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Report to the Congress

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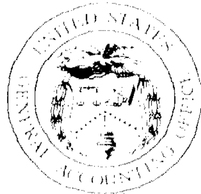
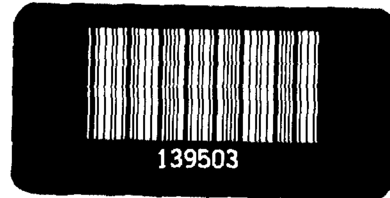
FINANCIAL DISCLOSURE

Legislative Branch Systems Improved But Can Be Further Strengthened





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Comptroller General
of the United States

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September 8, 1989

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

This report is submitted in accordance with Section 109, Title I, of the Ethics in Government Act of 1978 (Public Law 95-521), which requires GAO to regularly determine whether the financial disclosure requirements for the legislative branch are being met.

We are sending copies of this report to the Senate Select Committee on Ethics, the House Committee on Standards of Official Conduct, the Secretary of the Senate, and the Clerk of the House. We will also make copies of the report available to other interested parties upon request.

This work was done under the direction of Bernard L. Ungar, Director, Federal Human Resource Management Issues. Major contributors are listed in appendix II.

Charles A. Bowsher

Charles A. Bowsher
Comptroller General
of the United States

Executive Summary

Purpose

Concerned about public confidence in government, Congress passed the Ethics in Government Act of 1978 to promote financial accountability among high-level officials in all three branches of the federal government. Title I of the act requires public financial disclosure by Members of Congress, other legislative branch officials, and congressional candidates. (See p. 10.)

The act requires GAO to determine whether Title I has been implemented effectively and whether timely and accurate reports have been filed. GAO reviewed the financial disclosure systems established by the House and Senate and determined

- whether individuals required to file reports under Title I did so by the dates due and, if not, whether follow-up steps were taken to obtain overdue reports;
- whether the reports filed were reviewed to ensure that they were filled out properly and, if in error, whether timely corrections were made;
- whether the reports were made available to the public in accordance with the act; and
- the status of recommendations made in its 1981 report on Title I implementation.

GAO focused on the procedures used by the House and Senate Ethics Committees to determine the proper form and completeness of filers' public statements. GAO tested these procedures by reviewing selected filers' statements to determine if apparent omissions and inaccuracies had been detected. Neither GAO nor the Committee staffs audited Members' disclosure reports. Under the law, neither GAO nor the Committee staffs have access to documents, such as bank statements and tax records, that would be necessary to identify omissions or inaccuracies that would not be readily apparent, such as holdings or transactions that might not have been reported at all. Disclosure report filers have the responsibility under the statute to report accurately. (See pp. 13 to 15.)

Background

Individuals required to file reports under Title I are Members of Congress, legislative agency and congressional employees paid at or above the General Schedule (GS)-16 level who are employed for more than 60 days in a calendar year, certain other designated congressional employees, and candidates for Congress. The reports must disclose income, assets, liabilities, and other financial information that is prescribed in the act.

May 15 is the annual due date for reports required of Members, congressional employees, and legislative agency employees unless an extension is granted. Due dates vary for reports of candidates and new employees.

The House Committee on Standards of Official Conduct and Senate Select Committee on Ethics (the Ethics Committees) have separate financial disclosure systems. The Clerk of the House, Secretary of the Senate, and the various legislative branch agencies assist the Ethics Committees in identifying individuals required to file. The Ethics Committees render advisory opinions interpreting Title I, review the reports, and as needed, request corrections. The reports must be made available to the public within 15 days after they are filed.

Individuals who fail to file reports as required by Title I are subject to a civil penalty not to exceed $5,000, which is enforced by the Attorney General of the United States in a civil action.

GAO's last review of the financial disclosure systems in 1981 showed that Title I was not being effectively implemented. GAO reported over 20 recommendations or matters for congressional consideration to improve the systems. (See p. 12.)

Results in Brief

Since 1981, the House and Senate have made substantial progress in improving their financial disclosure systems. Various steps have been taken to detect and reduce reporting errors and to improve follow-up when reports are overdue. Clarified forms and instructions have been issued, and report review checklists have been developed. As a result, between 1981 and 1987, filing compliance improved overall.

Candidate filing, while better than in 1980, remains a problem. The Ethics Act defines candidates as persons, other than current Members, who sought to be elected to Congress. About one-half of the candidates for the House and Senate either filed late or not at all in 1986. Earlier identification of candidates by the House and Senate and better follow-up by the House of delinquent reports, including referrals to the Attorney General when appropriate, could enhance filing compliance among candidates.

Disclosure systems could be further enhanced by improving procedures for reviewing requested report corrections.

Principal Findings

Filing Compliance Has Improved

The House and Senate have procedures for notifying required filers to file reports by the dates due. Filing compliance improved since GAO's last report to the point that there was no nonfiling by Members, congressional employees, and legislative agency employees in 1987. Some employees filed late, however. (See p. 16.)

Twenty-five of 44 Senate employees hired in 1987 filed late, in part because they did not receive notice of the requirement to file at the time of their appointments. The House Ethics Committee did not require reports from those employees who were employed at or above the GS-16 rate for more than 60 days during the previous calendar year, but who were not being compensated at the GS-16 rate as of the May 15 filing date. As a result, some employees who held positions that could have allowed them to influence legislation did not have to file public disclosure reports. The House Committee's position is consistent with the act. However, the act does not preempt the Committee from requiring these employees to file reports. The Senate Ethics Committee requires Senate employees in such situations to file. (See pp. 18 and 19.)

Procedures for getting reports on time were less effective for candidates than for other filers. Overall, 37 percent of about 800 House and Senate candidates GAO reviewed filed late in 1986. Another 125 candidates (16 percent) did not file at all. Untimely identification by the House and Senate of candidates as required filers contributed to the late filings. The definition of a candidate differs between the Ethics in Government Act and the Federal Election Campaign Act, creating difficulties in identifying candidates. Closer coordination with state election offices to identify candidates and notify them of filing requirements could improve candidates' filing compliance. (See pp. 22 and 23.)

More aggressive follow-up could also improve candidate compliance. House procedures for pursuing each candidate who did not file a report ended with two letters and a phone call advising candidates to file. Currently, there are no House procedures for referring nonfiling candidates to the Justice Department, and consequently none have been referred. The House Committee pointed out that civil actions may be brought against nonfilers by the Attorney General without separate House action. (See pp. 24 and 25.)

Senate procedures included four written notices and a phone call. Unlike the House Ethics Committee, the Senate Ethics Committee did refer nonfilers to the Attorney General. For example, the Senate committee referred 10 candidates to the Attorney General for nonfiling in 1986. Justice located five nonfilers that the Committee could not locate, took civil action against one nonfiler, was considering civil action against two others, and decided further efforts to pursue the remaining two were not warranted. (See pp. 25 and 26.)

Procedures Enhanced to Detect Errors

Both House and Senate Ethics Committees have improved their report review procedures but can further improve procedures for handling report corrections.

Since GAO's last report, both the House and Senate Ethics Committees have implemented a checklist review of reports to detect errors and omissions, identified which types of errors posed the biggest problems, and revised report forms to improve disclosure. The House had arranged for accounting professionals to be temporarily assigned to review reports because of the large number of reports it must handle, as compared to the Senate. (See pp. 30 to 32.)

The House and Senate procedures for reviewing reports for proper form and completeness were effective in detecting apparent errors obvious from the forms. GAO reviewed a sample of reports filed by 28 Representatives and 19 Senators in 1987 that the Ethics Committee staff had previously reviewed and agreed in each instance with Senate and House staffs' findings. Among the apparent errors detected by House staff were 12 reports that did not disclose some holdings, 7 that did not clearly disclose the source of income, and 4 that reported income exceeding honoraria limitations. The Senate Committee staff found that 10 reports did not disclose income amounts and 10 did not disclose holdings. (See p. 31.)

House Ethics Committee Staff did not review corrections that had been requested for reports filed with the House. The Committee said that after it questions items in the reports, it is the filers' obligation to explain or revise the report. GAO reviewed 34 House Members' correction requests and found that 3 of the 34 reports involved had not been corrected or explained as requested. Two reports did not adequately disclose information on trips for which Members were reimbursed. The other report had errors, such as failure to disclose the source of rental income and the disposition of holdings. (See p. 35.)

In contrast, the Senate Ethics Committee reviewed corrections. Corrections had been made for 35 Senate reports that the Committee found in error and that GAO reviewed. However, the Committee's procedures for monitoring amendments did not always ensure timely corrections. Consequently, some corrections were not approved for 2 to 3 months after the original filing. (See p. 34.)

