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Report to Congressional Requesters

June 1987

ETHICS ENFORCEMENT

Process by Which
Conflict of Interest
Allegations Are
Investigated and
Resolved



Released

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General Government Division

May 21, 1987

The Honorable Carl Levin
Chairman, Subcommittee on
Oversight of Government Management
Committee on Governmental Affairs
United States Senate

The Honorable William S. Cohen
Ranking Minority Member, Subcommittee
on Oversight of Government Management
Committee on Governmental Affairs
United States Senate

The Honorable Gerry Sikorski
Chairman, Subcommittee on Human Resources
Post Office and Civil Service Committee
United States House of Representatives

On April 29, 1987, we briefed your offices on the results of our preliminary review of the government's procedures for enforcing federal conflict of interest laws. They asked that we provide you a written account of the briefing. The information presented in the briefing and our objective, scope, and methodology are summarized below and discussed in detail in the attached appendix.

The objective of our review was to gather some preliminary information on the process by which alleged violations of conflict of interest laws, particularly 18 U.S.C. 207 and 208, are investigated and resolved by federal agencies. We spoke with officials from the Office of Government Ethics and the Department of Justice about the process by which federal conflict of interest laws are enforced. We also spoke with officials of the Department of the Interior and the Environmental Protection Agency to gain a perspective on enforcement procedures at the agency level. The Inspectors General at those agencies said they conduct the initial investigations and refer those cases that they believe constitute violations of the statutes to either the Office of the U.S. Attorney or the Public Integrity Section of the Criminal Division in the Department of Justice. According to officials in the Public Integrity

Section, the Federal Bureau of Investigation also receives allegations of conflict of interest violations and conducts investigations either separate from or in concert with agency Inspectors General. The U.S. Attorney and the Public Integrity Section generally will prosecute those cases that they believe will result in felony convictions. Determinations of a lack of prosecutive merit can be based on one or a combination of various factors that are not ordinarily identified in letters of prosecution declination that are returned to the referring agency. Neither do such letters usually indicate whether Justice believes the case has merit or deserves administrative action.

Several of the officials we spoke with identified areas in the criminal statutes and in the enforcement process that they believe need to be improved. For example, several mentioned the difficulty of prosecuting conflict of interest cases as felonies, as is required in most conflict of interest statutes. They believed that a range of civil as well as criminal penalties in the conflict of interest statutes could facilitate prosecution of such cases. Also mentioned was the need for (1) regulations to define key terms in the statutes, (2) better coordination between the Office of the U.S. Attorney for the District of Columbia and the Public Integrity Section in the prosecution of cases, and (3) letters of declination that identify the reasons for declining prosecution and whether the cases have enough merit for administrative action. Officials in the Public Integrity Section do not believe these changes are needed.

We were able to obtain only limited information from the Office of Government Ethics on the issues raised in this report. Officials of the Office said they preferred to answer most of our questions in writing, and they are currently preparing their written responses. We will provide you a copy of their responses when they are received.

At your offices' request, we did not obtain official agency comments on this report. We did discuss the report with agency officials, most of whom said our reporting of their remarks was accurate. The Deputy Assistant Attorney General for the Criminal Division of the Department of Justice referred us to the Director of the Conflicts of Interest Crimes Branch, Public Integrity Section, for a statement of his views. The Director said the report did not accurately reflect his position. He requested that the complete records of Justice's testimonies before the House Judiciary Committee's

Subcommittee on Administrative Law and Governmental Relations and the Senate Judiciary Committee on conflict of interest legislation be included as appendices to this report as a complete depiction of his views. We did not do so because the testimony was voluminous and all of the testimony did not expressly address the issues in this report; however, we have cited portions of the testimony in the appendix. The complete record of that testimony can be found at Defense Procurement Conflict of Interest Act: Hearings on H.R. 2554 Before the Subcomm. on Administrative Law and Governmental Relations of the House Comm. on the Judiciary, 99th Cong., 2d Sess. 40-74 (1986) and Integrity in Post Employment Act of 1986: Hearings on S. 2334 Before the Senate Comm. on the Judiciary, 99th Cong., 2d Sess. 25-66 (1986).

