

OGC 78-7986

1 December 1978

DD/A Registry

78-4488

MEMORANDUM FOR: Deputy Director for Administration

STATINTL FROM :   
Associate General Counsel

DD/A Registry

File accounting

SUBJECT : Financial Reports by Supergrades

1. As you know, the new Ethics in Government Act of 1978 imposes stringent financial reporting requirements on GS-16's and above. This changes existing law in that all employees in supergrade positions must report and that the information must be reported in a great deal more detail and specificity than heretofore. The law is effective 1 January 1979 and the first disclosure reports are due to be filed on 15 May 1979.

2. Attached is a draft notice in general terms designed to alert all concerned to the reporting requirements, which you may want to consider for issuance. Unfortunately it is not yet clear whether or at what point these requirements will apply to those who leave Government service between the effective date of the Act, 1 January 1979, and the first specified filing date, 15 May 1979. One interpretation of the Act is that all those supergrades whose employment ceases after 1 January 1979 will be required to file, within 30 days after leaving office, reports covering all of 1978 and that portion of 1979 up to the date of termination. Another interpretation is that such reports will be required only as to those who terminate after 1 March 1979. There may be other possible readings of the Act on this point, and it probably will take a while for a definitive interpretation to emerge. Notwithstanding the uncertainty that surrounds this aspect of the legislation, I favor going ahead with a notice. Indeed, one of the purposes of such a notice is to alert supergrade employees who may be departing the Agency in the near future to the possibility that financial disclosure reports may be required.

3. The Act also provides appropriate enforcement authority for agency heads and the Department of Justice.

STATINTL

OGC Has Reviewed

Attachment

EMPLOYEE FINANCIAL REPORTS

1. This notice <sup>SERVES</sup> ~~is~~ to alert senior-level employees to the far-reaching changes in financial reporting requirements which were established by the Ethics in Government Act of 1978, signed by the President in late October. Several special aspects as to intelligence officers are noted also. Additional guidance from the Civil Service Commission is anticipated. Additional information and requirements under the new Act will be disseminated in due course.

2. The new Act provides that all officers and employees whose positions are classified at GS-16 or above (and their equivalents) must file with the Agency a detailed report of their financial interests. Apparently, the reporting requirement is based on the grade of the position, rather than that of the employee. Civil Service guidance on this point is anticipated. The reports are to be filed by 15 May of each year, to include information concerning the preceding year.

3. The Agency is required to make the reports available to the public. However, the Act authorizes the President to exempt certain employees of CIA and other intelligence agencies from the public disclosure requirements upon his finding that "due to the nature of the office or position occupied by such individual, public disclosure of such report would, by revealing the identity of the individual or other sensitive information, compromise the national interest of the United States." A review of Agency positions is underway to determine what positions should be recommended to the President as appropriate for exemption from the public disclosure provisions. The Act also provides that individuals exempted from the public disclosure requirements "may be authorized...to file such additional reports as are necessary to protect their identity from public disclosure if the President first finds that such filing is necessary in the national interest." This provision was included to permit compliance with the reporting requirements by intelligence personnel, but also permit them to maintain cover. It is anticipated that recommendations in this area also will be proposed to the Director at an early date.

4. The financial interests to be reported must be reported in much greater detail and specificity than has been required in the past under existing Executive orders and regulations. For example (in general terms), the following must be reported:

- a. the source and type of dividends, rents, interest and capital gains and an indication of the amount, in terms of any of seven specified ranges, i.e., "not more than \$1000" to "greater than \$100,000;"

b. the source, type and amount of all other income (except Government salaries);

c. the source and a description of gifts and entertainment above a specified amount;

d. the identity and value of any interest in property held for trade or business or for investment or the production of income;

e. the identity and value of liabilities in excess of \$10,000, other than personal residence mortgages, and loans for motor vehicles or household effects;

f. a description, the date and value of any purchase, sale or exchange of real property (other than personal residence), stocks, bonds, commodities futures and other forms of securities;

g. the identity of positions held in any business enterprise, non-profit organization, labor organization or educational institution; and

h. the identity of the source (other than the United States Government) of any compensation in excess of \$5,000 and a description of the duties or services for which it was paid.

5. The reports must include extensive information with respect to any trusts or other financial arrangements in which the employee has a beneficial interest.

6. Some financial interests of the employee's spouse and dependent children must be reported also.

7. At this point it remains uncertain whether the reporting requirements of the Act will apply in the case of supergrade employees whose Government employment ceases between the effective date of the Act, 1 January 1979, and the first specified filing date, 15 May 1979. The provisions of the Act are ambiguous in this regard, and it may take several more weeks before a definitive interpretation emerges, but those supergrade employees planning to retire on or after 1 January 1979 and before 15 May 1979 should be aware of the possibility that reports may be required.

8. It should be understood also that there is no way to know when the President will act to exempt at least some CIA employees from the public disclosure provisions, but it seems almost certain that this will not be done by the first few weeks of 1979. Thus, the financial reports filed by those employees who terminate in early 1979 would be subject to public disclosure, at least until such time as the President orders otherwise.

9. Agency heads must report to the Attorney General "the name of any individual he has reasonable cause to believe has willfully failed to file a report or has willfully falsified" a report. And the Attorney General may bring a civil action against such individual, in which event the court may assess against the individual a civil penalty of not to exceed \$5,000.

10. It is anticipated that reporting forms will be developed by the Civil Service Commission and will be available at an early date. Employees who file before such forms are available may do so by narrative or other written submission.

11. The current Executive order requiring financial interests reports, and CIA regulations thereunder, apply also to some employees at less than GS-16 grades. Whether modification or rescission of those Agency regulations would be appropriate in view of the new statute is now being considered.