Reports Made Available to Public as Required

After receiving the public disclosure reports, the Clerk of the House and Secretary of the Senate make them available to the Ethics Committees within 7 days and to the public within 15 days in accordance with the act. However, when reports first become available to the public, it is not always made clear in a general notice or in specific comments concerning individual reports that the reports are subject to change as a result of the Committees' reviews. The House does some review of reports before releasing them, but the Senate does not. According to the Secretary of the Senate staff, they notify persons requesting large orders of reports that they may be amended. The House does not do this. Because both the House and Senate may receive corrections, the public could benefit from knowing that the reports are being reviewed and are subject to change. (See pp. 38 and 39.)

Recommendations

GAO is making recommendations designed to

- improve filing compliance among certain Senate, House, and legislative agency employees;
- deal with the late filing and nonfiling among candidates;
- strengthen review and follow-up procedures; and
- make the public aware that reports are under review and subject to change. (See pp. 27 and 41.)

Ethics Committees' Comments

The House and Senate Ethics Committees as well as Clerk of the House and Secretary of the Senate officials provided comments on a draft of this report, which GAO incorporated where appropriate. The Senate Ethics Committee officials agreed with the thrust of GAO's recommendations. The House Ethics Committee generally chose not to comment on GAO's proposed recommendations until after the final report is issued. (See p. 28.)

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Abbreviations

GS	General Schedule
OPR	Office of Public Records
ORR	Office of Records and Registration

Introduction

The Ethics in Government Act of 1978 (Public Law 95-521) was enacted in part to require public financial disclosure by Members of Congress and other high-level officials in all three branches of government. One objective of the legislation was to promote financial accountability and public confidence in government officials by publicizing information on officials' financial interests and outside business and professional activities.

Title I of the act requires public financial disclosure in the legislative branch and specifies who must file and by what dates, what information is to be reported, who is to receive and review the reports, and how public access to the reports is to be provided.

Who Must File Financial Disclosure Reports, and When Are They Due?

Financial disclosure in the legislative branch, as well as the executive branch, involves the filing and review of either public or confidential financial disclosure reports. While at least one legislative agency has both public and confidential financial disclosure systems, Title I of the act establishes requirements for public financial disclosure only—the subject of this report.

Members of Congress, some of their employees, certain employees of legislative agencies, and candidates for congressional office are required by Title I of the act to file public financial disclosure reports. A Member must file if he or she is in office on May 15 of any year. The reporting period covers the previous calendar year. For example, if a Member is in office May 15, 1989, he or she is required to file a financial disclosure report by May 15, 1989, covering the 1988 calendar year.

Officers or employees of the House and Senate or of a legislative branch agency are required by the act to file if they are compensated at the basic rate of pay equal to or more than that in effect for a grade GS-16 ($64,397 per annum as of January 1988). They must also work for more than 60 days in any 1 calendar year and have been employed as such officers or employees on May 15 of the following calendar year. Having met these requirements, they must file by May 15 of the filing year for the prior calendar year.

The legislative history of the Ethics Act indicates that the GS-16 level was selected as the filing criterion because Congress felt that it was at this level that individuals could influence the legislative process. When a Member does not have an employee compensated at the GS-16 rate or

above, that Member must designate at least one staff member as a principal assistant to file a disclosure report. The principal assistant must perform the duties of his or her position or office for more than 60 days in a calendar year and must file a report if he or she is, or will be, a principal assistant on May 15 of the following year.

New employees who expect to work more than 60 days in a calendar year and who are compensated at or in excess of the GS-16 rate must file an abbreviated report within 30 days after assuming their positions if they (1) were not employed in the legislative branch immediately before assuming the position or (2) did not hold a legislative branch position covered by the law within the preceding 30 days. Experts, consultants, or other employees hired on a temporary or part-time basis are also subject to the filing requirements if they work for more than 60 days in a calendar year and their compensation rate is at the GS-16 level or above. However, the filing requirements may be waived under certain conditions.

A candidate for Congress must file within 30 days of becoming a candidate, or by May 15, whichever is later. In no case, however, may a candidate file later than 7 days before an election, including a primary election.

The act permits reasonable extensions of time for filing of any report. However, the extensions may not result in a Member or candidate filing a report later than 7 days before an election involving the Member or candidate. Also, the act provides that if the due date for a report falls on a weekend or holiday, the report may be filed the next business day. House and Senate filing instructions say that a report is filed on time if it is received or postmarked on or before the due date.

The act does not provide penalties for filing late but provides for the imposition of civil penalties for nonfiling. The Attorney General may bring a civil action against any individual who knowingly and willfully falsifies or fails to file a report. The courts may assess a civil penalty of up to $5,000. In addition, any filer who knowingly and willfully falsifies a report is subject to criminal prosecution under section 1001 of Title 18 of the United States Code.

Who Administers the Financial Disclosure System?

The Legislative Branch has two separate, but similar, systems for implementing Title I. The House Committee on Standards of Official Conduct and the Senate Select Committee on Ethics (referred to as the Ethics Committees) are responsible for administering and implementing the two disclosure systems. The Committees' responsibilities include

- identifying certain required filers,
- assuring that financial reports are filed on time,
- rendering advisory opinions interpreting the act,
- reviewing reports to ensure proper form and completeness, and
- requesting report corrections when errors are found.

The Office of Records and Registration (ORR), located in the Office of the Clerk of the House, is responsible for identifying for the House Ethics Committee those House employees and candidates required by the act to file public financial disclosure reports. The Senate Disbursing Office and the Office of Public Records (OPR), both located in the Office of the Secretary of the Senate, are responsible for assisting the Senate Ethics Committee in identifying Senate employees and candidates who are required to file. ORR and OPR are also responsible for receiving reports and making them available to the public.

Legislative agencies are responsible for identifying employees in their respective agencies who must file reports with ORR and OPR. The act provides whether agency employees are to file with the House or Senate. Reports filed by employees of the Architect of the Capitol, Botanic Gardens, Congressional Budget Office, Government Printing Office, and Library of Congress must be filed with ORR. GAO, the Office of Technology Assessment, the National Commission on Air Quality, and the Office of the Attending Physician employees must file reports with OPR. The reports filed by legislative agency employees are to be reviewed by the respective House and Senate Ethics Committees.

Prior GAO Report

We issued our first report on the legislative branch's financial disclosure systems in 1981.[1] We concluded that Title I of the act was not being effectively implemented. We made 16 recommendations to the Chairmen of the Senate and House Ethics Committees and identified 8 matters for consideration by Congress to improve the implementation of the financial disclosure systems.

[1] The Financial Disclosure Process of the Legislative Branch Can Be Improved (FPCD-81-20, March 4, 1981).

Objective, Scope, and Methodology

We made this review pursuant to Section 109, Title I, of the Ethics in Government Act of 1978, which requires that GAO regularly do a study to determine whether legislative personnel financial disclosure requirements were met effectively and whether timely and accurate disclosure reports were filed. The act states that the Comptroller General's report to Congress should contain a detailed statement of findings and conclusions, together with recommendations for such legislative and administrative actions as he deems appropriate.

Our overall objective was to evaluate the effectiveness of the legislative financial disclosure process. As part of our evaluation, we assessed actions taken on the recommendations and other matters discussed in our 1981 report as they related to objectives and questions addressed in our current review. Specifically, to satisfy our overall review objective, we focused our review on the following questions:

- Do the procedures and controls in use assure that all individuals who must file financial disclosure reports are identified and appropriately notified?
- Did all individuals required to file submit financial disclosure reports by the due dates, and, if not, was appropriate follow-up action taken?
- Were the financial disclosure reports reviewed to ensure that they were in proper form and were complete?
- Were the financial disclosure reports and related information made available to the public as the act requires?

To understand the legislative financial disclosure process, we did the following:

- We reviewed Title I of the act, the legislative history, and the Ethics Committees' policies and operating instructions that address the responsibilities of filers and managers of the disclosure process.
- We reviewed our prior report addressing the disclosure process and Ethics Committees' internal reports concerning systems for reviewing financial disclosure reports and the need for improvements.
- We interviewed officials of the House Ethics Committee and Clerk's offices, the Senate Ethics Committee and Secretary's offices, and legislative branch agencies to obtain their perspectives on implementation of the financial disclosure process.
- We reviewed disclosure reports and related procedures that indicated how filers were identified and how reports were processed, reviewed, and made available to the public.

We determined whether reports were filed on time by examining records indicating when reports were postmarked or received by the House and Senate and then comparing those dates to report due dates prescribed in the act. We looked at the entire universe of reports filed in 1987 for Members, congressional employees, legislative agency employees, and first-time Senate candidates. We looked at a sample of reports filed by first-time House candidates in 1986. The universe of first-time candidate filers was 640. We chose one in every five candidates to comprise our sample. We reviewed and tested the Ethics Committees' follow-up procedures and actions for obtaining reports that were not filed on time and for referring individuals who failed to file to the Attorney General.