Because our review was limited to the Office of the Designated Agency Ethics Official and the Office of the Inspector General at two agencies and one Office of the U.S. Attorney, no generalizations should be drawn concerning the enforcement procedures followed or the problems experienced in any of the other agencies or U.S. Attorneys' Offices. Also, the views expressed in this report are those of the individuals contacted and have not been evaluated or corroborated by other data.

As arranged with your offices, we plan no further distribution of this report until 30 days from the date of publication unless you publicly announce the contents earlier. At that time, we will send copies to interested parties and make copies available to others upon request. If you have any questions or need additional information, please contact me on 275-6204.


Rosilyn S. Kleeman
Senior Associate Director

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ABBREVIATIONS

DAEO	Designated Agency Ethics Official
EPA	Environmental Protection Agency
IG	Inspector General
OGE	Office of Government Ethics

THE INVESTIGATION AND RESOLUTION OF
CONFLICT OF INTEREST ALLEGATIONS

BACKGROUND

Two federal conflict of interest statutes impose certain restrictions on the activities of former federal employees (18 U.S.C. 207) and prohibit current federal employees from participating in matters in which they have a financial interest (18 U.S.C. 208). One provision of 18 U.S.C. 207 permanently bars a former federal employee from representing anyone other than the United States before the government in connection with a "particular matter involving a specific party or parties" if he or she participated "personally and substantially" in that same matter as a government employee (18 U.S.C. 207[a]). Also, a former employee is barred for 2 years from conducting representational activity with respect to any matter pending under his or her official responsibility within 1 year prior to termination of the employee's service in the area in question (18 U.S.C. 207[b][i]). Another provision, 18 U.S.C. 207(c), precludes a former high-level employee from contacting his or her former agency for 1 year on any "particular matter" which is pending before the agency or in which the agency has a direct and substantial interest. Under 18 U.S.C. 208, a current federal employee is prohibited from participating "personally and substantially" in any "particular matter" that to his or her knowledge may affect a personal financial interest or the financial interest of a spouse, minor child, partner, organization in which the employee serves, or person or organization with whom the employee is negotiating for employment.

Section 402(a) of the Ethics in Government Act (Pub. L. 95-521) requires the Director of the Office of Government Ethics (OGE) to provide "overall direction of executive branch policies relating to preventing conflicts of interest on the part of officers and employees of any executive agency." The Department of Justice is responsible for investigating and prosecuting alleged violations of all federal criminal statutes, including conflict of interest laws. At the agency level, Designated Agency Ethics Officials (DAEOs) are appointed by the department or agency head to, among other things, review financial disclosure statements, counsel employees on ethics standards and programs, and assist managers and supervisors in understanding and implementing agency ethics programs. Agency Inspectors General (IGs) are responsible for investigating fraud, waste, and abuse within their agencies, including conflicts of interest.

OBJECTIVE, SCOPE, AND METHODOLOGY

The objective of our review was to gather some preliminary information on the process by which alleged violations of conflict of interest laws, particularly 18 U.S.C. 207 and 208, are investigated and resolved by the Department of Justice and the Office of Government Ethics (OGE) and within two agencies-- the Department of the Interior and the Environmental Protection Agency (EPA). These latter two agencies were chosen because they were recommended by the requesters' offices as agencies experienced in the enforcement of conflict of interest statutes.

