



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

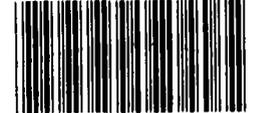
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FEDERAL PERSONNEL AND
COMPENSATION DIVISION

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B-206488 APRIL 16, 1982

The Honorable Edward J. Markey
Chairman, Subcommittee on Oversight
and Investigations
Committee on Interior and Insular
Affairs
House of Representatives

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Dear Mr. Chairman:

Subject: The Geological Survey's Financial Disclosure System is Adequate But Further Refinements Are Needed (FPCD-82-37)

In response to your October 15, 1981, request, we have reviewed the adequacy of the financial disclosure system at the U.S. Geological Survey, Department of the Interior. We found that the Survey has substantially improved its financial disclosure system since our review in 1975. 1/

The Survey's financial disclosure system deters employee financial interests which may cause conflict with his or her Government duties by (1) identifying employees required to file financial disclosure statements, (2) reviewing financial interests reported by employees, and (3) requesting the divestiture of improper holdings. However, the Survey does not determine whether employees report all their financial interests. The success of the financial disclosure system, therefore, depends to a great extent upon the honesty and integrity of the employees.

Our review indicates that the Survey could make some administrative improvements in its disclosure system. The Survey's financial disclosure system for preventing conflict of interest can also be improved by using more precise data to identify prohibited holdings. To further protect the system's integrity, the need for the Survey to closely monitor spouse and minor children's holdings cannot be overemphasized.

1/"Effectiveness of the Financial Disclosure System for Employees of the U.S. Geological Survey" (FPCD-75-131, Mar. 3, 1975).

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OBJECTIVE, SCOPE, AND METHODOLOGY

Our objective was to determine if the Survey's financial disclosure system complies with existing laws and regulations. To accomplish this, we:

- Reviewed financial disclosure laws, regulations, and policies applicable to Survey employees and discussed the application and interpretation of these requirements with Department and Survey officials.
- Examined the financial disclosure statements filed by 1,522 non-senior executive employees in the Survey's Conservation Division, 1/ and 63 senior Survey executives for the 1980 filing cycle (the most recently completed cycle at the time of our review).
- Reviewed the handling of requested divestitures.

We compared the list of Conservation Division positions requiring financial disclosure with the statements filed to insure that everyone required to file actually did so.

In examining the financial disclosure statements, we eliminated the statements of 943 employees from detailed review because they reported no financial interests on their forms. We grouped the remaining 642 statements as either (1) reporting financial interests in petroleum- or mining-related areas that warranted our closer evaluation or (2) reporting financial interests which did not relate to petroleum and mining, and therefore, did not warrant our evaluation. Using this criteria, we selected the statements of 228 Conservation Division employees and 13 Survey senior executives for closer examination. We reviewed the information employees reported but did not determine if they reported all pertinent interests since the Survey has no authority to verify this information.

For 18 divestitures that occurred in 1981, we reviewed the Survey's reasons for requesting the divestitures, the length of time it took the Survey to request the divestiture, and the employee's notification to the Survey that the divestiture was completed

1/Because of the large number of Survey employees who filed financial disclosure forms, the Subcommittee office agreed that we should focus our review of financial statements on those filed by Conservation Division employees. They said that this division was the organization of primary concern to the requester because of the division's involvement with the collection of royalties that companies must pay the Government.

or appealed. Five of these 18 requested divestitures were appealed to the Department level. We reviewed the background and resolution of these five appeals.

Our work was performed in accordance with our Office's "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions."

STATUTORY AND REGULATORY PROVISIONS
GUIDE FINANCIAL DISCLOSURE

Various statutory and regulatory provisions guide the establishment and management of the Survey's financial disclosure system. While some provisions address Government-wide concerns, other provisions deal solely with the Department or the Survey.

Executive Order 11222 and the Ethics in Government Act of 1978, provide the general basis for all Federal financial disclosure systems. The order, issued in 1965, directed agencies to establish standards of conduct for all Federal employees and required employees to report their financial interests. The Ethics in Government Act, among other things, provided additional requirements for financial disclosure related to high-level Government officials and set criteria for using blind trusts.