We evaluated procedures, including recently revised checklists, for reviewing reports to ensure proper form and completeness by analyzing samples of House and Senate reports. We reviewed a sample of 51 House reports with amendments, selected from the universe of 168 such disclosure reports filed by Representatives in 1987. We reviewed all 40 Senators' reports that had amendments in 1987. Using the 51 House and 40 Senate reports, we did various tests of the Ethics Committees' procedures. As indicated in the report, the number of reports used in these tests varied for certain reasons, such as the files did not contain the information necessary for a test, and time constraints did not permit a test to be done for all 51 House or 40 Senate reports.

We selected Members' reports for review because congressional staff who received filers' reports and made them publicly available said that the greatest public interest is in the Members' reports. By examining internal congressional documents assessing the extent that errors were detected, we obtained information on whether filers other than Members properly completed reports. We had OPR and ORR officials explain the procedures they use to make disclosure reports publicly available. Additionally, these officials and Ethics Committee staffs explained their procedures and practices for identifying required filers, reviewing reports, and following up with filers to obtain reports.

Our work generally covered the House of Representatives and Senate disclosure activities for the 1987 filing year requirements—that is, reports filed in 1987 for calendar year 1986. We evaluated candidates' reports filed in 1986 because 1986 was an election year, and we wanted to include a filing year that was typical for candidates and completed at the time of our review.

We did our work in Washington, D.C., primarily at the Offices of the House Committee on Standards of Official Conduct and Senate Select Committee on Ethics, Clerk of the House, and Secretary of the Senate. We also did work at the Senate Finance Office, the General Accounting Office, the Library of Congress, and the Federal Election Commission. We chose GAO and the Library of Congress because they are the two legislative branch agencies having the most employees filing public financial disclosure reports with the Senate and House, respectively.

We interviewed election officials in the District of Columbia, Maryland, New York, and California to obtain information on the registration of candidates for Congress and the coordination between these officials and the Ethics Committees. We selected the District of Columbia and Maryland because of their proximity and the other states because they have large numbers of candidates.

We complied with generally accepted government auditing standards. We did not validate the lists of required filers. Neither we nor the Committee staffs audited Members' disclosure reports. Under the law, neither we nor the Committee staffs have access to documents, such as bank statements and tax records, that would be necessary to identify omissions or inaccuracies that would not be readily apparent, such as holdings or transactions that might not have been reported at all. Disclosure report filers have the responsibility under the statute to report accurately.

The House Ethics Committee provided formal comments on a draft of this report. The Senate Ethics Committee and OPR and ORR commented informally on the draft report.

Procedures Have Generally Assured That Individuals File on Time, But Candidate Filing Remains a Problem

The House and Senate Ethics Committees have improved procedures for obtaining financial disclosure reports by the dates required. Overall, filing compliance improved since our 1981 report to the point that there was no nonfiling by Members, congressional employees, and legislative agency employees in 1987. Even so, the filing compliance of congressional candidates continues to be a problem, with fewer than one-half of the candidates disclosing their financial interests by the required dates in 1986.

Procedures Have Generally Resulted in Timely Reporting

In 1981, we reported that the House and Senate Ethics Committees had adequate procedures for identifying Members and congressional employees required to file financial disclosure reports. At that time, however, many individuals notified to file either failed to file or filed late. We reported that neither the House nor the Senate Ethics Committee had an effective follow-up system to correct the problem. In 1980, 948 (29 percent) of the 3,242 individuals required to file reports did so late or not at all. Also, Members had not always designated principal assistants who would be required to file in accordance with the act.

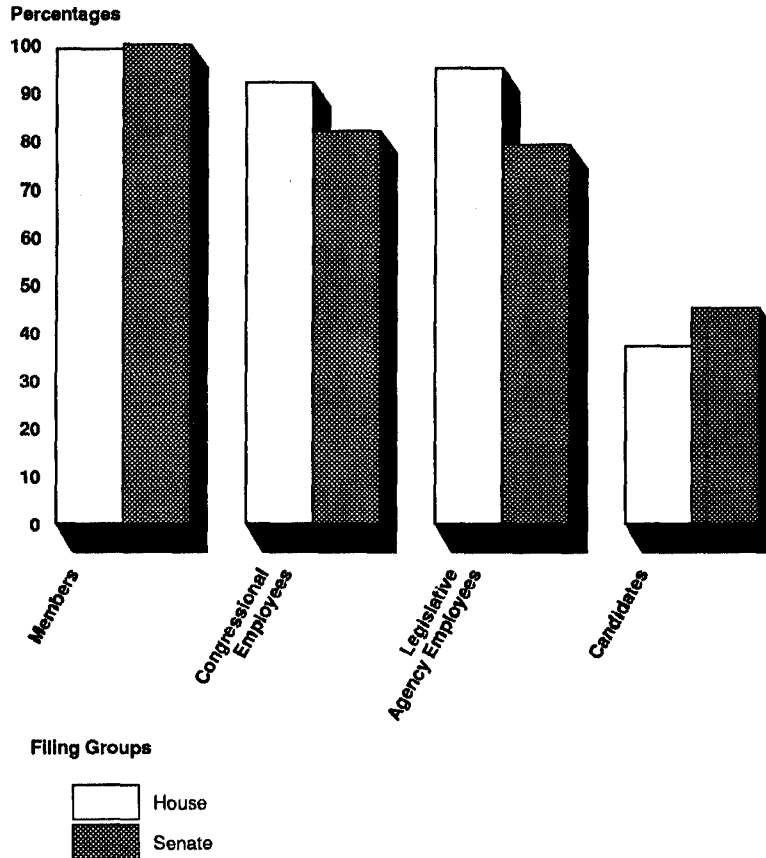
The failure to file was particularly apparent among congressional candidates. Of the total 1,124 House and Senate candidates in 1980, 415 (37 percent) of the candidates did not file required reports at all.

Overall, filing compliance improved since our 1981 report to the point that nonfiling was eliminated for all groups except the candidate group.[1] Of the 797 House and Senate candidates we reviewed, 130 (16 percent) were nonfilers in 1986. In general, the level of compliance continued to be much lower for candidates than for the other three categories. (See figure 2.1.)

While filing compliance was generally high for all categories of filers, except candidates, about one-third of employees who filed late missed the due date by more than 15 days. (See table 2.1.)

[1] A House Ethics Committee representative considered a late filer to be any individual who is required to file a disclosure report but has failed to file by its due date and has not received approval from the Ethics Committee for a time extension. A nonfiler is an individual who has refused to file or who, after all attempts to obtain the report have been exhausted, still has not filed. We used this distinction between late filing and nonfiling in this report and considered both actions to represent filing noncompliance.

Figure 2.1: Timeliness in Filing Financial Disclosure Reports



Note 1: All data, except for candidates, are for filing year 1987 for which reports were due May 15, 1987. The data for candidates are for various due dates in calendar year 1986.

Note 2: Filing compliance of new employees during calendar year 1987 is not included in this figure. Such employees are required to file within 30 days of their appointments.

Table 2.1: Number of Days That Individuals Filed Late and Date That Last Report Was Filed[a]

	Total late	Number of days late				Date of last report
		1	2-5	6-15	More than 15	
House						
Members	4	2	1	1	•	Aug. 21, 1987
Congressional employees	58	•	27	8	23	Dec. 21, 1987
Legislative agency employees	14	•	4	3	7	Dec. 16, 1987
Totals	**76**	**2**	**32**	**12**	**30**	
Percentages	100	3	42	16	39	
Senate						
Members	0	•	•	•	•	May 15, 1987
Congressional employees	74	5	27	11	31	Oct. 4, 1987
Legislative agency employees	70	15	33	7	15	July 10, 1987
Totals	**144**	**20**	**60**	**18**	**46**	
Percentages	100	14	41	13	32	

[a]While the due date for all reports was May 15, 1987, we calculated the number of days late from either May 15 or the date of the latest extension approved by the Ethics Committees.

The House and Senate Ethics Committees' filing instructions say that reports are considered to be filed on time if they are postmarked or received by the reports' due dates. The House ORR and Senate OPR kept records of both postmarked and receipt dates. However, both dates were not included in the various reports used by the House and Senate Ethics Committees to track filing status. Reports they provided to us included only receipt dates. Using the underlying records, we compared the receipt dates or postmark dates, as appropriate, with the due dates for reports and determined filing timeliness.

Payroll Records Used to Identify Required Filers

The House Office of Records and Registration and the Senate Ethics Committee use official payroll record data supplied by the House Finance Office and Senate Disbursing Office, respectively, as a basis for identifying Members of Congress and congressional employees at or above the GS-16 level who are required to file. The Committees rely on the various legislative agencies to furnish information necessary to identify employees in their agencies who must file. Our review at two agencies, GAO and the Library of Congress, showed that these agencies also use payroll records to identify individuals required to file.

Using payroll data, the House and Senate as well as the legislative branch agencies are able to identify Members, employees, consultants,

and new employees hired at or above the GS-16 level required to file. The use of current payroll data permits prompt notification of individuals that they are required to file by certain dates. However, as discussed in more detail later:

- Senate employees at the GS-16 salary level who are required to file within 30 days of their employment did not always file reports within the prescribed time; and
- House employees whose salaries were at or above the GS-16 level for more than 60 days during the prior calendar year, but not as of May 15 of the filing year, did not file.