To accomplish our objective, we reviewed relevant statutes and regulations to determine who was responsible for conflict of interest enforcement in individual agencies and across the government. We then interviewed officials of the Offices of the DAEOs and the IGs at the Department of the Interior and EPA to determine how they carried out their conflict of interest enforcement responsibilities. Next, we spoke with officials in the Department of Justice and discussed their role in the enforcement process. We spoke with Justice officials in the Criminal Division, the Public Integrity Section within the Criminal Division, the Office of General Counsel, the Office of Legal Counsel, the Executive Office of the U.S. Attorneys, and the Office of the U.S. Attorney for the District of Columbia. We also attempted to discuss the enforcement of conflict of interest laws with OGE, but we obtained only limited information. OGE officials preferred to answer most of our questions in writing, and they are currently preparing their written responses.

Because our review was limited to two IG and DAEO offices and one Office of the U.S. Attorney, no generalizations should be drawn concerning the enforcement procedures followed or the problems experienced in any of the other IG, DAEO, or U.S. Attorney offices. Also, the views expressed in this report are those of the individuals contacted and have not been evaluated or corroborated by other data.

Our work was conducted in March and April, 1987, in the Washington, D.C., headquarters offices of the various agencies involved. At the direction of the requesters' offices, we did not obtain official agency comments on this report, but we did discuss the report with agency officials. Most said our reporting of their remarks was accurate. The Deputy Assistant Attorney General for the Criminal Division of the Department of Justice referred us to the Director of the Conflicts of Interest Crimes Branch, Public Integrity Section, for a statement of his views. The Director said the report did not accurately reflect his position. He requested that the complete records of Justice's testimonies before the House Judiciary Committee's

Subcommittee on Administrative Law and Governmental Relations and the Senate Judiciary Committee on conflict of interest legislation be included as appendices to this report as a complete depiction of his views. We did not do so because the testimony was voluminous and all of the testimony did not expressly address the issues in this report; however, we have cited portions of the testimony in the appendix. The complete record of that testimony can be found at Defense Procurement Conflict of Interest Act: Hearings on H.R. 2554 Before the Subcomm. on Administrative Law and Governmental Relations of the House Comm. on the Judiciary, 99th Cong., 2d Sess. 40-74 (1986) and Integrity in Post Employment Act of 1986: Hearings on S. 2334 Before the Senate Comm. on the Judiciary, 99th Cong., 2d Sess. 25-66 (1986). Our review was conducted in accordance with generally accepted government auditing standards.

AGENCY ENFORCEMENT PROCESS

The investigation of alleged violations of conflict of interest laws within the Department of the Interior and EPA is primarily the responsibility of the Inspectors General. The Designated Agency Ethics Official serves as a technical resource to the IG, but the DAEO's primary duties are to provide training and counseling to agency employees on conflict of interest matters and to review financial disclosure statements. Also, allegations the DAEOs receive in the conduct of their responsibilities are to be forwarded to the IG. The IG investigations may result in the case being referred to the Department of Justice for further investigation and possible prosecution or forwarded to others within the agency for possible administrative action (e.g., a reprimand or dismissal in cases involving current employees).

Source of allegations

Officials of the Interior and EPA IG offices said they receive allegations of conflict of interest violations from a variety of sources, but most allegations are from agency hotlines. Other sources include congressional staff, the media, and DAEOs. Officials we spoke with in the IG and DAEO offices said that few allegations arise as a result of financial disclosure form reviews.

IG investigation and referral

Officials in the IG offices at EPA and Interior said they reject some allegations without investigation because they are clearly frivolous and/or are not violations of the law. Other allegations are rejected after a preliminary investigation for the same reasons. If the preliminary or full investigation

indicates that no criminal violation occurred but that the employee should be disciplined in some way, the case may be referred back to the employee's division-level supervisor for administrative action. The EPA IG said their DAEO is consulted in making a determination of whether there has been a violation; the Interior IG said the DAEO is not consulted.

The IGs said the preliminary investigation in some cases will indicate that a provision of conflict of interest law may have been violated, but the potential violation is minor or "technical" in nature and not the type of case the Department of Justice is likely to prosecute. (See pp. 10 through 12 of this appendix for a discussion of Justice's prosecutive determinations.) Because federal law (28 U.S.C. 535) generally requires that Justice be notified of any violation of title 18, the IGs at EPA and Interior said they will refer such cases to Justice without a full investigation, anticipating that Justice will decline to prosecute the case. If the preliminary investigation indicates the possibility of a serious violation and that evidence is available to substantiate the charge, the IG will initiate a full investigation.

