

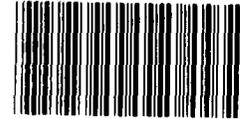


RELEASED 119939

B-207873

OCTOBER 18, 1982

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



119939

Dear Mr. Chairman:

**Subject:** Changes are Needed to Improve the Management  
of the Bureau of Land Management's Financial  
Disclosure System (GAO/FPCD-83-16)

In response to your February 17, 1982, request, we have reviewed the adequacy of the financial disclosure system and the regulations on conflicts of interest applicable to employees at the Bureau of Land Management (BLM), Department of the Interior. BLM is responsible for managing 417 million acres of public lands and the Outer Continental Shelf. BLM awards leases and liens to private companies to harvest resources (petroleum, minerals, and timber) from these areas and collects royalties on the resources extracted. BLM also grants rights-of-way for crossing public lands.

Our review showed that BLM has not effectively managed its financial disclosure system. Also, BLM has misapplied provisions of the Organic Act (43 U.S.C. 11). As a result:

- Some employees may be holding questionable financial interests in public lands.
- The rationale used in approving employees' financial interests is not adequately documented.
- Reviews of most financial statements are made later than required.
- Some employees are not filing required disclosure statements.

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OBJECTIVE, SCOPE, AND METHODOLOGY

Our objective was to evaluate the adequacy of BLM's financial disclosure system and its implementing regulations. To accomplish this, we

- reviewed financial disclosure laws, regulations, and policy applicable to BLM employees and discussed the application and interpretation of these requirements with Department and BLM officials;
- examined BLM's headquarters review procedures and its monitoring of field office activities; and
- interviewed by telephone seven BLM field office Assistant Ethics Counselors 1/ to discuss their responsibilities in carrying out financial disclosure activities.

We also examined BLM employees' 1980 financial disclosure statements provided to us by headquarters and the following field offices:

- Boise Interagency Fire Center.
- California State Office.
- Colorado State Office.
- Denver Service Center.
- Eastern States Office.
- Los Angeles, New Orleans, and New York Outer Continental Shelf Offices.

We selected these field offices to provide geographical coverage and to include coverage of the Outer Continental Shelf Offices. We reviewed the 1980 financial disclosure statements because BLM's review of the 1981 statements had not been completed when we conducted our work from March through May, 1982.

We examined the disclosure statements of 674 employees and found that 428 of them reported no holdings. We grouped the remaining 246 as either (1) reporting interests which warranted our closer examination because they were associated with public lands

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1/We interviewed field office Assistant Ethics Counselors serving the California, Colorado, Oregon, Utah, and Wyoming State Offices; the Denver Service Center; and the Eastern States Office.

or (2) reporting financial interests not associated with public lands and, therefore, not warranting any further examination. Using this criteria, we closely examined the statements of 150 BLM employees. We reviewed the information employees reported but did not determine if they reported all their financial interests. Federal financial disclosure laws and regulations do not require the agency to verify that all interests have been reported.

We compared the list of headquarters positions requiring financial disclosure with the statements filed to determine whether headquarters employees required to file actually did so; we could not determine this for field office positions because the necessary data was not maintained at headquarters.

Our work was performed in accordance with our Office's current "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 BLM's financial disclosure system. While some provisions address Government-wide concerns, other provisions deal solely with the Department or BLM.

Executive Order 11222 and the Ethics in Government Act of 1978 provide the general basis for Federal financial disclosure systems. The order, issued in 1965, directs agencies to establish standards of conduct for all Federal employees and provides for the confidential reporting of financial interests. As required by the Office of Personnel Management's regulations issued pursuant to the Executive order, Interior requires its employees holding positions classified at GS-15 and employees holding specified positions at lower grades to file confidential disclosure forms. The Ethics in Government Act of 1978 imposes additional requirements for public disclosure upon higher level Government employees, including members of the Senior Executive Service and those holding executive level and supergrade positions.