Department of the Interior regulations 43 CFR 20.735 set forth Department policies, identify principal laws relevant to employee conduct and responsibilities, and establish the financial disclosure system for the Department. Under these regulations, bureau and office heads are designated as ethics counselors who are responsible for administering financial disclosure provisions to promote the ethical conduct of their employees. These regulations also subject Department employees to the disclosure requirements of several laws relating to their official duties. These laws include the:

- Federal Land Policy and Management Act (Public Law 94-579).
- Mining in the Parks Act (Public Law 94-429).
- Surface Mining and Reclamation Act (Public Law 95-87).
- Energy Policy and Conservation Act (42 U.S.C. 6392).
- Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1864).

For Survey employees, the Organic Act of 1879 (43 U.S.C. 31(a)) and the related survey policy (43 CFR 20.735-12(b)(3)) also restrict the interests they may have in petroleum or mineral related activities.

SURVEY HAS IMPROVED ITS
FINANCIAL DISCLOSURE SYSTEM:
SOME REFINEMENTS ARE NEEDED

In 1975 and 1976, ^{1/} we identified certain deficiencies in the Survey's financial disclosure system. The Survey has corrected these deficiencies by

- defining the responsibilities for key positions which guide the operations of the financial disclosure system,
- identifying employees required to file statements, and
- implementing review procedures to identify improper financial interests and ordering divestitures whenever these interests presented a conflict.

Defining the responsibilities of key positions which guide disclosure operations has increased the effectiveness of the Survey's financial disclosure system. The responsibilities defined for the key positions are as follows:

- The Deputy Agency Ethics Official who oversees the Department's disclosure system assists bureau/offices in operating disclosure systems and formally reviews Department-wide senior executives' disclosure forms.
- The Department's Solicitor provides legal interpretations and advice based on relevant statutes and regulations.
- The Survey's Director who serves as the Survey Ethics Counselor provides top management support, oversight, and accountability.
- The Survey's Deputy Ethics Counselor manages the Survey's system.

The first three positions mainly provide oversight and accountability for the disclosure system. The Survey Deputy Ethics Counselor, as manager, (1) monitors the amount of Federal leases companies hold, (2) notifies employees of their filing requirements, (3) reviews employees' reported financial interests, (4) recommends divestitures, and (5) advises and counsels employees.

^{1/}"Effectiveness of the Financial Disclosure System for Employees of the U.S. Geological Survey" (FPCD-75-131, Mar. 3, 1975).
"Department of the Interior Improves Its Financial Disclosure System for Employees" (FPCD-75-167, Dec. 2, 1975). Letter report to the Honorable John E. Moss (FPCD-76-37, Feb. 2, 1976).

The Survey presently staffs this position with an individual who is knowledgeable about employee duties and the financial interests which may conflict with these duties.

The Deputy Agency Ethics Official and the Survey Deputy Ethics Counselor believe the Survey's financial disclosure system protects the Government from actual or apparent conflicts of interest by requiring the (1) employees to truthfully disclose financial interests and (2) Survey to determine whether reported interests constitute a conflict. It should be noted, however, that the system's integrity relies on employees to honestly and fully disclose financial interests. The Survey does not determine whether employees have disclosed all pertinent holdings.

While these efforts have substantially improved the Survey's system, further improvements could be made by more clearly presenting the list of positions required to file, better documenting the rationale used in approving some holdings, and improving the timeliness of Solicitor decisions.

Identified positions requiring disclosure can be more clearly presented

The Survey has developed a comprehensive list of positions subject to financial disclosure requirements under different acts. The Survey's Deputy Ethics Counselor coordinates the updating of this list annually by requesting division heads to identify positions that should be added to or deleted from the list because of changes in duties. The Deputy Ethics Counselor uses this list to identify employees who should file disclosure statements.

We found the list difficult to interpret because of its format. For example, some portions of the list identified positions that are required to file while other portions identified positions that are not required to file. Some portions of the list identified positions by organizational units within offices while other portions identified positions in general.

By comparing the list of positions required to file with a list of employees who occupied these positions, we identified 14 employees who did not file the required statements. The Survey's Personnel Office had not notified the Deputy Ethics Counselor of the personnel actions which required nine employees to file statements after their job positions changed. The remaining five employees were not identified due to organizational changes and confusion over employees' duty status. Considering the Deputy Ethics Counselor had to identify the filing status for over 2,000 Survey employees, we do not view 14 omissions as a significant finding. The Deputy Ethics Counselor assured us that the 14 employees would be included in the 1981 cycle.