Although 28 U.S.C. 535 requires that indications of criminal violations be forwarded to the Justice Department, it does not indicate the office within Justice to which such allegations are to be sent. Section 402(b)(13) of the Ethics in Government Act (Public Law 95-521) requires the Director of OGE to cooperate with the Attorney General in developing "an effective system for reporting allegations of violations of the conflict of interest laws to the Attorney General..." but no formal referral process has been developed. The IGs indicated that they can refer substantiated allegations to either the Public Integrity Section of the Criminal Division or to the Office of the U.S. Attorney within the jurisdiction in which the offense occurred. Officials in the Public Integrity Section said that some allegations are sent directly to the Federal Bureau of Investigation, and that the Bureau conducts investigations either separate from or in concert with the IG investigation.

The IGs at both EPA and Interior said they send virtually all conflict of interest cases to the appropriate Office of the U.S. Attorney because they believe that the Public Integrity Section does not readily prosecute conflict of interest cases. An official in the Office of the U.S. Attorney for the District of Columbia also said that he believed his Office would be more likely to prosecute conflict of interest cases because Public Integrity requires a higher evidential standard for prosecution in cases similar to 18 U.S.C. 207 and 208 (e.g., cases involving false or fraudulent claims [18 U.S.C. 287] and false or fraudulent statements [18 U.S.C. 1001]). He also said he

believed conflict of interest cases are not sent to Public Integrity because:

- The U.S. Attorney's Office can process cases faster than Public Integrity because they can put certain cases on a "fast track," enabling them to be processed within 90-120 days.
- The U.S. Attorney's Office has certain investigative tools available that IGs may need in their investigations (e.g., access to grand juries) that Public Integrity cannot provide as easily.
- The IGs may have developed a personal relationship with 1 of the 94 U.S. Attorney's Offices and feel more comfortable referring cases there.

The officials we spoke with in the Office of the IG at EPA said they are more likely to refer cases to the Office of the U.S. Attorneys because that Office will give them a preliminary indication of the likelihood of prosecution of a case. The official in the Office of the U.S. Attorney for the District of Columbia said this type of consultation can save IGs from spending time on an extended investigation and can also allow the U.S. Attorney to oversee the IG's investigation, ensuring that mistakes are not made that could adversely affect the prosecution of the case.

Overall, the referral process was described by the official of the U.S. Attorney's Office for the District of Columbia as "hit or miss." He explained that his Office and the Public Integrity Section do not, as a matter of course, notify each other when they receive a case or when they decide to prosecute or decline prosecution. He said their contacts are limited to instances when the Public Integrity staff, like the IGs, needs investigatory tools that the Office of the U.S. Attorney has more readily available, such as grand juries. He also said his Office may contact Public Integrity when it needs to utilize the expertise available in that office.

Officials in the Public Integrity Section said they are not aware of any evidence to indicate that they have a higher evidential standard or are less likely to prosecute conflict of interest cases. They also said they consult with agency officials on the merits of a case when they believe such consultation is appropriate.

JUSTICE ENFORCEMENT PROCESS

The process by which both the Public Integrity Section and the U.S. Attorney's Office investigate and prosecute a conflict of interest case is, according to Justice officials, the same as any other criminal investigation or prosecution. The objective of the investigation is to collect facts sufficient to demonstrate whether an offense has been committed. Prosecutions after indictment proceed as set forth in the Federal Rules of Criminal Procedure and the local rules of the district court where the prosecution is conducted. The case may be resolved by a plea agreement either before or after an indictment is returned or information is filed. Cases that are prosecuted under the conflict of interest statutes are sometimes resolved by a finding or admission of guilt under other criminal statutes, such as those prohibiting false or fraudulent claims (18 U.S.C. 287), false or fraudulent statements (18 U.S.C. 1001), and perjury (18 U.S.C. 1621-1623).

