AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Calendar No. 349

104TH CONGRESS, 2d session | SENATE | REPORT 104–244

OFFICE OF GOVERNMENT ETHICS AUTHORIZATION ACT OF 1996

R E P O R T

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 699

TO AMEND THE ETHICS IN GOVERNMENT ACT OF 1978, TO EXTEND THE AUTHORIZATION OF APPROPRIATIONS FOR THE OFFICE OF GOVERNMENT ETHICS FOR 7 YEARS, AND FOR OTHER PURPOSES

MARCH 27 (legislative day, MARCH 26), 1996.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
29–010 WASHINGTON : 1996

COMMITTEE ON GOVERNMENTAL AFFAIRS

TED STEVENS, Alaska, *Chairman*

WILLIAM V. ROTH, JR, Delaware
WILLIAM S. COHEN, Maine
FRED THOMPSON, Tennessee
THAD COCHRAN, Mississippi
JOHN MCCAIN, Arizona
BOB SMITH, New Hampshire
HANK BROWN, Colorado

JOHN GLENN, Ohio
SAM NUNN, Georgia
CARL LEVIN, Michigan
DAVID PRYOR, Arkansas
JOSEPH I. LIEBERMAN, Connecticut
DANIEL K. AKAKA, Hawaii
BYRON L. DORGAN, North Dakota

ALBERT L. MCDERMOTT, *Staff Director*
LEONARD WEISS, *Minority Staff Director*
MICHAL SUE PROSSER, *Chief Clerk*

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT AND THE DISTRICT OF COLUMBIA

WILLIAM S. COHEN, Maine, *Chairman*

FRED THOMPSON, Tennessee
THAD COCHRAN, Mississippi
JOHN MCCAIN, Arizona
HANK BROWN, Colorado

CARL LEVIN, Michigan
DAVID PRYOR, Arkansas
JOSEPH I. LIEBERMAN, Connecticut
DANIEL K. AKAKA, Hawaii

KIM CORTHELL, *Staff Director*
PAULINA MCCARTER COLLINS, *Professional Staff Member*
LINDA J. GUSTITUS, *Minority Staff Director and Chief Counsel to the Minority*
FRANKIE DE VERGIE, *Chief Clerk*

CONTENTS

		Page
I.	Summary and Purpose	1
II.	Background	1
III.	Legislative History	4
IV.	Major Issues in S. 699	5
V.	Section-by-Section Analysis	6
VI.	Estimated Cost of Legislation	7
VII.	Evaluation of Regulatory Impact	8
VIII.	Changes in Existing Law	9

Calendar No. 349

104TH CONGRESS, *2d Session* | SENATE | REPORT 104–244

OFFICE OF GOVERNMENT ETHICS AUTHORIZATION ACT OF 1996

MARCH 27, (legislative day, MARCH 26), 1996.—Ordered to be printed

Mr. STEVENS, from the Committee on Governmental Affairs, submitted the following

REPORT

[To accompany S. 699]

The Committee on Governmental Affairs, to which was referred the bill (S. 699) to extend the authorization for the Office of Government Ethics (OGE) for seven years, and for other purposes, having considered the same, reports favorably on the bill and recommends that the bill do pass.

I. SUMMARY AND PURPOSE

The purpose of S. 699, is to ensure an effective system throughout the Executive Branch by extending the Office of Government Ethics authorization for seven years. The bill also provides OGE with gift-acceptance authority and makes certain technical changes to the ethics laws.

II. BACKGROUND

A. CREATION OF THE OFFICE OF GOVERNMENT ETHICS

The Office of Government Ethics was created by Title IV of the Ethics in Government Act of 1978 (Ethics Act). In response to a 1976 General Accounting Office report to Congress identifying a number of problems with the federal government's ethics system, President Carter submitted draft legislation in 1977 proposing the creation of OGE. Later in 1977, the Senate Committee on Governmental Affairs reported S. 555, the Public Officials Integrity Act. The basic concepts of S. 555 were incorporated into the Ethics Act, which was signed into law on October 26, 1978, as Public Law 95–521.

29–010

The Ethics Act created OGE within the Office of Personnel Management (OPM) to provide "overall direction of executive branch policies related to preventing conflicts of interest on the part of officers and employees of any executive agency." OGE was originally authorized for five years, through September 30, 1983.

B. 1983 AND 1988 REAUTHORIZATIONS

OGE was reauthorized for another five years in 1983 by passage of S. 461, which was signed into law as Public law 98–150. S. 461 was reported by the Senate Governmental Affairs Committee, passed by the Senate, and amended by the House Committee on the Judiciary and the House Committee on Post Office and Civil Service. As finally passed, the law extended OGE's authorization through September 30, 1988, and clarified the agency's authority and independence. Specifically, the 1983 reauthorization:

Established a five-year term for the OGE Director;

Gave OGE greater independence from OPM, allowing OGE to operate "in consultation with" rather than "under the general supervision of" OPM;

Required a separate budget line for OGE;

Permitted the OGE Director to request assistance from the Inspector General of an agency in conducting investigations involving financial disclosures; and

Required OGE to review the financial disclosure reports of high-level White House aides.