The Deputy Ethics Counselor told us that she has few problems using the list to identify and notify employees of reporting requirements. Clarifying the list, however, could help to insure the proper use of the list in the event the system's managerial personnel change. A clear list would also permit employees to independently review the filing requirements of their positions.

Better documentation of
subjective decisions needed

The Survey's procedures for determining the propriety of employee financial interests seem adequate for insuring that interests conform to relevant laws, policies, and guidelines. The process could be improved, however, by better documenting all the factors considered in approving interests where subjective decisions were made.

The Deputy Ethics Counselor determines the propriety of employee financial interests. In making these determinations, the Deputy Ethics Counselor uses information accumulated from continuously monitoring the activities of parent and subsidiary companies in the petroleum or mineral industries, particularly those companies with Federal petroleum or mineral leases. The Deputy Ethics Counselor reviews Federal lease activity reports and a variety of financial publications to update information on these companies. To determine the value of an employee's interest, the Deputy Ethics Counselor uses the most recently quoted stock price. In cases involving improper interests, the Deputy Ethics Counselor may ask the Department Solicitor for advice and/or recommend that the Survey Ethics Counselor formally request divestiture. Generally, once the Survey requests divestiture, employees must either divest within 90 days or appeal within 30 days.

Our detailed review of statements for 228 employees and 13 senior executives indicated that the Survey appropriately applied its guidelines in approving financial interests. In our review of divestitures occurring in 1981, we found no cases where employees unjustifiably retained improper holdings or divested past the permitted deadline.

In our review of the 228 cases, however, we found that the rationale for approving some questionable holdings was not documented in the case files. For example, we found cases in which the value of employees' shares of stock in corporations that held Federal leases exceeded the limits specified in Survey guidance. The Survey, however, did not require employees to reduce the amount of their holdings because (1) the corporations had diversified operations in which petroleum and minerals were small parts, (2) the corporations did not actively mine the leased land, (3) the amount of leased land was minimal, and/or (4) the value of individual shares was insignificant. Although the Deputy Ethics

Counselor provided additional information that justified those decisions, this information was not documented in the employees' files.

While we recognize that cases arise where considering other factors in addition to uniform standards is justified, it is important that the rationale used in subjective decisions be documented in the employee's file. Completely documented files can provide a reference for making future decisions that are consistent and equitable, particularly if managerial changes occur.

Timeliness of Solicitor's
decisions can be improved

Our review indicates the Solicitor's delay in responding to the Survey's requests for policy decisions hinders complete reviews of disclosed interests. For example, we found cases in which the Survey had tentatively approved employees' interests in companies pending a Solicitor's decision on the Federal leasing status of the companies. The Solicitor's delay in responding to these requests resulted in employees' holding questionable interests for three consecutive filing cycles. In addition, the delays discouraged the Deputy Ethics Counselor from issuing disclosure policy updates to employees. More timely responses by the Solicitor could resolve these problems.

DISCLOSURE PROCESS WEAKENED
THROUGH POLICY INTERPRETATIONS

We believe the effectiveness of the disclosure system has been weakened because the Department interprets the Organic Act in a way that (1) permits employees to have limited holdings in companies with Federal petroleum and/or mineral leases that do not exceed established acreage limits and (2) excludes interests of spouses and minor children from provisions of the act. The importance of using more precise criteria to establish prohibited holdings and of closely monitoring spouse and minor children's holdings can not be overemphasized as a means of protecting the integrity of the system.

More precise criteria could be used
to establish prohibited holdings

In determining whether an employee is prohibited from or limited in holding securities in a company, the Survey primarily considers the Federal lease holding status of the company. Employees are prohibited from holding securities in companies which have Federal petroleum leases in excess of 100,000 acres or mineral leases in excess of 10,000 acres. Employees are permitted holdings of up to \$1,500 in companies which (1) have Federal

petroleum leases up to 100,000 acres or mineral leases up to 10,000 acres, or (2) rely upon petroleum or minerals as their primary source of revenue but do not have Federal leases.

The Organic Act states that:

"The Director and members of the Geological Survey shall have no personal or private interests in the lands or mineral wealth of the region under survey, and shall execute no surveys or examinations for private parties or corporations."

The Department modified this prohibition by regulating a policy that permits employees to hold limited interests in companies with Federal petroleum or mineral leases. This 1975 regulatory extension of the act, states that:

". . . members of the Geological Survey shall not hold substantial personal or private interests, direct or indirect, in any private mining enterprise doing business with the United States."