Prosecutive determinations

Officials of both the Public Integrity Section and the Office of the U.S. Attorney for the District of Columbia said their decision on whether to prosecute a conflict of interest case is guided by the prosecutive policy in Chapters 27 and 85 of the U.S. Attorneys' Manual. Chapter 27 describes the general principles of federal prosecution for all cases, and Chapter 85 relates specific guidelines for prosecution of conflict of interest cases. The prosecutive policy in Chapter 85 states that:

"If investigation results in proof of an offense, the offender should be prosecuted unless there are strong reasons not to prosecute. The offender's failure to profit from his crime and the fact that his offense did not involve fraud against the government are not appropriate reasons for declining to prosecute conflict of interest crimes. But, for example, when it is unquestionably clear that a petit jury would acquit the offender or if administrative disposition would be clearly more appropriate than prosecution, a decision against prosecution is justifiable."

The prosecutive policy does not identify any additional factors relevant to the determination whether to prosecute a conflict of interest case.

In testimony before the Subcommittee on Administrative Law and Governmental Relations of the House Judiciary Committee on January 29, 1986, a representative of the Criminal Division of

the Justice Department noted that a determination of lack of prosecutive merit is based on a combination of various factors, including (1) no evidence of venal conduct; (2) no evidence of tangible harm to the government; (3) no evidence of gain to the potential defendant or a party represented by the potential defendant; (4) the existence of strong legal defenses; (5) the existence of strong factual defenses; (6) authorized punishment disproportionate to the offense or the offender; (7) substantial likelihood of an acquittal if prosecution were undertaken; and (8) the existence of administrative action as an adequate alternative to criminal prosecution.¹

Both the IGs and Justice officials indicated, however, that the final test of prosecutive merit in a conflict of interest case is the likelihood of obtaining a felony conviction. As an official in the Department of Justice stated in hearings relating to enforcement of the conflict of interest statutes:

"The sense is, Senator, that most of these cases, at least most of those I have seen, have been cases which technically meet the standards of the statute...but there is no realistic expectation that a jury will convict, and it would be a waste of resources to bring them because the juries have a tendency to give sympathy to a defendant who is being charged with what sometimes juries view as an ethical violation and they do not sometimes see the real criminality involved in the situation."²

According to Justice officials in the Criminal Division, the initial decision on whether to prosecute a case is made by a trial attorney, and is reviewed by others up the agency chain of command. Internal Justice Department memoranda indicate why cases are declined, but letters of declination sent to the IG or other referring officials in the agencies are generally very short and ordinarily do not indicate the reason for declination. Neither do such letters usually indicate whether Justice believes the case has merit or whether it deserves administrative action.

¹Defense Procurement Conflict of Interest Act: Hearings on H.R. 2554 Before the Subcomm. on Administrative Law and Governmental Relations of the House Comm. on the Judiciary, 99th Cong., 2d Sess. 66 (1986) (statement of Stephen S. Trott, Assistant Attorney General, Criminal Division).

²Integrity in Post Employment Act of 1986: Hearings on S. 2334 Before the Senate Comm. on the Judiciary, 99th Cong., 2d Sess. 32 (1986) (statement of John C. Keeney, Deputy Assistant Attorney General, Criminal Division [hereinafter cited as Hearings]).

Typically, the letters state that the case was declined for prosecution and is being returned to the agency for whatever action it deems necessary. However, officials in the Public Integrity Section said agency officials are often told that they may discuss why the case was declined for prosecution by calling one of their attorneys.