We also noted that the two legislative agencies did not follow up on late reports.

New Senate Employees Sometimes Filed Late

In our 1981 report, we said that the House Ethics Committee's procedures ensured that new employees required to file financial disclosure reports were properly identified. Conversely, in the same report, we said that the Senate Ethics Committee had not established a system for identifying new employees, and neither the Senate Ethics Committee nor the Senate Disbursing Office were systematically notifying individuals of their filing obligations. Because of this finding, we reviewed the Senate Ethics Committee's current procedures for ensuring that new employees who must file are identified and that they file reports within the required 30 days.

The Senate Ethics Committee and Disbursing Office had instituted procedures for notifying new employees of requirements to file. When a congressional employee is hired at or above the GS-16 level, the Senate Disbursing Office is to identify from its payroll system the name of the individual and advise the new employee by letter of the requirement to file a financial disclosure report. A copy of the letter is to be sent to the Senate Ethics Committee. Procedures require the Committee to notify employees of the filing requirement about 15 days after their employment.

However, even though new Senate employees were supposed to be notified of filing requirements, they often did not file within the required 30 days. Records maintained by the Senate Ethics Committee showed that of the 44 new Senate employees hired in 1987, 25 (57 percent) did not file within 30 days after their employment or within approved time extensions. Delays in notifying the employees of the filing requirement

contributed to the late filing among new employees. Of the 25 who filed late, 19 (76 percent) were not notified of the filing requirement until later than 15 days after their employment. Thus, these employees had less than 15 days to prepare their reports and get them to the Senate Ethics Committee within the 30 days allowed. Although they were late in filing, the 25 new Senate employees did file reports. In filing after their due dates, 12 employees filed from 1 to 14 days late; 5 filed from 15 to 28 days late; and 8 filed over 4 weeks late, the latest filing 83 days late.

Other factors, such as the time employees needed to understand and comply with the filing requirements while also meeting other responsibilities upon assuming a new position, may have contributed to the late filing. Even so, the data we gathered indicate that prompt notification of new employees of filing requirements would improve compliance.

Certain GS-16 Salary Level House Employees Were Not Required to File

As originally enacted, the Ethics Act required officers and employees of the legislative branch who were compensated at a rate equal to or exceeding the annual rate of basic pay for grade GS-16 and who worked for more than 60 days in a calendar year to file financial disclosure reports by May 15 of the following year. The Ethics Act was amended in 1979 to add the requirement that a covered individual need file only "if such individual is or will be such an officer or employee on such May 15." In section 101(e) of the act, "officers and employees" are defined as legislative branch employees who are compensated at a rate equal to, or in excess of, the annual rate of basic pay in effect for grade GS-16.

Therefore, the literal terms of the law indicate that an officer or employee would not have to file a report if he or she is not being compensated at or above the GS-16 rate on the May 15 filing date, even if the employee had been compensated at that rate for more then 60 days in the prior year. However, the law does not preempt the Committee's authority to require that these individuals file reports. The legislative history of the amendment suggests that the provision was intended simply to clarify the act's filing requirement to state that only officers and employees actually serving Congress on May 15 are required to file. In addition, the legislative history of the original Ethics Act indicates that the GS-16 level was chosen to clearly single out for filing purposes those employees in key positions of influence.

As permitted by the act's amended filing requirement, the House Ethics Committee's position is that an employee compensated at or above the

GS-16 rate for more than 60 days during a calendar year need not file a report, unless that individual is compensated at the GS-16 salary level on May 15 of the following year. In looking at reports filed by House employees, we found that 44 (8 percent) of the 564 House GS-16 employees were not required to file under the House position. Although they had been compensated at or above the GS-16 level for more than 60 days during the 1987 filing year, they were not compensated at that level on May 15, 1988.

Employees in this situation would not have been required to file a financial disclosure report even though such employees could have had the opportunity to influence legislation. We note that the Senate Ethics Committee imposes filing requirements on all such employees without regard to whether they continue to be employed at the GS-16 level on May 15 of the following year.

Legislative Agencies Did Not Emphasize Filing Timeliness or Follow Up on Overdue Reports

A total of 84 (14 percent) of the 612 employees in the legislative agencies who were required to file with either the House Clerk's or Senate Secretary's offices of public records missed the May 15, 1987, filing date from 1 day up to several months. At present, legislative agencies do not have a formal role for following up to ensure that employees file on time.

Although the Ethics Committees are responsible for administering the legislative branch financial disclosure system, the legislative agencies themselves could assist in obtaining required reports on time. For example, the agencies could emphasize well before the May 15 or other due dates the importance of filing on time. Also, while the reports are filed with the Ethics Committees, a copy is to be provided to a reviewing official within the agency. The agencies could check to see that all required employees have filed on time, and when reports are overdue, the agencies could follow up to obtain them.

Procedures Generally Did Not Result in Timely Non-Incumbent Candidate Filing

While filing compliance by candidates improved between 1980 and 1986, the extent of compliance with the act continued to be lower than with other groups required to file under Title I, and some candidates did not file at all in 1986. As indicated in table 2.2, more than one-half of the candidates for the House and Senate in 1986 we reviewed did not file reports on required due dates. Of those missing the due dates, 18 percent of the House and 6 percent of the Senate candidates did not file at all.

Table 2.2: Extent of Non-Incumbent Candidate Filing Noncompliance in 1986

		Late filers		Nonfilers	
	Total	Number	Percentage	Number	Percentage
House[a]	640	230	36	115	18
Senate[b]	155	65	42	10	6
Total	795	295	37	125	16

[a]We estimated the overall extent of House candidate compliance indicated above by reviewing a randomly selected statistical sample of 128 House candidates who filed for the first time in 1986 and for whom we had enough information to determine timeliness.

[b]We determined Senate candidate compliance by reviewing all 155 Senate candidates who filed for the first time in 1986 and for whom we had enough information to determine timeliness.

Several factors contributed to the lower compliance among candidates, including possible confusion about filing requirements, difficulties in identifying candidates on a timely basis, and insufficient follow-up when candidates did not file on time.

Different Definitions of "Candidate" in Ethics Act and Campaign Act Cause Confusion for Filers

For the purpose of the Ethics Act, a candidate is defined as an individual, other than a Member, who seeks nomination for election, or election, to Congress, whether or not the individual is elected. An individual is deemed to seek nomination for election, or election, if: (1) he or she has taken the action necessary under the law of a state to qualify for nomination for election, or election; or (2) if he or she or the principal campaign committee has taken action to register or file campaign reports required by the Federal Election Campaign Act.

The current definition of a candidate in the Federal Election Campaign Act has complicated the identification of candidates for the purpose of obtaining financial disclosure reports under the Ethics in Government Act. A January 8, 1980, amendment to the Campaign Act exempted from reporting their candidacy or campaign finance information to the Federal Election Commission those individuals who registered for election under state law but had not raised or spent more than $5,000.

Before the change, individuals had to register regardless of how much they raised or spent for the campaign. Officials of the House and Senate offices of public records knew who had to file because they received the candidates' election registration forms. The House ORR and Senate OPR then sent notifications of these registrations to their respective Ethics Committees and to the Federal Election Commission. These actions, along with providing the Federal Election Commission the information needed to require campaign expenditure reports from the candidates,

gave the Ethics Committees the information needed to send notices and take follow-up steps to get financial disclosure reports from any registered candidate.

After the change and still today, individuals may seek election by registering as candidates under state law and, by such action, be required to file a financial disclosure report under the Ethics Act. Yet, they may not meet the funding criterion and thus the candidacy and campaign finance reporting requirements under the Campaign Act. The House ORR and Senate Ethics Committee depend on state election offices to report individuals who register as candidates and do not meet the Campaign Act's reporting requirements.

House ORR staff told us that candidates are sometimes confused by differing definitions of candidates. The staff said that candidates do not always believe they need to file a financial disclosure report when they register as candidates under state law but do not qualify as candidates under the Campaign Act, although the Ethics Act clearly requires it.

State Election Offices Can Provide More Timely Information on Candidates

The House and Senate can identify candidates sooner and make them more knowledgeable of filing requirements through closer coordination with state election offices. The Senate recently took steps to speed up the process.

The House ORR and Senate Ethics Committee rely in part on ballot lists, provided by state election offices after the registration period for an election, to identify candidates who must file disclosure reports. This method of identifying candidates may not allow enough time to identify, notify, and obtain reports from candidates by the required dates.

The Ethics Act requires candidates to file disclosure reports within 30 days of becoming candidates or May 15, whichever is later, but in no case later than 7 days before a primary or general election. This final due date of 7 days before an election is particularly important because it provides the minimum time for voters to evaluate candidates' financial interests before voting. A House ORR staff representative said that sometimes ORR receives state ballot lists identifying House candidates a short time before the election date. This leaves little time for ORR to notify a candidate to file a financial disclosure report and for the office to receive it at least 7 days before the election.