OGE was again reauthorized in 1988, this time for six years, through September 30, 1994. S. 2344, as reported by the Senate Committee on Governmental Affairs, made a number of important changes in OGE's structure, including establishing OGE as a free-standing agency independent of OPM (effective October 1, 1989). In addition, the 1988 reauthorization, signed into law as Public Law 100–598:

Upgraded the Director's position to Level III from Level V of the Executive Schedule;

Clarified the Director's power to recommend and order "corrective action" on the part of other agencies;

Expanded the Director's authority to request Inspector General assistance to include any investigation pursuant to the agency's statutory responsibilities; and

Increased OGE's authorized appropriations to $2.5 million for fiscal year 1989 and to $3 million for each of the five years thereafter.

C. DEVELOPMENTS SINCE OGE'S LAST REAUTHORIZATION

Since OGE was last reauthorized in 1988, the ethics laws have undergone a dramatic restructuring by virtue of the Ethics Reform Act of 1989 (Reform Act), Public Law 101–194. The Reform Act consolidated the ethics laws applicable to all three branches of government; expanded the post-employment restrictions for employees of the Executive Branch and extended such restrictions to the legislative branch; revamped the financial disclosure rules for senior government officials; changed certain aspects of the laws pertaining to the acceptance of gifts, outside earned income, and outside employment; authorized "certificates of divestiture" for incoming polit-

ical appointees who sell assets in order to avoid conflicts of interest; banned the receipt of Honoraria by Federal employees;[1] and added civil penalties to the range of potential sanctions for violations of the criminal ethics laws, among other changes. As the agency responsible for coordinating the Executive Branch's ethics program, these changes added substantially to OGE's workload, calling for increased employee education and counseling, the issuance of regulations, the development of new forms, and other related tasks.

Also since OGE was last reauthorized, two presidential Executive Orders have added to OGE's responsibilities. President Bush issued Executive Order 12674 on April 12, 1989, requiring OGE to issue new regulations, including comprehensive Standards of Conduct for the Executive Branch, and to review agency requests for supplemental regulations. President Clinton issued Executive Order 12834 on January 20, 1993, creating new post-employment rules for top political appointees and requiring OGE to assist in its implementation.

In June 1990, the Subcommittee on Oversight of Government Management (OGM) held a hearing on OGE's agency review program and found significant problems. The OGM Subcommittee found that OGE never audited certain agencies; the intervals between audits at other agencies were too long; and while OGE did a good job of identifying weaknesses and making recommendations when it conducted audits, it did not follow up effectively to make sure that its recommendations were implemented by agencies. Both OGE and the General Accounting Office (GAO) testified that the main reason for these deficiencies was that OGE lacked sufficient staff to do a better job.

D. OGE'S BUDGET AND STAFFING

In light of OGE's expanded duties under law and Executive Order and the findings of the OGM Subcommittee hearing, it became apparent that OGE's resources were not sufficient to accomplish its mission. Accordingly, the Congress acted twice to ensure that OGE had the tools it needed, enacting Public Law 101–334, to increase OGE's appropriations cap to $5 million, and Public Law 102–506, to remove OGE's appropriations cap. OGE's budget and staff levels since its last reauthorization are as follows:

	Funding	Authorized staff levels[1]
Fiscal year:		
1989	$1,822,000	35
1990	3,414,000	53
1991	3,500,000	53
1992	6,303,000	70
1993	8,265,000	101
1994	8,313,000	93
1995	8,154,000	93

[1] The U.S. Supreme Court on February 22, 1995, held that the total Honoraria ban violates the First Amendment rights of the persons on whose behalf the case was brought in *U.S.* v. *National Treasury Employees Union* (federal employees below grade GS–16). However, the decision leaves some question as to how the description of employees below GS–16 should be applied to employees who are not in GS–15 positions or below or who were not among the respondents in the case. At the time this report was filed, no final injunction had been issued by the District Court on this matter.

	Funding	Authorized staff levels[1]
1996	7,776,000	91

[1] The actual number of staff years used each year has been less than the authorized level.

The Committee believes that the significant increase in OGE's funding and staffing since it was last reauthorized is justified because of its status as a free-standing agency with responsibility for many administrative matters formerly handled by OPM and its increased workload under statute and Executive Order. Significantly, the growth in OGE's budget leveled off in FY93–FY96, once it had the opportunity to respond to its changed environment.

E. PRESIDENTIAL TRANSITION

OGE has a variety of responsibilities in connection with presidential transitions. The 1992 transition, which involved a change of political parties, not just a new President, drew heavily on OGE's resources.