Survey and Department officials told us that the 100,000 and 10,000 acre limits are used because they were the most convenient and accurate data available in 1975 when the policy was implemented. Although these limits have been cited as the basis for Department decisions on appealed divestitures, a Department official said that the Department has not officially sanctioned these limits as the criterion for determining how the Organic Act's absolute prohibition should be applied. In April 1981, the Survey requested the Department's concurrence on using lower acreage limits. The Department has not concurred.

The limits on the value of holdings have basically evolved through decisions on appeals of divestiture requests. During 1975 and 1976, the Department's Appeals Review Board began using a \$1,500 ceiling to determine the substantiality of holdings. This ceiling applied to all Survey employees regardless of their official duties. In 1979, the Survey began considering employees' duties in determining the substantiality of holdings by using the following criteria:

--An aggregate limit of \$1,500 applies to employees whose duties involve mineral or petroleum responsibilities of the Survey.

--An aggregate limit of \$15,000 applies to employees whose duties do not involve mineral or petroleum responsibilities of the Survey.

In June 1981, the Survey requested the Solicitor's concurrence on raising the \$1,500 limit to \$5,000.

By requesting the Solicitor's concurrence on lowering the acreage limits for prohibited holdings and raising the dollar value for limited holdings, the Survey proposes increasing the number of companies in which employees are prohibited from investing, while increasing the value of securities Survey employees may hold in nonprohibited companies.

We question the Survey's continued use of the present acreage limits as the primary criterion for determining whether holding securities in a company is prohibited. More precise and meaningful data exist for making such determinations. For example, statistics are available on smaller size leases, the number of producing acres leased, the quantity of petroleum or minerals on leased acres, and the royalty value of leases. The Department could use available data that make the criteria more precise in categorizing companies' securities as prohibited or limited for Survey employees.

Need for monitoring spouse and
minor children's holdings can
not be overemphasized

In 1978, the Department decided to exclude spouse and minor children's holdings from employees' interests, thus permitting a spouse or minor child to hold interests that the employee is not allowed to hold under the prohibition of the Organic Act. However, Department regulations curtail employee's Government duties that relate to the spouse or minor children's interests.

Prior to 1975, the interests of a spouse, minor child, or other member of an employee's immediate household were considered interests of the employee. However, in 1978, the Solicitor interpreted the statement "Director and members of the Geological Survey . . ." contained in the Organic Act, to mean employees of the Survey and not spouse or minor children. Accordingly, an employee's spouse or minor child may hold securities prohibited to employees without creating a conflict, provided

--the employee's funds or special knowledge were not used in the acquisition of the securities or

--the employee does not use his or her special knowledge in actively managing the holdings.

Such holdings are subject to Department-wide regulation (43 CFR 20.735-15(a)(1)). This regulation states that no employee shall have a direct or indirect financial interest that conflicts substantially or appears to conflict substantially with the employee's Government duties.

In our review of filed statements, we noted instances of spouse or minor children's holdings which would be prohibited or limited if they were held by the employee. For example, one employee's spouse held shares in two oil companies. The value of these shares exceeded the limited holdings that the employee would be permitted to own in those companies. We noted, however, that the files documented that the Department and Survey criteria on spouse or minor children's holdings were met. Also, the Survey had cautioned these employees against performing Government duties related to these holdings since such activity could present a conflict.

Executive Order 11222 and the Ethics in Government Act require employees to disclose spouse and minor children's holdings. We believe these provisions were intended to prevent actual or apparent conflicts of interest that could result from the holdings of an employee's immediate family. We were advised by a representative at the Office of Government Ethics (established by the Ethics Act) that provisions of specific financial disclosure laws, like the Organic Act, which involve selected groups of Federal employees are not extended to spouse or minor children's interests unless an agency decides to do so. Agencies generally exercise their authority to exempt spouse and minor children's holdings from specific financial disclosure laws by publishing their exemption policy in the Federal Register.

While we recognize the Department's intent to allow spouse and minor children's investments that are independent from the Survey employee's interests, this interpretation may permit Survey employees to circumvent the provisions of the Organic Act by investing in the name of a spouse or minor child. Therefore, the need for the Survey to closely monitor these holdings to protect the integrity of the agency from conflicts that could arise cannot be overemphasized.

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At the request of your office, we did not obtain agency comments on this report. As arranged with your office, no distribution of this report will be made until 15 days after the issue date unless you release it earlier. At that time we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,


Clifford I. Gould
Director