We interviewed election officials in the District of Columbia, Maryland, New York, and California concerning the House and Senate's need for candidate information. All state officials we contacted said that they were willing to help the House and Senate identify candidates earlier than current procedures do and to enhance candidates' understanding of the need to file financial disclosure reports.

For example, election officials in California, Maryland, and New York said they were willing to tell the House and Senate the names of candidates sooner than they do under current procedures. An official in the District of Columbia did not believe earlier notification was necessary because the District has few federal candidates. One official suggested that if the House and Senate asked in writing and designated a contact point for response, she could send candidates' names 2 to 3 months sooner. The State officials also said that they were willing to give candidates information explaining the need to file financial disclosure reports. These officials indicated that their working arrangements with the House and Senate do not provide for their offices to furnish candidates any information on financial disclosure requirements.

In 1986, and again in February 1988, the Senate Ethics Committee directly requested that state election offices provide names of Senate candidates when they registered as candidates. Previously, the Committee received this information from the Federal Election Commission or was notified by the Senate OPR when a candidate filed a Statement of Candidacy required by the Campaign Act. The House ORR had not requested the states to do this as of January 1989. However, in 1988 ORR did begin using candidate information supplied by states to the Federal Election Commission to request disclosure reports.

Follow-Up Procedures Can Be Strengthened

The Ethics Committees can improve their follow-up when candidates do not file required reports on time by making public the names of late filers and referring those unwilling to file to the Department of Justice. The Senate Ethics Committee had referred nonfilers to Justice, but the House Committee had not.

The House Ethics Committee's follow-up procedures included sending two letters and then making a phone call to each filer to request reports not yet filed by their due dates. The Clerk (ORR) sends the first letter, and the Ethics Committee sends the second letter and makes the phone call. The Senate Ethics Committee's procedures included four letters

and, by majority vote of the full Committee, referral of the case to the Department of Justice.

The Ethics Act does not require the House or the Senate Ethics Committees to publish the names of nonfilers to encourage individuals to file the required reports, and the Committees do not do so. In contrast, the Federal Election Commission, as required by law, publishes the names of individuals who have not provided required reports on campaign financing. The Ethics Committees could adopt a similar practice. Additionally, they could indicate in reminder notices that the names of individuals who are late in filing financial disclosure reports will be made public before the election. The Committees could then publish the names of those individuals who refuse to file.

House Ethics Committee staff said that the Committee had not referred nonfilers for civil action because the Committee lacks authority to refer such cases directly to Justice. With respect to Members, officers, and employees of the House, House Rule X of the House Standing Rules provides that the House Ethics Committee may refer possible legal violations to the appropriate federal or state authorities, in this case the Department of Justice, with the approval of the full House. There are no procedures in the House Rules for referring violations by candidates to the Department of Justice.

The House Ethics Committee pointed out that instances of nonfiling may come to the attention of the Department of Justice by means other than House referral. However, to ensure that Justice is alerted to cases of nonfiling by candidates that may warrant civil sanctions, the House needs to establish procedures for the referral of cases involving nonfiling candidates to Justice. The establishment and effective use of referral procedures could improve filing compliance among candidates.

The Senate Ethics Committee has authority to directly refer Members, employees, and candidates to the Justice Department for violation of law. The Committee referred 10 individuals, all candidates, to Justice for nonfiling in 1986. The Committee had been unable to locate five candidates. Justice located them and provided information to the Committee for further follow-up action. Justice authorized civil action against one candidate, was considering such actions against two others, and decided further efforts to pursue the other two candidates were not warranted.

Members Have Designated Principal Assistants

Both the House and Senate Ethics Committees had procedures for identifying Members who were required to designate principal assistants and notifying them to do so.

The act requires that each Member of Congress who does not have an employee on his or her staff compensated at or above a GS-16 salary level designate at least one principal assistant to file a financial disclosure report. The legislative history of the Ethics Act suggests that the principal assistant should be someone in a position to influence the legislative process. Such an individual would be one subject to a potential conflict of interest.

We analyzed House and Senate Ethics Committee records to determine whether all Members had designated principal assistants. Of the 438 House Members in office during 1987, 105 had GS-16 salary level employees on their staffs and thus were not required to designate principal assistants. Of the remaining 333 members who were required to designate principal assistants, 324 had done so and 9 had not as of May 1988. Subsequently, a House Ethics Committee staff representative said that after follow-up Members had designated principal assistants.

Our review of Senate records showed that of the 100 Senators, 28 had GS-16 level employees filing and 24 also had political fund designees filing[2], 57 had only political fund designees filing, 14 had only principal assistants filing, and 1 had a political fund designee and principal assistant filing. Thus, every Senator's office had at least one person filing. We did not determine whether individuals other than those designated to file financial disclosure reports were in positions to influence the legislative process and thus were susceptible to conflicts of interest.

Although we concluded in 1981 that Members could use criteria for designating employees to file, we also said that Members should have discretion in making such designations. During our current review, House and Senate Ethics Committee staffs said that criteria were not necessary and that Members should have the discretion to decide who among their staffs are in positions posing potential conflicts of interest.

Conclusions

Public confidence in the legislative branch's disclosure process hinges on getting everyone required to properly disclose their financial interests

[2]Political fund designees are designated by Senators under Senate Rule 41 to handle campaign funds and are required to file financial disclosure reports pursuant to that rule.

and to file reports on time. In general, the disclosure systems have been effective in achieving this end, and both the House and Senate Ethics Committees have made substantial progress in improving the systems since 1981.

Even so, refinements can be made in the systems, such as getting new Senate employees to file within 30 days and improving filing compliance by legislative agency employees. Also, although it is not currently required by law to do so, the House Ethics Committee could require all employees compensated at or above the GS-16 level for more than 60 days during a calendar year to file if they continue to be employed on May 15 of the following year. Candidate filing requires both the House and Senate Ethics Committees' attention. State election officials can help to identify candidates and inform them of their reporting obligations under both the Ethics Act and the Campaign Act. Filing compliance can be stimulated by more aggressive follow-up by the Committees.

In particular, the House should routinely consider the referral of nonfilers to the Justice Department for civil action. The House will need to establish procedures for the referral of nonfiling candidates to the Justice Department because candidates are not currently covered by referral procedures in the House Rules.

Recommendations to the House and Senate Ethics Committees

To improve filing compliance among House, Senate, and legislative agency employees, we recommend the following:

- The Senate Ethics Committee and the Senate Disbursing Office should work together to revise procedures for more quickly identifying all new Senate employees who must file and notifying them of requirements to file.
- The House Ethics Committee should require financial disclosure reports from all employees compensated at or above the GS-16 salary level for more than 60 days during a calendar year as long as they continue to be employed on May 15 of the following year.

To deal with the late filing and nonfiling among candidates, we recommend that both the House and Senate Ethics Committee:

- request state election offices to notify candidates of filing requirements and promptly provide names of candidates to the Committees for follow-up.

- adopt policies of publicizing, at an appropriate time, the names of candidates who file late or refuse to file.

We also recommend that the House develop procedures for referring nonfiling candidates to the Justice Department for consideration of enforcement action.

We further recommend that both Ethics Committees explore options for obtaining legislative agencies' assistance in improving filing compliance of their employees. For example, the Committees could ask the agencies to assist in tracking filing timeliness by their employees and following up when reports are overdue.

Ethics Committees' Comments

We provided a copy of our draft report to the House and Senate Ethics Committees as well as ORR and OPR for comment. The Committees, ORR, and OPR suggested various technical changes, which we have incorporated into the report as appropriate. Although the Senate Ethics Committee and OPR generally agreed with our recommendations, the Committee requested that we be more specific about what actions the Committee could take to implement our recommendations. We agreed to provide the Committee with additional information on the actions it could take.

The House Ethics Committee agreed with many of the observations in our draft report and believed certain aspects warranted comment. However, the Committee generally chose not to comment on our proposed recommendations until after the final report is issued. The Committee said that its position of not requiring reports from employees who are compensated at or above the GS-16 salary level for more than 60 days but who are not being compensated at or above the GS-16 rate as of the May 15 filing date is consistent with the 1978 act (2 U.S.C. 701 (b) (1)).

We agree that the Committee's practice is permitted by the act. However, the act does not preempt the Committee from requiring these employees to file. Our premise in making the recommendation was that employees in situations such as those described in our report could have had the opportunity to influence legislation during the period covered by the filing year and not be required to file disclosure reports. The Senate Ethics Committee requires Senate employees in such situations to file reports.

An ORR official suggested that an amendment to the act providing new criteria for determining the due dates for candidate reports would minimize the number of different due dates and thus facilitate accurate and consistent tracking of candidates. We agree that such a change could make it easier to understand when reports are due and to monitor compliance.

