To: Mr. Ryan
Mr. Turner
Mr. Aschom
Dr. Musolf
Mr. Murphy
Mr. Woodruff
Miss Heyman

From: Administrative Services

Subject: Conflict of Interests and Private Business Activities of ICA Employees

The Chief of Party has requested that the attached material be circulated within the Group. Since we were furnished only seven copies, we would appreciate your reading the material and passing it on to someone not listed in the heading of this memorandum.

It should be remembered that under the terms and conditions of our current contract, we are clearly governed by the content of the attached material. You will note that the material comes from ICA Manual Order.
MATERIAL TRANSMITTED:

M.O. L52.1 - Conflicts of Interests and Private Business Activities of ICA Employees

This manual order has been revised for the purpose of strengthening the Agency policy on conflict of interests and private business activities of ICA personnel.

Changes are shown in italics. Each Mission Director and Office Head should ascertain that this manual order is read by each person employed by or assigned to ICA.

SUPERSEDES: M.O. L52.1 (formerly L60.3) dated February 29, 1956
I. Policy of the Agency

A. It is the policy of the Agency that all ICA employees in Washington and in the USOMs shall conduct themselves, both at work and in their private activities, with the highest standards of good faith and responsibility to the public and to the Agency in order to avoid both the substance and the appearance of any conflict of interest between their public and their private activities and of any unethical capitalization of their official positions. The following extract from an opinion of the Attorney General expresses government-wide policy on this point:

"Apart from statutes, there are certain principles of fair dealing which have the force of law and which are applicable to all officers of the Government. A public office is a public trust. No public officer can lawfully engage in business activities which are incompatible with the duties of his office. He cannot in his private or official character enter into engagements in which he has, or can have, conflicting personal interest. He cannot allow his public duties to be neglected by reason of attention to his private affairs. See U.S. v. Carter 217 US 286, 306. Such conflicts of interest are not tolerated in the case of any private fiduciary, and they are doubly proscribed for a public trustee." (40 Op. Atty. Gen. 187, 190.)

B. In order to carry out this policy, the rules set forth in Section II of this order are established for the conduct of ICA employees, under the authority of Section 521(a) of the Mutual Security Act of 1951, as amended. While some of the activities prohibited by these rules would be violations of the statutes set forth in Section III of this order, the statutory restrictions have been broadened in some of these rules in order to carry out more fully the policy of the Agency. For example, 18 United States Code § 202 prohibits any employee from accepting a gift or gratuity with intent to have his decision or action on any official matter influenced thereby. While it may be argued that such gifts and gratuities may be accepted with no intention of having decisions influenced, nevertheless it is not considered good practice for employees of the Agency to accept gifts or gratuities, even of small value, from persons with whom they may have official relations. It is recognized generally that the object of such gratuities often is to influence favorable action by those who receive them and that this object is, to a greater or lesser degree, forthcoming in some cases. For this reason additional provisions concerning gifts have been included in Section II.
Despite the statutory exception from certain conflicts of interest contained in Section 117 and Section 117(a) of the Foreign Service Act of 1946, as amended, experts and consultants authorized under the authority of Section 117(a) of the Mutual Security Act of 1954, as amended, are subject to the rules set forth in Section II of this order.

The activities prohibited by Section II of this order and by the statutes set forth in Section III of this order are those prohibited to lead to conflicts of interest and improper use of official position. It is recognized, however, that the primary reliance, for the protection of the public, the Agency and the individual from any unethical or improper conduct, must be on the good judgment and discretion of the individual employee.

S. Limited Exemption for Foreign National Employees

The principles expressed in this manual order apply to the extent practicable to ICA's foreign national employees. However, USCIS Directors (or, principal ICA representatives) may approve engagement in limited private business activities by their foreign national employees provided such private business activities do not interfere with the foreign national employee's regular duties, or reflect discredit upon ICA's activities. Such approval of exemption should be documented in the USCIS personnel records for the employee.

II. Prohibited Private Activities of ICA Employees

Under Section 1003 of the Foreign Service Act of 1946, as amended, as applied to ICA, a Mission employee of ICA shall not, without permission of the Director of ICA, transact or be interested in any business or engage in any profession whether or not for profit in the country or countries to which he is assigned, either in his own name or in the name, or through the agency of, another person.

In addition, the following agency rules are effective upon all ICA employees, and their spouses, unless a waiver is obtained for activities of the spouse where exceptional circumstances would eliminate risk of conflict of interest or impropriety.

1. No ICA employee shall engage, directly or indirectly, in any private business transaction or private arrangement for personal profit (including investment) which accrues from or is based upon his official position or authority or upon confidential information which he gained by reason of his position or authority.

No ICA employee shall engage, directly or indirectly, in any private business activity, or private arrangement for a personal profit, which would place him in a position, by reason of a possible conflict of interest, where he could not exercise his best judgment on behalf of the Agency.
An ICA employee shall engage, directly or indirectly, in any business activity, or private arrangement, which might reflect discredit on the Agency, by reason of the nature of the activity or by reason of the relation of the activity to the Agency or to his position in the Agency.

An ICA employee shall accept, directly or indirectly, any decision or contract for any work, which is to result in a substantial profit to the employee, who is related to an individual with whom the employee transacts business, whether or not the employee is affected by the performance of such contract or decision.