Before the election, OGE briefed the candidates' staffs on the ethics laws applicable to high-level appointees and OGE's role in the appointments process. This information assisted an incoming administration in making its initial personnel decisions. Immediately after the election, OGE advised transition team staff and agency personnel with respect to permissible activities during the transition period.

The high level of turnover among top-level Executive Branch employees placed significant demands on OGE's resources. In addition to providing ethics to individuals who entered or considered entering government service as a result of the transition, OGE provided advice to outgoing government employees about negotiating for new jobs and post-employment restrictions. One indication of OGE's increased workload is the number of financial disclosure statements reviewed by the agency for individuals nominated by the President for positions requiring Senate confirmation. In 1992 OGE reviewed, certified, and forwarded to the Senate 256 public financial disclosure statements for such presidential nominees. In 1993, that number grew to 547, with on average over 100 draft reports pending at OGE at any given time. In 1994, OGE handled 415 financial disclosure reports.

OGE is also responsible for issuing certificates of divestiture, which allow nominees who meet statutory criteria to defer taxes on capital gains if they dispose of assets in order to avoid conflicts of interest; assisting in the establishment of qualifying blind trusts; and monitoring compliance with any ethics agreements made by appointees during the confirmation process. Presidential transitions increase the level of activity in all of these areas.

OGE informed the OGM Subcommittee that, from its program perspective, it had no recommendations for administrative or legislative changes with respect to future presidential transitions.

III. LEGISLATIVE HISTORY

S. 699 was introduced by Senators Cohen and Levin on April 6, 1995, and referred to the Subcommittee on Oversight of Government Management and the District of Columbia of the Committee

on Governmental Affairs. S. 699 is nearly identical to legislation (S. 1413) introduced by Senators Levin and Cohen and passed by the Senate in the 103d Congress. On April 20, 1994, the OGM Subcommittee held a hearing on S. 1413. Stephen D. Potts, the Director of OGE, was the only witness. Mr. Potts testified in favor of reauthorizing OGE and granting the agency gift acceptance authority. He also described OGE's agency review program, the presidential transition process, and OGE's budget and personnel resources. Since the Subcommittee held a hearing so recently on the issues surrounding the OGE reauthorization bill, the Subcommittee did not hold a hearing on S. 699. The Subcommittee polled out S. 699 with no amendments and reported it to the full Committee for consideration on August 1, 1995. The Committee met on August 10 and approved S. 699 by voice vote.

President Clinton nominated Mr. Potts on July 12, 1995 to serve a second five year term as Director of OGE. The Governmental Affairs Committee approved his nomination on August 10, 1995 by voice vote and the full Senate confirmed his nominated on August 11.

IV. Major Issues in S. 699

A. LENGTH OF REAUTHORIZATION

S. 699 reauthorizes OGE for seven years, which is one year longer than its last reauthorization. The Committee agreed with OGE's request that the period be extended to seven years in order to avoid having reauthorization occur during a presidential election year or the year immediately thereafter, when the large turnover in high-level executive branch employees places great demands on OGE's resources.

B. GIFT ACCEPTANCE AUTHORITY

Federal agencies are not permitted to accept gifts unless they have specific statutory authority to do so. While OGE has not had this authority in the past, twenty-three agencies and departments do have some type of gift acceptance authority. Based on OGE's testimony, the Committee determined that gift acceptance authority would assist OGE in performing its duties.

OGE intends to use its gift acceptance authority primarily in connection with its training and education function. OGE regularly conducts multi-agency training sessions for federal employees around the country, and sometimes there is no federal facility available that can provide adequate space and services. The gift acceptance authority in S. 699 will allow OGE to accept donated non-federal facilities, for example, an auditorium and related services such as projectionists and custodians, which might be offered free-of-charge by a state or local government or a university.

OGE has asked for broad authority, as other agencies have, but coupled its request with a requirement that the agency establish written rules governing the acceptance of gifts to ensure that the authority is used as intended and guard against abuse. S. 699 requires the Director of OGE to establish written rules to govern the exercise of this authority to safeguard against conflicts of interest or the appearance of conflicts in the acceptance of gifts.

Currently, other agencies that have gift acceptance authority do not have to prescribe regulations governing its use. While other agencies would not be required to follow the example of OGE's regulations in making their own determinations about their gift acceptance authority, OGE believes that its regulations would provide useful guidance to agencies. OGE also believes it would place the agency in a better position to recommend more strongly to agencies that they too consider such limiting regulations so as not to bring their programs and employees' conduct into question.