Review Procedures Have Been Improved but Can Be Further Strengthened

Since 1981, both the House and the Senate Ethics Committees have substantially improved the procedures they use in reviewing financial disclosure reports. The procedures now provide greater assurance that reports are complete and in proper form. However, additional steps can be taken to ensure that reporting errors are corrected, guidance is adequate for review of blind trusts, and the public is informed of the extent that reports have been reviewed.

Improvements Made in House and Senate Review Procedures

In 1981, we reported that the House and Senate Ethics Committees were not effectively reviewing public financial disclosure reports. They had no written guidelines for reviewing the reports and had no effective system for assuring that all individuals requested to amend their reports had properly and promptly done so. Also, neither the House nor the Senate Ethics Committees had established formal procedures for reviewing proposed blind trust agreements.

Both the House and Senate Ethics Committees have since improved their procedures for reviewing reports and obtaining corrections and have taken other steps to ensure that reports are made available to the public in proper form and are complete.

Checklists Guide Reviews

To help assure that the financial disclosure reports are in proper form and complete, both the House and Senate Ethics Committee staffs use separate checklists for reviewing the reported information. The Committees revised their respective checklists for the 1986 and 1987 filing years to be more complete and to coincide with report form changes. The checklists allow reviewers to make orderly examinations of the reports and focus their reviews on specific kinds of likely errors.

The checklists guide the reviews of over 50 report items, with 3 to 12 items in each of 9 categories, to detect possible errors. For example, the checklists provide for a review to see if Members have exceeded honorarium limitations and to compare the holdings for a filer with the transactions reported by the filer to help verify that disclosure of assets sold or purchased was made.

To encourage and assist filers to file reports in proper and complete form, both the House and Senate send the checklists or parts of the checklists with items in error checked, along with letters requesting amendments, to filers who need to amend their reports. Consequently,

filers are given an opportunity, by reviewing the checklist, to correct their own report forms and avoid future errors.

Of the 51 House reports and 40 Senate reports included in our sample, we reviewed 28 Representatives' reports and 19 Senators' reports,[1] all of which had been previously reviewed by Ethics Committees' staff, to determine whether our findings agreed with the staff's findings on the need for corrections. We did not detect errors in our review that the Committees' staff had not previously identified. The Committees' staff found and requested corrections for such errors as

- income reported exceeded honoraria limitations (4 House reports),
- source of income was not clearly shown (7 House reports),
- some holdings were not reported (12 House reports),
- assets were not identified (10 Senate reports), and
- value of income was omitted (10 Senate reports).

As discussed later, one of the House reports cited above, which erroneously disclosed holdings and source of income, was not corrected.

House Obtained Additional Staff Assistance

Because of the large number of reports filed, the House Ethics Committee began using a staff of accounting professionals detailed from GAO to assist in reviewing reports in 1986. The staff made the first level of review for the Committee using the checklists. The staff worked with Ethics Committee attorneys, who further reviewed the deficiencies identified by the staff and determined whether to recommend to the Chief Counsel that report corrections be requested.

House Ethics Committee staff told us that use of detailees had helped to (1) make the report review process more thorough during a tight review period, (2) free up staff attorneys so they could provide more counseling to filers, and (3) detect more reporting errors.

Filer Awareness Encouraged

In order to encourage proper form and completeness in reports, both the House and Senate have done more than simply notify filers of their reporting requirements with notices, report forms, and written instructions. They have provided further assistance to filers on how they can

[1] Because of our findings that errors were being consistently detected and because of the extensive amount of time required to verify the adequacy of the Committees' review of a report, we limited this test to 28 House reports and 19 Senate reports for which the Committees had requested amendments.

properly fill out the reports. The House relies upon one-on-one counseling by a House Ethics staff attorney with the filer. A House Ethics Committee staff representative said that the staff tries to develop a counselor-client relationship with the filers in which the filer can be counseled to avoid omissions and errors. The person also said that the staff normally provides substantial informal advice to about 50 to 100 filers, especially new Members, just before the May 15 filing deadline.

The Senate Ethics Committee has held seminars with Senate filers to help them understand filing requirements, with emphasis on answering commonly raised questions. OPR joins the Ethics Committees in presenting information.

Report Forms and Instructions Improved

Both the House and Senate revised their respective report forms[2] for 1987 to improve financial disclosure. For example, the House and Senate changed the forms by

- telling filers to show in the report "if none so indicate" (House) or incorporating a "none" box for the filer to check when applicable (Senate) in the various report sections, thereby encouraging completion of each report section;
- emphasizing important requirements by placing them in bold print on the form (House) or through form structure (Senate); and
- specifying details expected to be reported by giving examples either in the instruction booklet (House) or on the forms (Senate).

Both the House and Senate Ethics Committees' internal memoranda in 1987 indicated that improvements in reports had occurred. For example, the Senate memorandum indicated that certain problems, such as sections being left blank when no information applied instead of "none" being checked or names and addresses of "sources" being left out, had been corrected by changes to the form. The House 1987 memoranda said that after the House report form was revised in 1986, the holdings section, the biggest problem area, had only about half as many errors as had occurred during the prior year.

[2]The House and Senate used two report Forms. Form A is for Members, officers, and employees. Form B is for candidates and new employees. We focused only on Form A for this part of our work.

House and Senate Can Make Refinements to Procedures

While the House and Senate Ethics committees have improved their review procedures since 1981, refinements can be made in some areas.

Senate Has Improved Its Review Procedures by Comparing Reports for 2 Years

Unlike the House, before 1989, the Senate did not compare the current year report with the prior year report to determine whether filers reported changes in holdings from 1 year to the next. However, the Senate Ethics Committee instituted a 2-year review procedure in 1989, according to the Chief Counsel for the Committee.

Since the 1986 filing year, the House Ethics Committee included in the report review process a comparison of holdings reported in the current year report with those reported the prior year. This step allows the staff to question a filer when certain holdings or acquisitions or dispositions of assets should be indicated on the current report but are excluded.

Our review showed that use of the 2-year review procedure had disclosed omissions and helped to ensure that reports were complete. In our sample of 51 House reports, we reviewed 37 reports filed by House Members for which Committee staff had requested amendments. Of the 37, 12 (32 percent) needed to be amended in part because of the failure to disclose prior year acquisitions or holdings in the current year report.

According to Senate Ethics Committee staff, they compare the holdings shown in the current year reports with the transactions sections of the same reports, which they said serves some of the same purposes as the 2-year comparison. We agree that the comparison made by the Senate staff can detect certain omissions, such as when the filer reports dividends from stock holdings but fails to report the related stock holdings. However, this comparison would not detect the acquisition or disposal of holdings from one year to the next that is not disclosed in the transaction section of the report. Conversely, we found that the House Ethics Committee's 2-year comparisons resulted in it detecting omissions of stock acquisitions and dispositions of real estate.

House Can Better Ensure That Reports Are Complete by Reviewing Requested Corrections

Procedures for obtaining amendments from filers have been improved by both the Senate and House since our last report, but better follow-up by the House is needed to ensure that reports are corrected as requested.

Senate Procedures for Obtaining Amendments

The Senate Ethics Committee's procedures for obtaining amendments in 1987 required the staff to

- send correction letters to filers whose reports needed amending, along with a copy of the checklist or a portion of the checklist referring to the area needing correction;
- give filers a 2-week deadline for filing amendments;
- follow up with a second letter requesting amendment if no amendment was received in 2 weeks;[3]
- use logs to track correction requests and track reports approved after requests were sent;
- assure that amendments received were stored in the public files maintained by OPR; and
- assure that requested amendments were made correctly.

Of 812 reports filed with the Senate in 1987, corrections were requested for 266 (33 percent). All these reports were approved according to records maintained by the Senate Ethics Committee. Of the 40 Senators' reports included in our sample, the Committee staff had requested amendments for 35. We reviewed all 35 reports and found that the Senators had filed the requested amendments to correct their reports.

However, the Senate Ethics Committee's procedures did not ensure that requested amendments were submitted and approved in a timely manner. We reviewed the Committee's records showing the status of Senators' reports filed in 1987 and noted 41 reports where the Committee had requested amendments. In 5 of these 41, the reports were not approved for at least 2 months, ranging from 65 to 182 days, after the amendments were requested. The Committee's requests for corrections state that amended reports were to be submitted in 2 weeks.

According to the Committee staff, some filers did not submit amendments by due dates requested and sometimes did not promptly respond to additional follow-up by the Ethics Committee. Thus, the Committee

[3]This letter would note that in order to avoid civil penalties, the filer needs to file an amendment.

staff had to wait to review the amendments. Committee staff also said amendments were reviewed when filed. However, Ethics Committee status reports did not show when amendments should be and were received. In our opinion, if provided, this information could have helped the Committee track amendments and ensure they were filed in a timely manner.