In addition to the Government-wide reporting requirements imposed by these two authorities, BLM employees are subject to the public or confidential disclosure requirements of several laws relating specifically to Interior functions. These include:

- Federal Land Policy and Management Act, 43 U.S.C. 1743 (1976).
- Mining in the Parks Act, 16 U.S.C. 1912 (1976).

- Surface Mining Control and Reclamation Act, 30 U.S.C. 1211(f) (Supp. I, 1977).
- Energy Policy and Conservation Act, 42 U.S.C. 6392 (1976).
- Outer Continental Shelf Lands Act Amendments, 43 U.S.C. 1864 (Supp. II, 1979).

Depending on the individual's particular responsibilities, a BLM employee may be subject to disclosure requirements of any one or all five of these acts.

Aside from these disclosure requirements, BLM employees are subject to the statutory and regulatory conflict-of-interest restrictions generally applicable to Federal employees. They are also subject to the provisions of 43 U.S.C. 11 (1976) which prohibit them from voluntarily acquiring an interest in public lands. This restriction applies to all interests in public lands, except insofar as 43 U.S.C. 682(d) permits a BLM employee or spouse stationed in Alaska to purchase or lease 1 tract of BLM administered land, not exceeding 5 acres, for residential or recreational purposes.

The provisions of 43 C.F.R. 20.735 set forth Department policies, identify principal laws relevant to employee conduct and responsibility, and establish the financial disclosure system for the Department. According to these provisions, no Department employee shall have a direct or indirect financial interest that conflicts substantially or appears to conflict substantially with his or her Government duties and responsibilities. As defined in the regulations, an employee's direct interest includes holdings of the spouse and minor children, as well as relatives who live in the employee's home. Under Department 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.

BLM'S FINANCIAL DISCLOSURE  
SYSTEM IS POORLY MANAGED

BLM's financial disclosure system is not managed effectively because (1) responsibilities have been delegated without providing adequate guidance and training, (2) staff performing financial disclosure duties often have other, higher priority responsibilities, and (3) monitoring of financial reviews does not insure thorough and consistent reviews. As a result, there is no assurance that the system prevents employees from holding prohibited or conflicting financial interests.

Responsibilities delegated  
without adequate guidance

Several key positions in the Department are involved in the operations of BLM's financial disclosure system. These positions include:

- The Designated Agency Ethics Official who administers the regulations governing the conduct and responsibilities of all employees in the Department.
- The Deputy Designated Agency Ethics Official who oversees the Department's disclosure system, assists bureaus and offices in operating their disclosure systems, and formally reviews Department-wide senior executive disclosure statements.
- The Department Solicitor who provides legal interpretations and advice based on relevant statutes and regulations.
- The Bureau Ethics Counselor who is responsible for administering regulations governing the conduct of BLM employees.

As provided for by 43 CFR 20.735, BLM has also designated a Bureau Deputy Ethics Counselor who attempts to resolve conflict-of-interest issues before referring them to the Bureau Ethics Counselor. In addition, 16 BLM Assistant Ethics Counselors conduct financial reviews, resolve conflicts, and counsel employees. One of these counselors, located in headquarters, oversees the work of the other counselors. At the time of our review, a former Deputy Ethics Counselor was also involved in resolving broad policy issues relating to BLM's financial disclosure system.

Despite the various positions involved in the financial disclosure review process, BLM has not (1) adequately defined the responsibilities for each of the positions, (2) provided guidance and criteria for applying financial interest policies, or (3) provided instructions for counselors assigned financial disclosure duties. Employees serving in these positions explained to us the duties they performed in the financial disclosure process. However, the duties for each of the various positions were not adequately defined to indicate which duties were assigned to which positions. Further, BLM Assistant Ethics Counselors told us they had received no training or formal guidance prior to being assigned financial disclosure duties. Some counselors said they either relied on information passed on by their predecessors or learned as they performed their new duties.