C. REPEAL AND CONFORMING AMENDMENTS

S. 699 also repeals, corrects, and modifies various provisions of current law. Two of the changes amend the Ethics in Government Act: (i) correcting the heading of Section 401 to reflect the fact that OGE was made independent of OPM in 1988, and (ii) moving the date of OGE's biennial report to Congress back by one month, from March 31 to April 30, in order to give OGE more time to collect and analyze calendar year-end-data. S. 699 also repeals a requirement dating from 1980 that requires a poster entitled "Code of Ethics for Government Service" to be displayed in all federal facilities employing 20 or more people. Display of the poster is no longer appropriate since it does not incorporate the current Standards of Conduct applicable to Executive Branch employees, and OGE has developed new educational materials for employees. Finally, S. 699 amends the Federal Deposit Insurance Act to delete a requirement that was added in 1993 (Public Law 103–204) that requires OGE to consult with the Board of Directors of the Federal Deposit Insurance Corporation with respect to ethics regulations applicable to independent contractors working for the FDIC. Because OGE's responsibilities and expertise pertain to the conduct of Executive Branch employees, and because these FDIC contractors are not government employees, the consultative role imposed by the Act is not consistent with OGE's mission.

V. SECTION-BY-SECTION ANALYSIS

Section 1 states the short title of the Act.

Section 2 authorizes the Director of OGE to accept and utilize, on behalf of the United States, any gifts or donations for the purpose of aiding or facilitating the work of OGE. The section also places certain limits on the use of this authority and requires the Director to establish written rules governing its use to avoid conflicts of interest or the appearance of conflicts.

Section 3 extends OGE's authorization for seven years, authorizing the appropriation of such sums as may be necessary to carry out OGE's duties for fiscal years 1996 through 2002.

Section 4 contains repealing and conforming amendments:

It repeals a requirement that a specific ethics poster be displayed in all federal facilities with 20 or more employees;

It deletes a requirement in the Federal Deposit Insurance Act that requires OGE to consult with the Board of Directors of the Federal Deposit Insurance Corporation with respect to ethics regulations applicable to independent contractors working for the FDIC;

It corrects a heading in the Ethics in Government Act to reflect the fact that OGE was made independent of OPM in 1988; and

It extends by one month, from March 31 to April 30, the date on which OGE is required to file its biennial reports to Congress.

VI. ESTIMATED COST OF LEGISLATION

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 30, 1995.

Hon. TED STEVENS,
Chairman, Committee on Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 699, the Office of Government Ethics Authorization Act of 1995.

Because enactment of this legislation could affect direct spending, pay-as-you-go procedures would apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 699.

2. Bill title: Office of Government Ethics Authorization Act of 1995.

3. Bill status: As ordered reported by the Senate Committee on Governmental Affairs on August 10, 1995.

4. Bill purpose: S. 699 would authorize the appropriation of such sums as may be necessary to fund the Office of Government Ethics from fiscal year 1996 through fiscal year 2002. The office's authorization expired at the end of fiscal year 1994. The 1995 appropriation for the Office of Government Ethics was $8.1 million.

The bill also would allow the director of the Office of Government Ethics to accept and use certain types of gifts to further the work of the office.

5. Estimated cost to the Federal Government: Enacting S. 699 would affect discretionary spending, subject to appropriations of the necessary funds, as shown in the following table. The table provides two alternative spending paths: one assuming no annual adjustment for inflation, and one including such an adjustment.

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998	1999	2000
Spending under current law:						
Budget authority[1]	8.1	.....	.....	.....	.....	.....
Estimated outlays	8.1	0.4	.....	.....	.....	.....
WITHOUT ADJUSTMENT FOR INFLATION						
Proposed changes:						
Estimated authorization	.....	8.1	8.1	8.1	8.1	8.1
Estimated outlays	.....	7.7	8.1	8.1	8.1	8.1

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998	1999	2000
Projected spending under S. 699:						
Estimated authorization [1]	8.1	8.1	8.1	8.1	8.1	8.1
Estimated outlays	8.1	8.1	8.1	8.1	8.1	8.1
WITH ADJUSTMENT FOR INFLATION						
Proposed changes:						
Estimated authorization	.....	8.5	8.8	9.2	9.5	9.9
Estimated outlays	.....	8.1	8.8	9.2	9.5	9.9
Projected spending under S. 699:						
Estimated authorization [1]	8.1	8.5	8.8	9.2	9.5	9.9
Estimated outlays	8.1	8.1	8.5	9.2	9.5	9.9

[1] The 1995 level is the amount appropriated for that year.

The costs of this bill fall within budget function 800.

6. Basis of estimate: This estimate assumes that all funds authorized will be appropriated and that spending will occur at historical rates. The estimated authorization amounts in the above table are alternative projections for this program: the 1995 appropriation without any adjustment for inflation, and the 1995 level plus annual adjustments for inflation. The 1996 appropriation, however, is likely to be lower than both of the alternative authorization estimates ($8.1 million and $8.5 million). The House-Senate conference version of the Treasury, Postal Service, and General Government Appropriation Bill for 1996 includes $7.8 million for the Office of Government Ethics.

7. Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. CBO estimates that enacting S. 699 could affect direct spending. Thus, pay-as-you-go procedures would apply to the bill.

Direct spending could result from the provision that would allow the director to accept donations to further the work of the office. CBO expects that any contributions would be used in the same year. Therefore, we estimate that the net change in direct spending would be negligible in all years. The following table summarizes CBO's estimate of the pay-as-you-go impact of S. 699.

[By fiscal year, in millions of dollars]

	1996	1997	1998
Change in outlays	0	0	0
Change in receipts	(1)	(1)	(1)

[1] Not applicable.

8. Estimated cost to State and local governments: None.

9. Estimate comparison: None.

10. Previous CBO estimate: None.

11. Estimate prepared by: Mark Grabowicz.

12. Estimate approved by: Robert A. Sunshine, for Paul N. Van de Water, Assistant Director for Budget Analysis.

VII. Evaluation of Regulatory Impact

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory and paperwork impact of S. 699, as well as the im-

pact of the bill on personal privacy. The bill creates a limited regulator responsibility on the part of the Director to establish rules governing internal government operations, but imposes no additional regulatory burden on private sector individuals or businesses. The bill will have no significant impact on paperwork and no impact on personal privacy beyond those imposed by existing law.

VIII. Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing rules of the Senate, changes in existing law made by S. 699 are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no changes are proposed is shown in roman):

OFFICE OF GOVERNMENT ETHICS

* * * * * * *

Sec.
401. Office of Government Ethics.
402. Authority and functions.
403. Administrative provisions.
404. Rules and regulations.
405. Authorization of appropriations.
406. Annual pay.
407. Annual pay of Director.
408. Reports to Congress.

401. [Office of Government Ethics] *Establishment; Appointment of Director*

(a) There is established an executive agency to be known as the Office of Government Ethics.

(b) There shall be at the head of the Office of Government Ethics a Director (hereinafter referred to as the "Director"), who shall be appointed by the President, by and with the advice and consent of the Senate. Effective with respect to any individual appointed or reappointed by the President as Director on or after October 1, 1983, the term of service of the Director shall be five years.

(c) The Director may—

(1) appoint officers and employees, including attorneys, in accordance with chapter 51 and subchapter III of chapter 53 of title 5, United States Code; and

(2) contract for financial and administrative services (including those related to budget and accounting, financial reporting, personnel, and procurement) with the General Services Administration, or such other Federal agency as the Director determines appropriate, for which payment shall be made in advance, or by reimbursement, from funds of the Office of Government Ethics in such amounts as may be agreed upon by the Director and the head of the agency providing such services.

Contract authority under paragraph (2) shall be effective for any fiscal year only to the extent that appropriations are available for that purpose.

402. Authority and Functions

(a) The Director shall provide, in consultation with the Office of Personnel Management, overall direction of executive branch poli-

cies related to preventing conflicts of interest on the part of officers and employees of any executive agency, as defined in section 105 of Title 5.

(b) The responsibilities of the Director shall include—

(1) developing, in consultation with the Attorney General and the Office of Personnel Management, rules and regulations to be promulgated by the President or the Director pertaining to conflicts of interest and ethics in the executive branch, including rules and regulations establishing procedures for the filing, review, and public availability of financial statements filed by officers and employees in the executive branch as required by title II of this Act;

(2) developing, in consultation with the Attorney General and the Office of Personnel Management, rules and regulations to be promulgated by the President or the Director pertaining to the identification and resolution of conflicts of interest;

(3) monitoring and investigating compliance with the public financial disclosure requirements of title II of this Act by officers and employees of the executive branch and executive agency officials responsible for receiving, reviewing, and making available financial statements filed pursuant to such title;

(4) conducting a review of financial statements to determine whether such statements reveal possible violations of applicable conflict of interest laws or regulations and recommending appropriate action to correct any conflict of interest or ethical problems revealed by such review;

(5) monitoring and investigating individual and agency compliance with any additional financial reporting and internal review requirements established by law for the executive branch.

(6) interpreting rules and regulations issued by the President or the Director governing conflict of interest and ethical problems and the filing of financial statements;

(7) consulting, when requested, with agency ethics counselors and other responsible officials regarding the resolution of conflict of interest problems in individual cases;

(8) establishing a formal advisory opinion service whereby advisory opinions are rendered on matters of general applicability or on important matters of first impression after, to the extent practicable, providing interested parties with an opportunity to transmit written comments with respect to the request for such advisory opinion, and whereby such advisory opinions are compiled, published, and made available to agency ethics counselors and the public;

(9) ordering corrective action on the part of agencies and employees which the Director deems necessary;

(10) requiring such reports from executive agencies as the Director deems necessary;