DAEO officials at Interior said that since Justice does not express an opinion on the merits of the case, the bureau-level supervisor at Interior may also decide that administrative action is inappropriate. The Interior officials said this situation could be remedied if the letter of declination were to indicate why Justice chose not to prosecute the case and/or whether Justice believed administrative action was warranted. DAEO officials at EPA said Justice's decision not to prosecute a case has no effect on their agency's willingness to take administrative action. Also, officials in the Public Integrity Section said the decision on whether to take administrative action is an agency responsibility in which they do not interfere.

AGENCY ADMINISTRATIVE ACTIONS

Administrative action may be taken against either current or former employees believed to have violated the conflict of interest statutes. The IGs at both Interior and EPA said the types of administrative actions that may be imposed on current employees include termination, suspension, reassignment, reprimand, and requirement that employees recuse themselves from certain decisions or divest certain financial holdings. Department of Justice officials said that agency administrative actions may be imposed at any point during the IG or Justice investigations and do not necessarily preclude criminal sanctions. However, both the EPA and Interior IGs said they would not refer a case for administrative action while the Department of Justice is deciding whether to prosecute. The IGs said they commonly refer cases that are declined by Justice to the employee's bureau-level supervisor for administrative action. The IGs also said they review the action taken and, if they believe it is inappropriate, they will notify the supervisor of that determination.

Administrative sanctions for postemployment violations were authorized by the Ethics in Government Act of 1978 and are codified at 18 U.S.C. 207(j). If the head of an agency finds that a former employee has violated a provision of the postemployment conflict of interest statute, the law provides that the agency head may bar him or her from contacting the agency for up to 5 years or may take "other appropriate disciplinary action." The law requires agencies to develop

procedures for implementation of administrative sanctions, and both EPA and Interior have done so. While the DAEOs at both agencies knew of those procedures, neither agency's IG was aware of them. Both agencies' procedures place significant responsibility for the implementation of administrative action on the IG.

ISSUES IDENTIFIED BY INTERVIEWEES

In the course of our interviews, several officials identified difficulties they had in enforcing the conflict of interest laws and mentioned some possible solutions. For example, some officials expressed the view that enforcement of the conflict of interest laws has been inhibited by the fact that the laws generally classify violations as felonies and do not provide for the imposition of lesser criminal and civil penalties. Some officials perceived a need for regulations defining key terms in 18 U.S.C 208 concerning conflicts of interest on the part of current employees. Also, some officials recommended clarification of the process by which conflict of interest cases are referred to and coordinated within the Department of Justice. These and various other concerns raised by the officials are discussed below.

Need for a range of penalties

The issue most commonly cited by officials at the Justice Department was the difficulty in prosecuting conflict of interest cases as felony violations. Because they believe that juries will not return felony convictions on most conflict of interest cases, prosecutors in both the Public Integrity Section and the Office of the U.S. Attorney for the District of Columbia said they are reluctant to accept such cases for prosecution. They recognize that their reluctance to prosecute such cases may deter IGs from fully investigating such allegations and referring them to Justice.

Officials in Justice's Office of General Counsel, Office of Legal Counsel, the Criminal Division, the Public Integrity Section, and the Office of the U.S. Attorney for the District of Columbia said they believed the conflict of interest statutes could be amended to provide for a range of civil as well as criminal penalties. This, they said, could facilitate prosecution of conflict of interest cases, possibly resulting in more prosecutions and more convictions. This increased enforcement may also have a deterrent effect, one official noted, as the greater likelihood of prosecution could make employees more conscious of their ethical obligations.

Need for regulations

One of the first problems agency and Justice investigators must face when they receive an allegation of a conflict of interest violation is to determine whether the activity involved is prohibited by law. The conflict of interest laws governing current (18 U.S.C. 208) and former employees (18 U.S.C. 207) contain terms such as "particular matter" and "participate personally and substantially." These terms are not defined in the law.

Section 402(b)(2) of the Ethics in Government Act requires the Director of OGE to develop, in consultation with the Attorney General and the Office of Personnel Management, rules and regulations pertaining to the identification and resolution of conflicts of interests. To date, OGE has issued regulations for only postemployment conflicts of interest (18 U.S.C. 207).