The lack of criteria, guidance, and instructions is particularly significant considering the frequent changes in the personnel assigned as Assistant Ethics Counselors. We noted that, generally, new assignments were made for each annual review. For example,

during the past 6 years, five individuals have occupied the headquarters Assistant Ethics Counselor position. These individuals managed the daily operations of the system.

Other duties limit time for thorough reviews

All BLM Assistant Ethics Counselors who are assigned financial disclosure system responsibilities also have other duties which limit the time available to thoroughly review financial interests. In many instances, these other duties have higher priority. For example, the headquarters BLM Assistant Ethics Counselor, who is responsible for overseeing BLM-wide operational functions of the system, said his duties as a personnel specialist had higher priority than the financial disclosure duties. Most of the field office Assistant Ethics Counselors are personnel officers. Two of the seven field office Assistant Ethics Counselors said they did not have adequate time to thoroughly review employees' financial interests. Another stated that financial disclosure duties were last priority considering other responsibilities as personnel officer. The four remaining Assistant Ethics Counselors said adequate time was available. Further, the two Assistant Ethics Counselors at headquarters also felt that, because of other assigned duties, they lacked the time necessary to adequately review financial interests.

Limited monitoring does not insure consistent and appropriate performance of delegated responsibilities

We found that virtually no one monitored the financial disclosure actions taken by the Assistant Ethics Counselors. Field office Assistant Ethics Counselors report statistical information, such as the number of statements due, received, approved, and pending, and submit unresolved cases to the headquarters. They do not provide reports to headquarters on their resolution of cases involving questionable holdings, the rationale used in approving questioned holdings, or voluntary divestitures. Disclosure statements they approved for the 1980 annual review remained in the field and were not reviewed for consistent application of policy. Similarly, we found no indication of any higher level monitoring of the duties performed by the two Assistant Ethics Counselors at headquarters.

For the 1981 annual review, 1/ all disclosure statements submitted by field office employees are being sent to headquarters to be monitored.

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1/For this review, the 1981 financial disclosure statements were scheduled to be filed by employees by February and reviewed by March 1982. However, the reviews were not completed when we completed our work in May 1982.

THE SYSTEM'S EFFECTIVENESS IS QUESTIONABLE

Weaknesses in BLM's review process have resulted in (1) inadequate support to justify approval of financial interests, (2) untimely reviews of disclosure statements, and (3) failure to obtain statements from all headquarters employees whose positions require disclosure statements.

In reviewing employee disclosure statements for 1980, we identified 141 questionable interests reported by 92 employees. Of these questionable interests, 125 involved stock holdings in companies with Federal mineral leases. These are discussed below. The other 16 cases represented (1) financial interests that may conflict with the employee's duties or (2) possible direct employee interests in Federal lands. The files did not show why the 141 financial interests were approved. We found no indication that the interests had been thoroughly researched to determine whether they were proper.

Also, BLM's reviews of financial disclosure statements were not performed on time. Department regulations require employees to submit their disclosure statements by February 1 and BLM to certify to the Department by March 18 that all required reviews have been completed. We reviewed statements filed by 674 employees. Although most of these statements were submitted on time by the employees, BLM completed reviews of statements for only 157 of the employees by March 18. BLM did not complete reviews for any of the statements filed at headquarters by this date. BLM reported that several review decisions were still pending as of the following September.

We also identified 33 headquarters employees who should have filed disclosure statements for the 1980 annual review but did not do so. Headquarters did not maintain enough information for us to determine if similar oversights had occurred in the field offices.

PROHIBITION ON EMPLOYEE INTERESTS  
IN PUBLIC LANDS NOT ENFORCED

Under 43 U.S.C. 11, (1) officers, clerks, and employees in BLM are prohibited from directly or indirectly purchasing or becoming interested in the purchase of any public lands and (2) any person who violates this section of the law shall be removed from office. According to Department and BLM officials, this restriction applied to all BLM employee and spousal holdings reported for the 1980 annual review.

