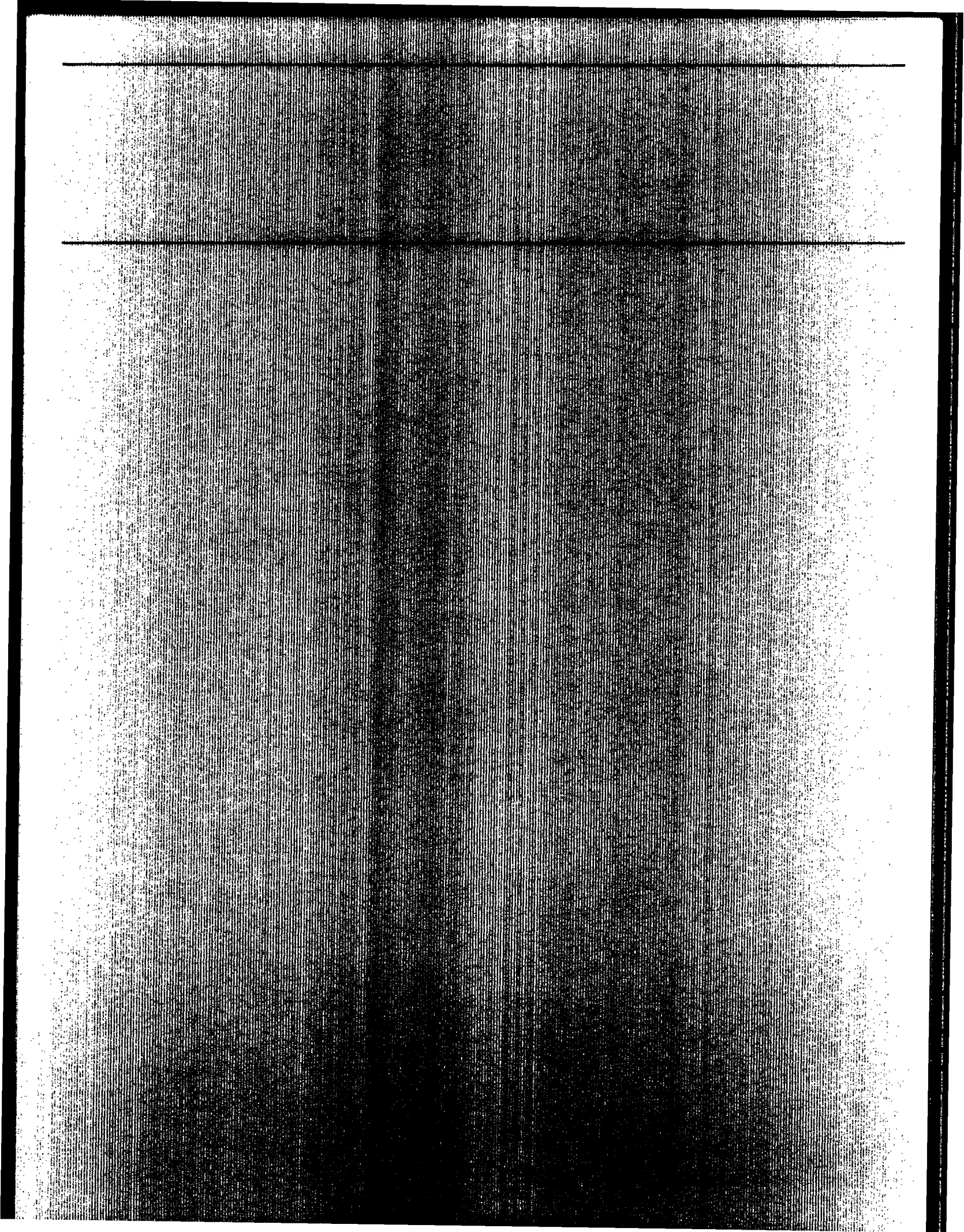
Report to the Select Committee on
Ethics, U.S. Senate

March 1984

**FINANCIAL
DISCLOSURE**

**Implementation of
Statute Governing
Senate and Legislative
Agency Personnel**







General Government Division

B-254224

March 16, 1994

The Honorable Richard H. Bryan
Chairman
The Honorable Mitch McConnell
Vice Chairman
Select Committee on Ethics
United States Senate

The Ethics in Government Act of 1978, as amended, requires us to conduct studies regularly to determine whether the provisions of title I governing financial disclosure of federal personnel are being carried out. This report, which focuses on the Senate, recognizes the progress made in implementing title I by your Committee, which is the supervising ethics office for the Senate.