House Procedures for Obtaining Amendments

The House Ethics Committee did not follow up to ensure that requested amendments were received and that amendments corrected the errors identified. The Committee staff said that they treat the filers as clients to whom the staff provides counsel to obtain correct financial disclosure reports. Thus, in the Committee's view, after the filers are presented with the apparent need for correction or explanation, the filers themselves, and not the Ethics Committee staff, are responsible for ensuring that correct reports are submitted. The Committee also said that reviewing both the original filing and amendments would result in double, if not triple, effort. Having taken this view, the staff said they do not need to follow up on amendments. Thus, the staff said they did not follow up to obtain requested amendments and, when amendments were received, they were filed without review.

Since 1987, however, the House Ethics Committee has been using a computerized data base to produce a filing status for each filer, including reports received, amendments requested, amendments received, and the dates these actions occurred. According to information available in this data base, of 1,555 filers in 1987 including Members, House employees, and legislative agency employees, 505 (32 percent) were requested to file amendments; 54 (11 percent) of those requested did not file. The nonfiling rate by category was 5 percent for Members, 14 percent for House employees, and 9 percent for legislative agency employees.

Of the 51 House Members' reports included in our sample, 37 reports involved amendments initiated by the House Ethics Committee staff. The Committee's files did not contain sufficient information for us to determine whether Members had complied for 3 of the 37 reports. For the remaining 34 House reports, we determined that 31 reports had been corrected as requested by the Ethics Committee, and 3 had not been corrected or explained as requested. The apparent errors in two of the three reports involved the failure to report completely the itinerary of trips for which Members were reimbursed. The apparent errors in the other report involved several omissions, including the source of rental

income, the disposition of holdings, and assets that generated farm income.

The lack of follow-up to obtain amendments and ensure that corrections have been made allows incomplete reporting to go uncorrected and thus defeats the purpose of the review program. The House Ethics Committee could, for example, notify filers to submit requested amendments within a specified time to avoid civil penalties, similar to the procedure followed by the Senate Ethics Committee.

House and Senate Procedures for Handling Blind Trusts

We found in 1981 that neither the House nor Senate Ethics Committees had formal written procedures for reviewing qualified blind trusts. We also found that the Ethics Committees had approved some trusts that did not meet the requirements of the act. The Committees still have not adopted formal procedures for reviewing blind trusts.

The act provides that a reporting individual need not report the holdings of or the source of income from a qualified blind trust. To be considered a qualified blind trust under the law, both the trust instrument and its trustee must meet prescribed standards and must be approved by either the House or the Senate Ethics Committee. These standards identify the specific provisions that must be in each trust, impose requirements for the administration of the trust, and require that the trustee be independent of and not associated with any interested party.

The act specifies the requirements to maintain and dissolve a qualified blind trust. To maintain the trust, section 102(e)(3)(C) of the act requires that the trust instrument provide that generally there shall be no communications between a trustee and interested parties about the trust unless such communications are in writing and are related to specific subjects. The provisions further specify (1) the type of reports to be furnished to interested parties and (2) the requirement that the trustee notify the reporting individual and his supervising ethics office when the holdings of an asset transferred to the trust by any interested party are disposed of or when the value of such holding is less than $1,000. In dissolving a qualified blind trust, the act provides that a reporting individual shall, within 30 days of the dissolution, (1) notify the appropriate Ethics Committee of the dissolution and (2) file with the Committee a list of the assets of the trust at the time of dissolution.

In 1981 we concluded that the approval of trust agreements without the trust instrument conforming to the standards contained in the act raised

serious doubt as to the appropriateness of the blind trust as a mechanism to insulate a government official from conflicts of interest. At that time, we recommended that the Chairmen of the House and Senate Ethics Committees develop formal procedures and requirements for approval of proposed trusts and trustees.

We are aware, however, that both the House and Senate review trust documents. The House Ethics Committee staff provide informal advice to members concerning what is needed in the trust documents. Neither Ethics Committee has developed specific guidance for reviewing blind trusts.

In our most recent review, we examined the public files for 3 House and 4 Senate trust agreements that we judgmentally selected from the 7 House and 15 Senate trust agreements on file in June 1988. We noted that certain required provisions were missing from one Senate blind trust. Also, the public file for one House trust agreement was missing two pages. Subsequently, the missing pages, which were in the original trust agreement and which contained required provisions of the act, were included in the public file.

The House Ethics Committee believes that no further guidance on reviewing blind trusts is necessary. The Committee said that the act's requirements on blind trusts were explicit on what a blind trust document must include and that additional formal procedures were not necessary. The Committee also said its review procedures are stringent and that the act is used as a checklist for compliance in the review of blind trust documents. The Senate Ethics Committee, however, believed that additional guidance for reviewing blind trusts could be useful and said that it would consider using a review checklist.

Reports Were Made Available to the Public on Time, but Their Status Was Not Made Clear to the Public

Both the House and Senate made financial disclosure reports filed in 1987 available within the times required by law. Some improvements can be made, however, to facilitate the public's use of the reports.

Reports Made Available to Ethics Committees and Public on Timely Basis

In accordance with sections 103 and 104 of the act, the Clerk of the House and the Secretary of the Senate are responsible for making financial disclosure reports available to the House and Senate Ethics Committees and the public. Section 103 requires that the Clerk send a copy of each financial disclosure report to the House Ethics Committee within a 7-day period, which begins the day the report is filed. The Secretary is also required to send a copy of each report to the Senate Ethics Committee. The Office of Records and Registration does this function for the Clerk, and the Office of Public Records does it for the Secretary.

Of the 51 House reports and 40 Senate reports included in our sample, the House and Senate files contained sufficient information for us to determine whether 45 House and 30 Senate reports were provided to the Ethics Committees within the time required. All 75 reports were given to the Committees within 7 days after the reports were received.

Section 104 of the act requires that financial disclosure reports required to be filed by May 15 of any year be made available to the public in Washington, D.C., within 15 calendar days after that date. All other financial disclosure reports are to be made available to the public within 15 days of filing. Both the House ORR and Senate OPR had procedures for making the reports available to the public within the 15 days.

The House procedure was to not release them to the public until after May 15. In 1988, the release date was May 25 according to an ORR staff member. This interim period gave the House Ethics Committee a chance to review the reports and, if needed, to begin getting them corrected before the public saw them. The Senate procedure was to make the reports available to the public soon after they were received. According to an OPR representative, the reports were typically available to the public within 2 to 3 days after receipt. The House reports were available to the public at Room 1036, Longworth House Office Building, New Jersey and Independence Avenues, S.E., Washington, D.C. The Senate reports

were available at Room 232, Hart Senate Office Building, Second Street and Constitution Avenue, N.E., Washington, D.C.

We visited House and Senate facilities where the financial reports were available and observed that the reports were accessible to the public. The reports could be reviewed during regular office hours, (9:00 A.M. to 5:00 P.M. for the House and 8:00 A.M. to 6:00 P.M. for the Senate) each work day, and copies were available for a small fee. Procedures required that persons requesting a report fill out a form giving the name, address, and occupation of the person or organization for whom the request is made. The completed request forms, also available to the public, provided a basis for enforcing provisions of the act restricting the purposes for which the financial disclosure reports may be used.

The House and Senate maintain lists of financial disclosure reports showing, by filing year, each filer's name; the reports and amendments filed and the dates they were filed; and a reference to files containing the reports, amendments, and other related documents. Using these materials, we found it easy to locate financial disclosure documents filed with the House and Senate.

House and Senate Need to Disclose to Public the Extent Reports Have Been Reviewed

Both the House ORR and Senate OPR provide copies of financial disclosure reports to the public before the Ethics Committees have completed the review and correction process. Until the Committees complete their reviews, the public has access to reports that may change. However, when reports are released to the public, there is no disclosure in the public file showing whether the reports have been reviewed and whether they are subject to change. According to OPR, it provides a written notice to requesters of large orders of reports that the reports are subject to being amended, but the House does not follow a similar practice.

The Committees are faced with meeting the 15-day requirement in the act for making reports available to the public while also reviewing them to ensure they are complete and in proper form. The Senate generally did not complete its reviews until June 1987 even though the reports, due May 15, were made available to the public within 2 or 3 days after they were received. To inform the public of a report's status, the Senate made available in its public files a listing of the reports and correspondence showing the need to file or the granting of an extension. After the reports were reviewed by the Ethics Committee, they were included in

the public record. The public record also included Ethics Committee letters containing checklists showing where corrections were needed and included amendments received.

The House reviewed Members' original reports within the 15-day time period allowed before releasing them to the public. Therefore, the public was seeing Members' reports that had been initially reviewed for completeness and proper form. However, not all amendments were completed before the reports were released to the public within the 15-day period on—May 21, 1987—according to ORR and Ethics Committee staff. When amendments were filed, the House made them available to the public. Anyone using a report, however, would not know from the information provided what amendments had been requested or whether amendments had been received. Also, a House rule requires that House Members' reports be reviewed and made available to the public in a printed document by July 1 of each year. This rule provided the impetus to give priority to reviewing Members' reports before other filers' reports were reviewed. Therefore, other filers' reports were not necessarily reviewed before they were released.