We questioned BLM's approval of 125 interests reported by employees on their 1980 disclosure statements. These interests involved ownership of securities in companies with Federal leases,

liens, or rights-of-way. The files contained inadequate documentation to determine when the employees acquired the financial interests or to support the rationale used in approving these holdings.

The Bureau Deputy Ethics Counselor advised us that, before the 1981 annual review, BLM employees were permitted to purchase and retain these interests if the employees were not in an official position to influence the value of the interest. This practice resulted in part from the fact that Department-wide regulations--which extended the prohibition of 43 U.S.C. 11 to employees of the Department, other than those in BLM--provided an exception for securities traded on the open market even though the company might hold interests in public lands. In the absence of guidance on specific application of 43 U.S.C. 11 to BLM employees, it appears that the Assistant Ethics Counselors applied the looser standards to the review of disclosure statements filed by BLM employees. In our opinion, the act's prohibitions apply to BLM employees regardless of whether the securities are traded on the open market or whether the employees are able to influence the value of their interests.

The Department's Deputy Agency Ethics Official has long maintained that BLM has inappropriately approved employee holdings, but BLM did not agree. In an effort to resolve the difference in the interpretation and application of the act, the Deputy Agency Ethics Official requested a ruling from the Department's Solicitor. On November 16, 1981, the Solicitor advised that during their employment BLM employees are prohibited from voluntarily acquiring stock holdings in companies that have interest in public lands. The Solicitor also concluded that the prohibition may not be waived and that holdings acquired by gift, devise, bequest, operation of law, or prior to Bureau employment are exempt from the prohibition.

According to the Bureau Deputy Ethics Counselor, the stricter application of the prohibition will be used in the review of employees' interests reported for the 1981 annual review. However, as of April 1982, BLM had not developed any criteria or guidelines to use in reviewing interests.

#### CONCLUSIONS

Some BLM employees (1) failed to file disclosure statements, (2) had their statements reviewed late, or (3) have financial interests which may be prohibited by 43 U.S.C. 11 or in conflict with their duties. Additionally, the rationale used in approving employees' financial interests is not adequately documented. These problems occurred because BLM poorly managed its financial disclosure system and did not enforce the prohibitions of 43 U.S.C. 11.

Key elements in the effective management and operation of any program include clear direction and guidance, adequate resources, and close monitoring. Deficiencies in these areas can adversely affect the program's success. Improvements in the management and operation of the system are, we believe, necessary to prevent employees from holding prohibited or potentially conflicting interests.

We believe that proper application of the Solicitor's November 1981 opinion on the provisions of 43 U.S.C. 11 could create major changes in the Assistant Ethics Counselors' review efforts. Clearly stated criteria and guidelines are needed to manage the implementation of these changes, particularly since many counselors are involved in the review process and, because of the high turnover of counselors, many of them may be reviewing financial interests for the first time.

#### RECOMMENDATIONS

We recommend that, to improve management of BLM's financial disclosure system, the Secretary of the Interior direct the Bureau of Land Management to:

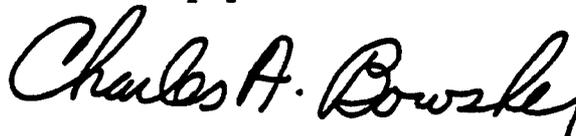
1. Define the responsibilities for all key BLM positions in the operation and management of BLM's financial disclosure system.
2. Establish criteria and guidelines for determining the propriety of BLM employees' financial interests.
3. Require the Deputy Ethics Counselor to
  - monitor the actions of Assistant Ethics Counselors and require them to document the justification for approving financial interests;
  - advise Assistant Ethics Counselors and other employees on financial disclosure matters;
  - advise the Bureau Ethics Counselor on actions employees should take on potential conflicts and on financial disclosure policy matters; and
  - periodically assess the adequacy of resources available for reviewing employee financial interests.

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In commenting on our proposed report, the Department generally agreed with our findings and discussed actions BLM and the Department plan to take on our recommendations. See the enclosure for a copy of the Department's comments and our responses to them.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 15 days from the date of the report. At that time, we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,

A handwritten signature in black ink that reads "Charles A. Bowles". The signature is written in a cursive style with a large, prominent initial "C".