(11) assisting the Attorney General in evaluating the effectiveness of the conflict of interest laws and in recommending appropriate amendments;

(12) evaluating, with the assistance of the Attorney General and the Office of Personnel Management, the need for changes in rules and regulations issued by the Director and the agencies regarding conflict of interest and ethical problems, with a

view toward making such rules and regulations consistent with and an effective supplement to the conflict of interest laws;

(13) cooperating with the Attorney General in developing an effective system for reporting allegations of violations of the conflict of interest laws to the Attorney General, as required by section 535 of title 28, United States Code;

(14) providing information on and promoting understanding of ethical standards in executive agencies; and

(15) developing, in consultation with the Office of Personnel Management, and promulgating such rules and regulations as the Director determines necessary or desirable with respect to the evaluation of any item required to be reported by title II of this Act.

(c) In the development of policies, rules, regulations, procedures, and forms to be recommended, authorized, or prescribed by him, the Director shall consult when appropriate with the executive agencies affected and with the Attorney General.

(d)(1) The Director shall, by the exercise of any authority otherwise available to the Director under this title, ensure that each executive agency has established written procedures relating to how the agency is to collect, review, evaluate, and if applicable, make publicly available, financial disclosure statements filed by any of its officers or employees.

(2) In carrying out paragraph (1), the Director shall ensure that each agency's procedures are in conformance with all applicable requirements, whether established by law, rule, regulation, or Executive order.

(e) In carrying out subsection (b)(10), the Director shall prescribe regulations under which—

(1) each executive agency shall be required to submit to the Office an annual report containing—

(A) a description and evaluation of the agency's ethics program, including any educational, counseling, or other services provided to officers and employees, in effect during the period covered by the report; and

(B) the position title and duties of—

(i) each official who was designated by the agency head to have primary responsibility for the administration, coordination, and management of the agency's ethics program during any portion of the period covered by the report; and

(ii) each officer or employee who was designated to serve as an alternate to the official having primary responsibility during any portion of such period; and

(C) any other information that the Director may require in order to carry out the responsibilities of the Director under this title; and

(2) each executive agency shall be required to inform the Director upon referral of any alleged violation of Federal conflict of interest law to the Attorney General pursuant to section 535 of title 28, United States Code, except that nothing under this paragraph shall require any notification or disclosure which would otherwise be prohibited by law.

(f)(1) In carrying out subsection (b)(9) with respect to executive agencies, the Director—

(A) may—

(i) order specific corrective action on the part of an agency based on the failure of such agency to establish a system for the collection, filing, review, and, when applicable, public inspection of financial disclosure statements, in accordance with applicable requirements, or to modify an existing system in order to meet applicable requirements; or

(ii) order specific corrective action involving the establishment or modification of an agency ethics program (other than with respect to any matter under clause (i)) in accordance with applicable requirements; and

(B) shall, if an agency has not complied with an order under subparagraph (A) within a reasonable period of time, notify the President and the Congress of the agency's noncompliance in writing (including, with the notification, any written comments which the agency may provide).

(2)(A) In carrying out subsection (b)(9) with respect to individual officers and employees—

(i) the Director may make such recommendations and provide such advice to such officers and employees as the Director considers necessary to ensure compliance with rules, regulations, and Executive orders relating to conflicts of interest or standards of conduct;

(ii) if the Director has reason to believe that an officer or employee is violating, or has violated, any rule, regulation, or Executive order relating to conflicts of interest or standards of conduct, the Director—

(I) may recommend to the head of the officer's or employee's agency that such agency head investigate the possible violation and, if the agency head finds such a violation, that such agency head take any appropriate disciplinary action (such as reprimand, suspension, demotion, or dismissal) against the officer or employee, except that, if the officer or employee involved is the agency head, any such recommendation shall instead be submitted to the President; and

(II) shall notify the President in writing if the Director determines that the head of an agency has not conducted an investigation pursuant to subclause (I) within a reasonable time after the Director recommends such action;

(iii) if the Director finds that an officer or employee is violating any rule, regulation, or Executive order relating to conflicts of interest or standards of conduct, the Director—

(I) may order the officer or employee to take specific action (such as divestiture, recusal, or the establishment of a blind trust) to end such violation; and

(II) shall, if the officer or employee has not complied with the order under subclause (I) within a reasonable period of time, notify, in writing, the head of the officer's or employee's agency of the officer's or employee's noncompliance, except that, if the officer or employee involved is the

agency head, the notification shall instead be submitted to the President; and

(iv) if the Director finds that an officer or employee is violating, or has violated, any rule, regulation, or Executive order relating to conflicts of interest or standards of conduct, the Director—

(I) may recommend to the head of the officer's or employee's agency that appropriate disciplinary action (such as reprimand, suspension, demotion, or dismissal) be brought against the officer or employee, except that if the officer or employee involved is the agency head, any such recommendations shall instead be submitted to the President; and

(II) may notify the President in writing if the Director determines that the head of an agency has not taken appropriate disciplinary action within a reasonable period of time after the Director recommends such action.