We are also issuing a companion report¹ to the House Committee on Standards of Official Conduct. The report focuses on the House Committee's review of financial disclosure reports in the House. In 1993, we issued a report on the judicial branch addressing its procedures for implementing title I provisions of the act.²

Results in Brief

Since the passage of the Ethics Reform Act of 1989, which amended the Ethics in Government Act of 1978, the Senate Select Committee on Ethics has modified and improved its financial disclosure report review system. Actions taken included using state election offices to identify candidates who must file reports, reviewing reports within 60 days of receipt, notifying filers when additional information is needed, using a computerized system to track outstanding financial disclosure reports, and assessing late filing fees.

The Committee's reviewers are not in a position to identify and resolve all potential conflict-of-interest situations because the reviewers do not have sufficient knowledge of the work performed by employees who file financial disclosure reports. However, procedures have been implemented that could aid in identifying potential conflict-of-interest situations. In accordance with section 902 of the Ethics Reform Act of 1989, copies of the reports are to be sent to each filer's respective office, Senator, or

¹Financial Disclosure: Implementation of Statute Governing House and Legislative Agency Personnel (GAO/GGD-94-76, Mar. 16, 1994).

²Financial Disclosure: Implementation of Statute Governing Judicial Branch Personnel (GAO/GGD-93-85, Apr. 27, 1993).

legislative agency. Individuals in these groups are in a better position to know the types of work their employees perform.

Background

Financial disclosure reports are designed to provide a system for senior government officials to disclose their financial interests in a form open to public scrutiny. This procedure is done to identify conflicts between the officials' financial interests and the interests of the public they serve. The law requires that filers disclose income, financial transactions, assets, liabilities, and certain other financial information.

In 1991, 1,378 Senate Members, officers, employees, principal assistants, candidates, and certain employees of legislative agencies³ filed financial disclosure reports with the Office of Public Records in the Office of the Secretary of the Senate. Generally, financial disclosure reports were required from persons who made \$72,298 or more annually in 1990. Table 1 presents the number of filers by category.

Table 1: Number of Individuals Filing Financial Disclosure Reports for Each Category of Filers for 1991

Category	Number of filers
Members of the Senate	100
Officers and employees of the Senate	650
Terminating Members, officers, and employees of the Senate and legislative agencies	40
Candidates for the Senate	62
Legislative agencies' employees	526
Total	1,378

Source: GAO's analysis of the Office of Public Records' financial disclosure index.

Within the Senate, the Select Committee on Ethics is responsible for providing for the review of financial disclosure reports to ensure that the reports comply with applicable laws and regulations. The Committee's staff reviews the reports to ensure that (1) the reported information is in the proper format; (2) sufficient information is contained in the reports to allow the supervising Senator or head of the office, public, media, and others viewing the reports to determine the nature and extent of the filer's financial interests; and (3) the reports are in compliance with certain restrictions, such as those dealing with receiving honoraria, gifts, and

³The five legislative agencies that report to the Senate are the General Accounting Office, the Office of Technology Assessment, the Office of the Attending Physician, the Physician Payment Review Commission, and the Prospective Payment Assessment Commission.

outside employment and income that could represent conflicts of interest. (A list of all the laws and regulations having relevance to financial disclosure reports filed in the Senate is presented in app. I.)

Objectives, Scope, and Methodology

Section 108 of the Ethics in Government Act, as amended, requires the Comptroller General to do studies on a regular basis to determine whether the financial disclosure provisions contained in title I are being carried out effectively by the executive, legislative, and judicial branches. We focused our current review primarily on the Senate's system for implementing new filing and reviewing provisions established by the act.

To determine how the statutory provisions addressing the review of public disclosure reports in section 106 of the Ethics in Government Act were being carried out by the Senate Select Committee on Ethics, we determined what policies, regulations, and procedures had been established for implementing the provisions. To identify these policies, regulations, and procedures, we interviewed the counsel and other staff of the Committee responsible for report reviews. The Committee's staff is responsible for establishing the procedures, performing the reviews of financial disclosure reports, and recommending penalties. We also met with the staff of the Office of Public Records—the office that receives and makes the reports available to the public—and legal and personnel officials in four of the five legislative agencies that manage the filing of financial disclosure reports required to be submitted to the Secretary of the Senate. We also reviewed the Senate filing form, reporting instructions, and the Senate Rules.

To assess the internal controls for implementing the act's filing and review provisions, we reviewed a random sample of 20 of the 1,378 financial disclosure reports filed in 1991. We limited the sample size because of improvements made by the Committee in response to a 1989 GAO report on the legislative branch's financial disclosure systems.⁴ The sample is not projectable to the 1,378 reports filed in 1991.