Comptroller General  
of the United States

Enclosure



## United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

AUG. 6 1982

Mr. Henry Eschwege  
Director, Community and Economic  
Development Division - Room 6146  
U.S. General Accounting Office  
Washington, D.C. 20548

Dear Mr. Eschwege:

As Designated Agency Ethics Official for the Department of the Interior, the Secretary has asked me to respond to your July 7, 1982 request for comments on your draft letter report GAO/FPCD-82-51. The report title is: "Changes Are Needed to Improve the Management of the Bureau of Land Management's Financial Disclosure System". My response consolidates my comments with those received from the Deputy Assistant Secretary - Land and Water Resources and from the Acting Associate Director, Bureau of Land Management.

We appreciate the time and effort the General Accounting Office has devoted to this review and we are in general agreement with the findings. We think it is important to recognize in the report that the BLM ethics program is very complex, involving six specific statutes and covering virtually every employee in the Bureau. The findings do bring to our attention procedural management deficiencies for which corrective actions have been initiated. And, we think it is significant that, to our knowledge, there has been no public charge or disclosure of an actual conflict of interest, nor did the current review disclose any.

My review of the draft report did disclose one technical inaccuracy and I have listed it with the other comments. For clarity, I have organized our remaining comments to coincide with the page number of the draft.

### Page 3

You list the Surface Mining and Reclamation Act, 30 U.S.C. 1211(f) as one of several laws requiring public disclosure reports. The correct title of this Act is the Surface Mining Control and Reclamation Act. This Act does not require public disclosure but rather, requires confidential financial disclosure reports from employees who perform functions and duties under the Act.

GAO response: We corrected the title of the act on page 3 and used a more general phrase regarding the disclosure requirements of the act on page 4.

GAO note: Page references have been changed to correspond with those in this report.

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As a matter of record, we would like to clarify the statement that "BLM has not (1) defined the responsibilities for each of the positions; (2) provided guidance and criteria for applying financial interests policies; or (3) provided instruction for counselors assigned financial disclosure duties." Enclosed is a copy of a BLM memorandum dated August 13, 1981, issued prior to this year's reporting cycle to address each of these areas of concern. The Assistant Ethics Counselors also have been provided with the Department Procedural Manual for Ethics Counselors.

GAO response: The memorandum dated August 13, 1981, which was sent to field office personnel officers assigned financial disclosure responsibilities, lists duties assigned to Assistant Ethics Counselors at the State level. However, the memorandum does not (1) address responsibilities and duties assigned to Assistant Ethics Counselors at other levels in the organization (e.g., regional levels, the Denver Service Center or headquarters), (2) provide criteria and guidance for interpreting and applying specific financial interest limitations which apply uniquely to BLM employees, or (3) instruct the Assistant Ethics Counselors on the appropriate steps to take in carrying out their assigned duties.

While the "Department Procedural Manual" provides some guidance on how to carry out assigned duties, it does not address the differences in duties between organizational levels or provide criteria or guidance for interpreting and applying financial disclosure statutes applicable to BLM.

Further, when we questioned Assistant Ethics Counselors about the adequacy of guidance and instructions, they did not mention the memorandum. Only four of nine counselors mentioned the manual.

We therefore believe that our findings are still applicable and merit the actions we recommend.

Page 7

We are unable to identify the 92 employees mentioned in the report, that you have identified as having questionable holdings. We would be happy to review the statements of these employees, when identified, and clarify all of those cases.

GAO response: We have provided the Department with a list of the 92 employees. We pointed out, however, that since the 92 employees were identified from the sample of statements we reviewed, other BLM employees whose financial disclosure statements we did not review may also hold questionable interests.

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The issues addressed in the recommendations beginning on page 13 of the report have been at the forefront of discussions and study in the BLM since I explained to BLM officials in an April 8, 1982, memorandum that they had leeway to develop bureau criteria and guidelines related to their ethics provisions. A copy of my April 8 memorandum to the Director, BLM is enclosed.