(B)(i) In order to carry out the Director's duties and responsibilities under subparagraph (A) (iii) or (iv) with respect to individual officers and employees, the Director may conduct investigations and make findings concerning possible violations of any rule, regulation, or Executive order relating to conflicts of interest or standards of conduct applicable to officers and employees of the executive branch.

(ii)(I) Subject to clause (iv) of this subparagraph, before any finding is made under subparagraphs (A) (iii) or (iv), the officer or employee involved shall be afforded notification of the alleged violation, and an opportunity to comment, either orally or in writing, on the alleged violation.

(II) The Director shall, in accordance with section 553 of title 5, United States Code, establish procedures for such notification and comment.

(iii) Subject to clause (iv) of this subparagraph, before any action is ordered under subparagraph (A)(iii), the officer or employee involved shall be afforded an opportunity for a hearing, if requested by such officer or employee, except that any such hearing shall be conducted on the record.

(iv) The procedures described in clauses (ii) and (iii) of this subparagraph do not apply to findings or orders for action made to obtain compliance with the financial disclosure requirements in title 2 of this Act. For those findings and orders, the procedures in section 206 of this Act shall apply.

(3) The Director shall send a copy of any order under paragraph (2)(A)(iii) to—

(A) the officer or employee who is the subject of such order; and

(B) the head of officer's or employee's agency or, if such officer or employee is the agency head, to the President.

(4) For purposes of paragraphs (2)(A) (ii), (iii), (iv), and (3)(B), in the case of an officer or employee within an agency which is headed by a board, committee, or other group of individuals (rather than by a single individual), any notification, recommendation, or other matter which would otherwise be sent to an agency head shall instead be sent to the officers or employees appointing authority.

(5) Nothing in this title shall be considered to allow the Director (or any designee) to make any finding that a provision of title 18, United States Code, or any criminal law of the United States outside of such title, has been or is being violated.

(6) Notwithstanding any other provision of law, no record developed pursuant to the authority of this section concerning an investigation of an individual for a violation of any rule, regulation, or Executive order relating to a conflict of interest shall be made available pursuant to section 552(a)(3) of title 5, United States Code, unless the request for such information identifies the individual to whom such records relate and the subject matter of any alleged violation to which such records relate, except that nothing in this subsection shall affect the application of the provisions of section 552(b) of title 5, United States Code, to any record so identified.

403. ADMINISTRATIVE PROVISIONS

(a) Upon the request of the Director, each executive agency is directed to

(1) make its services, personnel, and facilities available to the Director to the greatest practicable extent for the performance of functions under this Act; and

(2) except when prohibited by law, furnish to the Director all information and records in its possession which the Director may determine to be necessary for the performance of his duties.

The authority of the Director under this section includes the authority to request assistance from the inspector general of an agency in conducting investigations pursuant to the Office of Government Ethnics responsibilities under this Act. The head of any agency may detail such personnel and furnish such services, with or without reimbursement, as the Director may request to carry out the provisions of this Act.

(b)(1) The Director is authorized to accept and utilize on behalf of the United States, any gift, donation, bequest, or devise of money, use of facilities, personal property, or services for the purpose of aiding or facilitating the work of the Office of Government Ethics.

(2) No gift may be accepted—

(A) that attaches conditions inconsistent with applicable laws or regulations; or

(B) that is conditioned upon or will require the expenditure of appropriated funds that are not available to the Office of Government Ethics.

(3) The Director shall establish written rules setting forth the criteria to be used in determining whether the acceptance of contributions of money, services, use of facilities, or personal property under this subsection would reflect unfavorably upon the ability of the Office of Government Ethics, or any employee of such Office, to carry out its responsibilities or official duties in a fair and objective manner, or would compromise the integrity or the appearance of the integrity of its programs or any official involved in those programs.

404. RULES AND REGULATIONS

In promulgating rules and regulations pertaining to financial disclosure, conflict of interest, and ethics in the executive branch, the Director shall issue rules and regulations in accordance with chap-

ter 5 of title 5, United States Code. Any person may seek judicial review of any such rule or regulation.

405. AUTHORIZATION OF APPROPRIATIONS

There are authorized to be appropriated to carry out [the provisions of] this title [and for no other purpose—

[(1) not to exceed $2.5 million for the fiscal year ending September 30, 1989;

[(2) not to exceed $5 million for the fiscal year ending September 30, 1990; and

[(3)] such sums as may be necessary for [each of the 4 fiscal years thereafter.] *the fiscal years beginning with fiscal year 1996 and ending with fiscal year 2002.*

406. ANNUAL PAY

[Section amended section 5316 of Title 5, Government Organization and Employees, by adding "Director of the Office of Government Ethics" to the list of positions at Level V of the Executive Schedule.]