Our review of the reports in our sample was aimed at (1) testing whether established procedures for reviewing the reports were being followed and (2) observing the Committee's actual practices in administering applicable statutory controls for reviewing reports. In reviewing the reports, we completed a data collection instrument to record data on implementation

⁴Financial Disclosure: Legislative Branch Systems Improved But Can Be Further Strengthened (GAO/GGD-89-103, Sept. 8, 1989).

of various sections of the act related to reviewing public reports. Specifically, we gathered data on the type of procedures that were used in reviewing reports, the extent to which review was done on actions that could have resulted in conflicts of interest, actions taken by the filers to correct errors or omissions in reporting, and the filers' compliance with applicable laws and regulations. We did not attempt to second guess the reviewers' judgments of the disclosure reports; nor did we assess the extent to which Senators and legislative agencies reviewed financial disclosure reports.

Our review was done from March 1992 through November 1993 in accordance with generally accepted government auditing standards.

The Senate Select Committee on Ethics Has Improved Its Financial Disclosure Review System for Implementing the Act

Since the passage of the Ethics Reform Act of 1989, the Senate Select Committee on Ethics has modified its financial disclosure review system to implement newly established provisions of the Ethics in Government Act. We found that the Committee complied with the following provisions of the act dealing with filing and reviewing financial disclosures:

- Disclosure reports were reviewed within 60 days of receipt, as required by section 106 (a)(2) of the act.
- Additional information needed to complete reports and the deadline by which the information must be submitted was identified, and filers were notified, as required by section 106 (b)(2)(A) of the act.
- Filing fee penalties of \$200 were assessed for reports filed over 30 days late, as required by section 104 (d) of the act.
- Reporting instructions were issued that incorporated all new filing requirements imposed by the Ethics Reform Act of 1989.

The Committee also implemented recommendations from our September 1989 report. The first recommendation dealt with improving the timeliness of report amendments by tracking the status of requested amendments until they were received and approved. The Committee has developed a computerized tracking system so that the date reports are due and the status of any amendments can be accessed for monitoring purposes. To deal with the problem of late filing and nonfiling among candidates, the report recommended publicizing the names of candidates who file late or who do not file a report. The Office of Public Records established a list, available to the public and media, that shows the filing status of candidates and others. In addition, our previous review found that the Committee experienced difficulty identifying certain individuals

who were required to file reports. The Committee took action to correct this problem by (1) requesting that the election offices of each state and the various legislative agencies notify the Committee of all candidates and employees who met the criteria requiring them to file financial disclosure reports and (2) establishing a procedure that requires the names of new employees in the Senate be sent to the Committee as soon as they are appointed.

Procedures Have Been Established to Aid in Identifying Potential Conflict-Of-Interest Situations

Report reviewers on the staff of the Select Committee on Ethics have the information available in the financial disclosure reports to evaluate some activities that relate to financial conflicts of interest. For example, the reviewers evaluate financial restrictions on reported (1) gift amounts, (2) donations to charities in lieu of honoraria, and (3) outside employment and income. These restrictions, such as whether the value of gifts received exceeds the \$250 annual limitation from one source, can be assessed from the information presented in the report.

The Committee's reviewers are not in the best position to identify and resolve all matters covered by applicable conflict-of-interest laws and regulations. Because the reviewers do not have sufficient knowledge of the work performed by filers of financial disclosure reports, they cannot always compare the work performed with the financial interests identified in the reports. In 1991, the Senate Ethics Committee sent copies of the reports back to the filers' respective Senators and legislative agencies, as required by Senate Resolution 236, which implements section 902 of the Ethics Reform Act of 1989. This process enables persons more familiar with the filer to identify and resolve such conflicts of interest.⁵

In 1993, the Committee delegated the responsibility for reviewing GAO employees' financial disclosure reports to the Comptroller General. An April 5, 1993, letter to the Comptroller General said that

"The Committee has concluded that it is appropriate that review and certification of the public disclosure forms for GAO officers and employees be performed by your agency.... Additionally, we request that you endeavor to resolve any conflicts of interest on the part of any GAO officer or employee and refer to this Committee those unresolved conflicts in accordance with sections 106(b)(3)."

⁵As noted previously, we did not assess the degree to which Senators or legislative agency officials reviewed financial disclosure reports.

According to the letter, the Committee delegated the authority to GAO because (1) GAO is in a "unique position in evaluating the information reported by individuals within GAO's employ for conflicts of interest" and (2) GAO's review had previously duplicated the Committee's review. The Committee retains the option of reviewing a sample of the reports reviewed by GAO. The Committee has not yet delegated responsibility to the other four agencies that report to the Committee (Office of Technology Assessment, Office of Attending Physician, Physician Payment Review Commission, and Prospective Payment Assessment Commission). According to the counsel, this is primarily because the four offices together have fewer than 100 filers; the Office of Technology Assessment has about 89 employees who file reports, and the other three offices have fewer than 10 filers.

