

Office of Government Ethics

79 x 6 -- 10/26/79

Letter to a Government Official dated October 26, 1979

This is in response to your letter of April 27, 1979, wherein you requested our views on your conclusion that the interim regulations on Post Employment Conflict of Interest, 44 Fed. Reg. 19974, published in the Federal Register on April 3, 1979, do not apply to the General Accounting Office (GAO).

We have reviewed your comments in light of the statutory authority and legislative history surrounding the creation of the Office of Government Ethics (OGE) and are of the opinion that for purposes of Titles IV and V of the Ethics in Government Act, Pub. L. No. 95-521 (the Act), GAO is subject to the regulations on Post Employment Conflict of Interest.

Section 402 of the Act states that the Director, OGE, shall provide overall direction of executive branch policies relating to preventing conflicts of interest on the part of officers and employees of "any executive agency," as defined in 5 U.S.C. § 105 (emphasis added).

The definition of "executive agency" found in 5 U.S.C. § 105, which is incorporated by reference in section 402 of the Act, includes an "independent establishment." Section 104 of title 5 U.S.C. defines "independent establishment" to specifically include the General Accounting Office. Further, the definition of the term "agency" as used in title 18 U.S.C. § 207 includes any "independent establishment," which encompasses GAO by definition. (See 18 U.S.C. § 6.)

The conference committee considering the Senate (S. 555) and House (H.R. 6954) versions of the Ethics in Government Act clearly had the issue before it of whether or not to treat GAO as subject to the provisions of Title V and Title IV as it relates to Title V. The conference committee did decide to treat GAO as falling under the financial disclosure requirements established for legislative personnel, and this was accomplished by specific reference to your agency in section 101(e). However, when faced with another specific reference to your agency in S. 555 (S. 555, 95th Cong., 1st Sess. § 402(a) (1978)) which excluded it from the

purview of this Office pursuant to our proposed authority under Title IV with respect to "officers and employees of any executive agency as defined in section 105 of Title V, United States Code, except the General Accounting Office," the conference committee decided to strike the exclusionary clause and thereby place your agency under the provisions of Titles IV and V which are generally applicable to executive agencies.

In view of the foregoing, it is requested that this Office be provided with the reports required by the interim regulations, as amplified by our memorandum of April 6, 1979, a copy of which is attached. As a matter of information, the effective date of the discretionary designation of Senior Employee positions, as set forth in § 737.25(b)(1) of the interim regulations, has been amended to extend the date of October 1, 1979 to December 15, 1979.

We have informally coordinated the resolution of the question concerning the coverage of GAO with the Department of Justice. We have, in fact, deferred our response pending notification of the position to be taken by the Department of Justice on this matter. Although not authorized to speak for the Department of Justice, we understand that, at the staff level, DOJ concurs in the position taken by this Office. In view of the time elapsed, we believe it appropriate to forward our views at this time.

Sincerely yours,

Bernhardt K. Wruble
Director