407. ANNUAL PAY OF DIRECTOR

[Section amended section 5316 of Title 5, Government Organization and Employees, by striking out "Director of the Office of Government Ethics" from the list of positions at Level V of the Executive Schedule, and amended section 5314 of Title 5, Government Organization and Employees, by adding "Director of the Office of Government Ethics" to the list of positions at Level III of the Executive Schedule.]

408. REPORTS TO CONGRESS

The Director shall, no later than [March 31] *April 30* of each year in which the second session of a Congress begins, submit to the Congress a report containing

(1) a summary of the actions taken by the Director during a 2-year period ending on December 31 of the preceding year in order to carry out the Directors functions and responsibilities under this title; and

(2) such other information as the Director may consider appropriate.

* * * * * * *

---

12 U.S.C. 1822

(f) CONFLICT OF INTEREST.—(1) APPLICABILITY OF OTHER PROVISIONS.—(A) CLARIFICATION OF STATUS OF CORPORATION.—The Corporation is, and has been since its creation, an agency for purposes of title 18.

(B) TREATMENT OF CONTRACTORS.—Any individual who, pursuant to a contract or any other arrangement, performs functions or activities of the Corporation under the direct supervision of an officer or employee of the Corporation, shall be deemed to be an employee of the Corporation for purposes of title 18, and this chapter. Any individual who, pursuant to a contract or any other agreement, acts for or on behalf of the Corporation, and who is not otherwise treated as an officer or employee of the United States for purposes of title 18, shall be deemed to be a public official for purposes of section 201 of title 18.

(2) REGULATIONS CONCERNING EMPLOYEE CONDUCT.—The officers and employees of the Corporation and those individuals under contract to the Corporation who are deemed, under paragraph (1)(B), to be employees of the Corporation for purposes of title 18 shall be subject to the ethics and conflict of interest rules and regulations issued by the Office of Government Ethics, including those concerning employee conduct, financial disclosure, and post-employment activities. The Board of Directors may prescribe regulations that supplement such rules and regulations only with the concurrence of that Office.

(3) REGULATIONS CONCERNING INDEPENDENT CONTRACTORS.—The Board of Directors[, with the concurrence of the Office of Government Ethics,] shall prescribe regulations applicable to those independent contractors who are not deemed, under paragraph (1)(B), to be employees of the Corporation for purposes of title 18 governing conflicts of interest, ethical responsibilities, and the use of confidential information consistent with the goals and purposes of titles 18 and 41. Any such regulations shall be in addition to, and not in lieu of, any other statute or regulation which may apply to the conduct of such independent contractors.

CODE OF ETHICS FOR GOVERNMENT SERVICE—DISPLAY

PUBLIC LAW 96–303, [H.R. 5997]; JULY 3, 1980

* * * * * * *

[An Act to provide for the display of the Code of Ethics for Government Service.

[Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, under such regulations as the Administrator shall prescribe, each agency shall display in appropriate areas of Federal buildings copies of the Code of Ethics for Government Service.

[SEC. 2. (a) The Administrator shall provide for the publication of copies of such Code of Ethics and for their distribution to agencies for use under the first section of this Act.

[(b) The Administrator may accept on behalf of the United States any unconditional gift made for purposes of this Act.

[SEC. 3. For purposes of this Act—

[(1) the term "agency" means an Executive agency (as defined by section 105 of title 5, United States Code), the United States Postal Service, and the Postal Rate Commission;

[(2) the term "Administrator" means the Administrator of the General Services Administration;

[(3) the Code of Ethics for Government Service shall read as follows—

[Code of Ethics for Government Service

[Any person in Government service should:

[I. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.

[II. Uphold the Constitution, laws, and regulations of the United States and of all governments therein and never be a party to their evasion.

[III. Give a full day's labor for a full day's pay; giving earnest effort and best thought to the performance of duties.

[IV. Seek to find and employ more efficient and economical ways of getting tasks accomplished.

[V. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or herself or for family members, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of governmental duties.

[VI. Make no private promises of any kind binding upon the duties of office since a Government employee has no private word which can be binding on public duty.

[VII. Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of government duties.

[VIII. Never use any information gained confidentially in the performance of governmental duties as means of making private profit.

[IX. Expose corruption wherever discovered.

[X. Uphold these principles, ever conscious that public office is a public trust.

[Your agency ethics official and the Office of Government Ethics are available to answer questions on conflicts of interest; and

[(4) the term "Federal building" means any building in which at least 20 individuals are regularly employed by an agency as civilian employees.

[SEC. 4. The provisions of this Act shall take effect October 1, 1980. There shall be no costs imposed on the Federal Government for the printing, framing or other preparation of the Code of Ethics for Government Service under this Act.]

○