Conclusions

The Committee has taken actions to implement our prior recommendations concerning the filing and review of financial disclosure reports and to implement the new provisions in the Ethics Reform Act of 1989. Also, procedures have been established that, if properly implemented, should aid in identifying potential conflict-of-interest situations.

Committee Comments and Our Evaluation

A Counsel for the Select Committee on Ethics provided oral comments on January 13, 1994. The Counsel stated that in general the Committee agrees with our report that its program meets the act's new requirements for filing and reviewing reports. The Committee also provided some technical changes, which we incorporated in the report.

We are also sending copies of this report to other interested parties and will make copies available to others upon request.

The major contributors to this report are listed in appendix II. If you have any questions about this report, please contact me on 202-512-5074.



Nancy Kingsbury
Director
Federal Human Resource
Management Issues

Written Criteria Applicable to the Review of Legislative Branch Personnel Financial Disclosure Reports

Title	Description
Applicable laws	
Title I of the Ethics in Government Act of 1978, as amended	Contains financial disclosure requirements of federal personnel.
Titles III and VI of the Ethics Reform Act of 1989	Contains provisions concerning gifts, outside employment and income, and honoraria.
18 U.S.C. 201	Prohibits receiving anything of value for performing official acts other than as provided by law.
18 U.S.C. 203	Prohibits officer or employee from receiving compensation for services rendered personally or by another person before any government department, court, or agency on a matter in which the United States is a party or has a direct and substantial interest.
18 U.S.C. 204	Prohibits any Member of Congress from practicing in the United States Claims Court or Court of Appeals.
18 U.S.C. 205	Prohibits officer or employee from acting as agent or attorney for anyone in a claim against the United States or before any department, agency, or court in a matter in which the United States is a party or has a direct or substantial interest.
18 U.S.C. 207	Prohibits Members, officers, and employees (including committee staff, leadership staff, and legislative offices staff) for a period of 1 year after leaving office, from knowingly making any communication to specified federal officials with the intent to influence.
18 U.S.C. 208	Prohibits a covered person from personal and substantial participation in a matter when the person has a financial interest in the matter. The prohibition applies regardless of the value of the financial interest. ^a In the legislative branch, section 208 is only applicable to GAO employees. ^b
Regulations	
Senate Rule 37 (1)	Prohibits a Member, officer, or employee from receiving compensation to the person's beneficial interest from any source, the receipt of which occurs by influence improperly exerted from the person's position in Congress.
Senate Rule 37 (4)	Prohibits a Member, officer, or employee from knowingly using an official position to introduce or aid the progress of legislation, a principal purpose of which is to further the person's pecuniary interest.
Senate Rule 37 (7)	Requires employees on the staff of a committee who are compensated at a rate in excess of \$25,000 per annum and employed more than 90 days in a calendar year to divest themselves of any substantial holdings which may be directly affected by the actions of the committee, unless the Select Committee on Ethics has granted permission to retain such holdings.
Senate Rule 37 (10)	Prohibits any employee required to file a financial disclosure report from participating personally and substantially as an employee of the Senate in contact with any agency of the executive or judicial branch with respect to nonlegislative matters affecting any nongovernmental person in which the employee has a significant financial interest.
Other written criteria	
Financial disclosure statement instructions for Senate	Describes the preparation, filing, and review of financial disclosure reports; public access to reports; and regulations governing reporting.

(Table notes on next page)

Appendix I
Written Criteria Applicable to the Review of
Legislative Branch Personnel Financial
Disclosure Reports

^aSection 208 also prohibits an employee's participation when the employee's spouse, minor child, partner, organization in which the employee is serving as an officer, director, trustee, general partner, or employee, or someone with whom the employee is negotiating or has an arrangement concerning prospective employment, has such an interest.

^bThe Department of Justice has determined that section 208 applies to GAO employees because they are employees of an independent agency of the United States and the Comptroller General is appointed by the President.

Source: The U. S. Senate Code of Official Conduct.

Major Contributors to This Report

General Government
Division, Washington,
D.C.

Timothy P. Bowling, Associate Director, Federal Human Resource
Management Issues
Norman A. Stubenhofer, Assistant Director, Federal Human Resource
Management Issues
Thomas C Davies, Jr., Evaluator-in-Charge
John J. Tavares, Advisor
Jeffrey W. Dawson, Evaluator

Office of the General
Counsel, Washington,
D.C.

V. Bruce Goddard, Senior Attorney

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1955

**United States
General Accounting Office
Washington, D.C. 20548-0001**

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