The DAEO at Interior and the IGs at both EPA and Interior said regulations for the conflict of interest statutes involving current employees, particularly 18 U.S.C. 208, could help them define key terms and determine legal culpability. The official we spoke with in the Office of the U.S. Attorney for the District of Columbia also believes regulations would be helpful. An example of the type of confusion that can result from the lack of regulations was cited by the Interior DAEO. In the regulations that implement 18 U.S.C. 207, a "particular matter involving a specific party or parties" (from which a former employee may be precluded from being involved) is defined very narrowly and excludes policy determinations. However, OGE and Justice advisory opinions state that a "particular matter" as that term is used in 18 U.S.C. 208 includes policy decisions. Because "particular matter involving a specific party or parties" is defined in regulations implementing 207 and no regulations have been issued under 208, an investigator may erroneously rely on the 207 definition for a 208 case, thereby concluding that an individual's participation in a policy decision is permissible when it is, in fact, prohibited.

Officials in the Office of Legal Counsel and the Public Integrity Section said they did not believe that regulations defining terms in these statutes are necessary. The official we spoke with in the Public Integrity Section said that regulations that contain examples of key terms are commonly drawn from existing case law and are already available in OGE and Office of Legal Counsel legal opinions. He said that regulations are not necessarily the best place to define terms that exist in conflict of interest statutes.

Need for clarification
of the referral process

The official with whom we spoke in the Office of the U.S. Attorney for the District of Columbia said the process by which all cases, including conflict of interest cases, are referred to the Department of Justice needs clarification. He said the lack of guidance on when cases are appropriately referred to either the Public Integrity Section or his Office indicates the need for a more formal referral process or at least a requirement that the offices notify each other of the receipt and resolution of cases. The official we spoke with in the Office of the U.S. Attorney for the District of Columbia said his Office and the Office of Public Integrity are currently attempting to coordinate their actions in these areas.

Section 402(b)(13) of the Ethics in Government Act requires the Director of OGE to cooperate with the Attorney General in developing an effective system for agencies to use in reporting allegations of violations of the conflict of interest laws to the Attorney General. However, the IGs we spoke with in Interior and EPA said they were unaware of any such system of referral. Also, officials we spoke with in the offices of the IGs at both EPA and Interior, the Public Integrity Section, and the Office of U.S. Attorney for the District of Columbia told us that OGE is generally not notified when conflict of interest cases involving current employees are referred to the Department of Justice. OGE officials told us their Office keeps no record of postemployment violation referrals of which it is notified.

Postemployment monitoring

Agencies are not currently required to monitor former employees for violations of conflict of interest statutes, and neither EPA nor Interior has any system for monitoring these employees. Both the IGs and the DAEOs in each agency said they did not believe such a system would be enforceable or cost effective. However, in hearings before the Senate Judiciary Committee on April 29, 1986, representatives of the Criminal Division of the Justice Department said they believed Congress could consider amending 18 U.S.C. 207 to require persons leaving sensitive positions to disclose their contemplated employment to the agency that they were leaving, with infractions punishable as misdemeanors. An injunction could then be sought in appropriate situations to prohibit an individual from accepting certain types of employment.³

³ Hearings, pp. 26-27.

Other issues

Other suggestions, previously discussed on pages 9, 12, and 13 of this appendix, which were offered by Interior or EPA IGs or DAEOs or by the official in the U.S. Attorney's Office for the District of Columbia for improving the conflict of interest enforcement system include:

- early IG consultation with the Public Integrity Section (as is currently done in the Office of the U.S. Attorney for the District of Columbia) regarding the prosecutability of cases to prevent waste of investigatory resources and to avoid mistakes in investigations that could affect the prosecution of such cases,
- notification of agencies in letters of declination as to the reasons for declining prosecution and whether the case has enough merit for administrative action, and
- insuring that agency IGs are aware of administrative action procedures available in postemployment conflict of interest cases.

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