The House did not indicate for individual reports or in a general announcement to potential users the review status of reports or the fact that reports were subject to change. The Senate also did not show whether reports had been fully reviewed, but OPR staff said that they did alert users who requested large numbers of reports that reports might be amended and that copies of amendments could be obtained from OPR.

Conclusions

The House and Senate Ethics Committees have made progress in developing a review program to ensure that accurate financial disclosure reports are provided to the public. Both Committees can take further steps to improve the accuracy of reports and to make sure they serve the public's need. The Committees do not always disclose to the public the status of reviews or indicate that the reports may change. Therefore, members of the public who use the financial reports could be uncertain as to their completeness.

Recommendations to the House and Senate Ethics Committees

To ensure that the public has accurate financial disclosure reports, we recommend that the Chairman of the House Ethics Committee implement procedures to ensure that timely and correct amendments are made to financial disclosure reports that the Committee has found to be in error.

To strengthen its report review procedures, we recommend that the Senate Ethics Committee track the status of requested amendments until they are received and approved to improve the timeliness of the amendments.

We recommend that both the House and Senate Ethics Committees work with ORR and OPR, respectively, to institute a procedure for notifying the public that the reports are undergoing Committees' reviews and are subject to change.

Ethics Committees' Comments

The Senate Ethics Committee and OPR agreed with the thrust of our recommendations. The Committee instituted a 2-year review procedure in 1989, and therefore we did not include a recommendation on this in our final report. The Committee requested that we provide additional information about what actions it could take to implement our other recommendations. We agreed to do this and are separately furnishing information for the Committee's consideration.

In commenting on our draft report, the House Ethics Committee said it did not review amendments because it is the obligation of the filer to explain or revise the report after the Committee questions items in a disclosure report. We agree that the act does not specifically require that the Committee review amendments. However, we believe that procedures for the review of amendments would help ensure that the public receives disclosure reports that are complete and in proper form.

The House Ethics Committee and ORR did not believe it is feasible to inform the public of each report's review status at all times because of the volume of reports that are received and must be reviewed in a short period of time. We agree that it may not be feasible to show the current review status of each report. Therefore, we revised our recommendation to recognize that a general notification to the public, provided with all of the reports, could be useful for alerting the public to the fact that the reports are undergoing review and are subject to change.

Comments of the Chairman and Ranking Minority Member, Committee on Standards of Official Conduct, House of Representatives

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HANK BROWN, COLORADO

RALPH L. LOTKIN, CHIEF COUNSEL

U.S. House of Representatives
Committee on Standards of Official Conduct
Suite HT-2, U.S. Capitol
Washington, DC 20515

June 1, 1989

The Honorable Charles A. Bowsher
Comptroller General of the United States
General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Bowsher:

The House Committee on Standards of Official Conduct has reviewed the draft General Accounting Office Report entitled, "Financial Disclosure Systems Improved But Can Be Further Strengthened." We appreciate the continuing efforts of GAO to assist Congress in effectively implementing the financial disclosure provisions of title I of the Ethics in Government Act of 1978, as amended (EIGA).

While the Committee agrees with many of the observations made in the Draft Report, especially those regarding the improvements which have occurred since 1981, we also believe that certain aspects of the document warrant comment and response for your consideration.

See pp. 2 and 15.

On pages 2 and 20, the Draft Report states that Financial Disclosure Statements are not audited, and that neither GAO nor the Committee staffs have access to supporting documents. This is an important point that merits emphasis. The EIGA neither contemplates nor authorizes that audits of any type be conducted to verify information. The review which is undertaken by the designated House and Senate Committees is designed to assure that "reports are filed in a timely manner, are complete, and are in proper form." See, 2 U.S.C. §705(a).

See pp. 5 and 35.

The provision cited immediately above is also pertinent to the comments at pages 6 and 56 of the Draft Report regarding this Committee's policy on amendments submitted by filers. After the Committee questions items on a Financial Disclosure Statement, it is the filer's obligation to explain or revise the disclosure report as appropriate. Reviewing both original filings and amendments would result in double, if not triple, effort. It would also be contrary to the approach taken by most, if not all, administrative agencies (including the Internal Revenue Service), which place the onus on filers for the accuracy and completeness of required filings.

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See pp. 3 and 12.

In discussing the designated House and Senate Committees on pages 3 and 13A, it may be appropriate to reference the statutory role of the Committees to render advisory opinions interpreting EIGA, on which individuals may rely without fear of incurring any penalty. See, 2 U.S.C. §705(b).

See pp. 4 and 21.

We do not agree with the characterization on pages 4 and 29 that it is this Committee's "application" of EIGA that exempts from filing those individuals who are not compensated at the GS-16 level on the filing date. The Committee's position derives from EIGA. Specifically, 2 U.S.C. §701(b)(1) states:

> Any individual who is an officer or employee of the legislative branch described in subsection (e) during any calendar year and performs the duties of his position or office for a period in excess of sixty days in that calendar year shall file on or before May 15 of the succeeding calendar year . . . if such individual is or will be such an officer or employee on such May 15. [Emphasis added.]

Thus, we believe it is incorrect to characterize the Committee's approach as the implementation of an exemption.

See pp. 4 and 25.

The discussion on pages 5 and 39 references the procedure that would have to be used in the House to refer non-filers to the Attorney General. Such a referral is not the only manner in which matters may come to the attention of the Department of Justice. You may wish to note that a civil action may be brought at the initiative of the Attorney General, without separate House action, and that all reports are a matter of public record. See, 2 U.S.C. §706.

See pp. 5 and 31.

Regarding "apparent errors" detected by the Committees, the Draft Report states on pages 6 and 48 that instances were uncovered where holdings were not reported. We believe it would be helpful to point out that, in most cases, only a few holdings were omitted from individual forms, not that a filer's holdings were omitted in their entirety from the disclosure reports.

See p. 37.

We also have concern with regard to the conclusion on pages 2 and 46 that procedures for reviewing blind trust agreements could be improved. The GAO staff observed that there were no "formal" procedures for review and that the public record was incomplete in one instance. We are not aware of any assessment

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conducted of actual blind trust review procedures, since GAO staff did not engage in any discussions on the subject of blind trust review procedures with the Committee attorney who has been assigned primary responsibility in this area. In the Committee's view, the statute is so explicit in its requirements regarding what a blind trust document must include, that additional "formal" procedures are unnecessary. In fact, Committee blind trust review procedures are stringent and the statute itself is used as a "checklist" for adequacy.

Regarding the one trust for which GAO staff found the public record incomplete, we point out that two numbered pages of the trust document were somehow omitted from the microfilm record maintained by the Office of Records and Registration. Review of the original of the subject trust agreement, as well as other trust documents retained by the Committee would have established that all blind trusts approved by the Committee within the review period conform fully with applicable legal requirements.

See p. 37.

On pages 7 and 63, the Draft Report suggests that there should be public disclosure of the extent to which Financial Disclosure Statements have been reviewed. Because of the large volume of Statements received which have to be reviewed within a short period of time, it would be extremely difficult to note which reports on the public record had been examined and which had not. Moreover, stating that a report had been reviewed would not indicate the results of the review or whether the information included in a Statement was correct. The fact that changes had been made in a Statement should be apparent from the fact that the "amendment" box has been checked on the face of the form.

See pp. 6 and 40.

See pp. 11 and 18.

On pages 12 and 13 of the Draft Report, regarding filing dates, it may be appropriate to mention that a form postmarked by the due date is considered timely. Confusion regarding this fact appears to be the reason why the Draft Report is inaccurate with respect to the number of congressional employees who filed late in 1987. Committee staff, as well as staff of the Office of Records and Registration, held discussions with GAO staff regarding when a report is considered late, and why. Because of our concern in this matter, we reviewed the GAO workpapers supporting the relevant discussion and tables in the Draft Report. We determined that the figures in Table 2.1, on page 25, are inaccurate. Our review of the same materials as GAO staff indicates that there were 58, not 61, congressional employees who filed late. Of these, 8, not 7, filed 6-15 days late, and 23, not 27, filed more than 15 days late.

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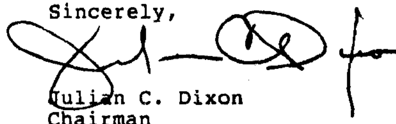
We appreciate the opportunity to have reviewed the Draft Report and hope that the foregoing comments will be useful to you.

Sincerely,



Julian C. Dixon
Chairman

John T. Myers
Ranking Minority Member

JS:MJD

Major Contributors to This Report

General Government Division, Washington, D.C.

James T. Campbell, Assistant Director
Gary V. Lawson, Evaluator-in-Charge
Carrie M. Watkins, Staff Member
Laura Shumway, Senior Analyst

Office of General Counsel

Henry Wray, Senior Associate General Counsel
Lynn Gibson, Assistant General Counsel
Jan Montgomery, Attorney-Advisor

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