Our responses to the specific recommendations of the report are also prepared and enclosed for your review.

Throughout the report reference is made to the statutory and regulatory provisions applicable to BLM employees. The report does a good job of explaining the general conflict of interest provisions and the specific statutory prohibitions that apply to BLM employees. However, the language in the draft does not make a distinction between (1) those statutes and regulations which prohibit financial interests based on a determination that the interests conflict with an individual's official duties and (2) those statutes and regulations which are absolute prohibitions and do not require that there be a relationship between the employee's official duties and the particular financial interest that is prohibited. We believe it is important to explain this distinction. For example, the statutory prohibitions of 43 U.S.C. §11 simply state that the Director and members of the BLM are prohibited from having certain financial interests. This prohibition applies regardless of whether there is a relationship between a BLM employee's duties and a particular financial interest which is prohibited. When this distinction is made it is possible for the reader to understand that because of this special statute a BLM employee is held to a higher standard of conduct than is required under the general conflict of interest laws. We believe it is important that the reader be made aware of this special standard since it helps to explain the complexity of the BLM ethics and conduct program. Your consideration of this point is appreciated.

GAO response: We incorporated additional language on page 4 to make the requested distinction between items 1 and 2 discussed above.

Other minor changes in grammar and wording have been discussed with the members of your staff who conducted the review. I of course will be happy to answer any questions you may have concerning our comments.

Sincerely,

  
for Richard R. Hite  
Designated Agency Ethics Official

Enclosures [See GAO note.]

GAC note: Only the enclosure describing the Department's actions on our recommendations is included here. The other enclosures which are copies of departmental memorandums are not reproduced.

Department of Interior Response to GAO Recommendations  
"Changes are Needed to Improve the Management  
of the Bureau of Land Management's Financial  
Disclosure System"

## RECOMMENDATION

The Secretary of Interior should:

"Define the responsibilities for all key BLM positions in the operations and management of BLM's financial disclosure system"

## RESPONSE

The Bureau will reemphasize by August 31, 1982, the enclosed instructions issued in August 13, 1981, which defined the responsibilities of the Assistant Ethics Counselors. In addition, a specific role statement will be developed by September 30, 1982, for the Deputy Ethics Counselor and the Washington Office Assistant Ethics Counselors.

## RECOMMENDATION

"Establish criteria and guidelines for determining the propriety of BLM employees' financial interests."

## RESPONSE

BLM is currently developing criteria and guidelines for determining the propriety of Bureau employee's financial interests consistent with the instructions received from the Department of Interior Designated Agency Ethics Official on April 9, 1982. This will include specific criteria pertaining to companies' interest in Federal lands as well as additional guidance which speaks to the remoteness of employee holdings vis-a-vis a company's mission. Our target date for submission of the criteria for Departmental review and approval is September 1, 1982, with implementation upon approval.

## RECOMMENDATION

"Require the Deputy Ethics Counselor, who reports directly to the Bureau Ethics Counselor, and whose primary duty is to manage the financial disclosure system, to:

- closely monitor the actions of Assistant Ethics Counselors,
- emphasize that Assistant Ethics Counselors document the justification for approving financial interests,
- advise Assistant Ethics Counselors and other employees on financial disclosure matters,

- advise the Bureau Ethics Counselor on actions employees should take when potential conflicts exist and on financial disclosure policy matters, and
- periodically assess resources available for reviewing employee financial interests."

**RESPONSE**

We will reassess the Bureau proposal to centralize the Conflict of Interest (financial disclosure) operational functions at the Denver Service Center. This assessment will consider the manner in which such restructuring of program roles and responsibilities can meet the program issues addressed in this recommendation. The organizational reassessment will be completed and a decision made on program realignment by August 31, 1982. Implementing instructions delineating specific roles and responsibilities of all Ethics Program counselors will be issued by September 15, 1982.