An ICA employee shall disclose future employment or any other association outside the government with which he is carrying on business on behalf of the Agency or which affects the performance of his official duties. As applied to independent contractors and in some cases existing contractors, this rule prohibits any discussion of employment with ICA employees, except with prior written approval of the Deputy Director of Management or the Deputy Director for Management. Further, independent contractors are required to report to ICA any employment discussions with ICA employees or the people related to amending the contract and removing them from contracts with ICA financing.

No ICA employee shall divulge confidential, commercial, or personal information to any unauthorized person, or the use of any such information for private purposes.

No ICA employee shall become unally involved, through common or joint business or social arrange, with any person outside the government with whom he transacts business on behalf of the Agency or which is affected by the performance of his official duties.

No ICA employee shall, on behalf of ICA, participate in the negotiation of contracts, the making of loans, or other financial transactions between ICA and any person or organization by whom he was employed within the two years immediately before the date of such transaction of business.

No ICA employee, for two years after termination of his employment with ICA, shall represent any non-governmental interest in any capacity whatsoever involving any subject matter directly connected with the work he was employed in or performed duty, in which the United States
Interested, directly or indirectly, whether as a party, an enforcement agent, or otherwise. No ICA employee shall represent any former ICA employee whom he knows to be violating this order.

3. Notwithstanding the exemption provided by Section 5(g)(a) of the Mutual Security Act of 1954, as amended, for experts and consultants appointed under Section 5(g)(a) of that Act, no expert or consultant employed by ICA shall consult, or otherwise participate, in the negotiation or execution of any contract, or the transaction of any other business, between ICA and his private employer, or between ICA and any corporation or other entity in which he has any direct or indirect financial interest; nor shall an expert or consultant, during his employment by ICA or for two years thereafter, represent any non-governmental interest in any matter whatsoever involving any subject matter directly connected with which he is or was so employed or performed duty, in which the United States is interested, directly or indirectly, whether as a party, an enforcement agency, or otherwise. (Employees not covered by Section 5(g)(a) of the Mutual Security Act of 1956, as amended, are prohibited from engaging in such activities by the statutes listed in Section III, and the regulations in Section II of this order).

5. This order contains no rule prohibiting speculation in stocks, bonds, or other commodities, because of the difficulty of distinguishing clearly between speculation and investment. However, ICA employees are expected to follow the policy laid down by the President in his letter to the Civil Service Commission dated April 22, 1937, which read in part as follows:

"I believe it to be a sound policy of the Government that no officer or employee shall participate, directly or indirectly, in any transaction concerning the purchase or sale of corporate stocks or bonds or commodities for speculative purposes, as distinguished from bona fide investment purposes."

(Federal Personnel Manual C2-26; see also Section III.F. of this order.)

III. Private Business Activities Prohibited by Statute

A number of criminal statutes, which impose fines and imprisonment on conviction for violations, apply to all ICA employees at ICA/W and overseas with respect to certain business activities. Paraphrasing of various criminal statutes given below is only for general informational purposes. Reference should be made to statutes for complete text. For example, Section 11A of the Mutual Security Act of 1954, as amended, not only prohibits the giving or receiving of payments, etc., but also failure to give or receive payments.
A. Government Contracts Generally, Including MLA AND AMLA

1. 18 United States Code § 216 prohibits any person in the United States from receiving any consideration for entering into any contract with the United States.

2. 18 United States Code § 1341 prohibits anyone who is an officer, member or agent of any private concern or is interested in the profits or contracts from acting on behalf of the United States in transacting business with the concern.

3. 18 United States Code § 281 prohibits any officer or employee of the United States from receiving any compensation for any services rendered by himself or another "in relation to any...contract in which the United States is a party or directly or indirectly interested, before any department, agency, court martial, officer, or any civil, military or naval commission."

4. Section 512 of the Mutual Security Act of 1954, as amended, prohibits giving or receiving any commission, payment or kickback in connection with the procurement of equipment, materials or services under the Act, or by a person who is or during the preceding two years has been an employee or officer of the United States, and in connection with which such procurement has been officer or employee, former officer or former employee is or was employed or performed duty or took any action during such employment.

B. Representation of Opposing Interest in Matters in which the Government has an Interest

1. 18 United States Code § 281 prohibits any officer or employee from receiving or agreeing to receive any compensation for any services rendered by himself or another in relation to any proceeding, claim, controversy, charge, or other matter in which the United States is directly or indirectly interested.

2. 18 United States Code § 283 prohibits any officer or employee from acting as agent or attorney, or assisting, in the prosecution of any claim against the United States.

3. 18 United States Code § 284 prohibits former employees, within two years after their employment ceases, from prosecuting, or acting as counsel, attorney, or agent for prosecuting, any claims against the United States involving any subject matter directly connected with which such person was employed or performed duty. The Attorney General, in his memorandum to all United States Attorneys, No. 40 of August 27, 1953, has interpreted this statute as follows:

"...the statute prohibits any former employee...from representing any non-governmental interest in any matter whatsoever, 'involving any subject matter"
directly connected with which such person was so employed or performed duty, in which the United States is interested, directly or indirectly, whether as a party, as an enforcement agent, or otherwise."

In addition, the Attorney General stated in this Memorandum No. 40, that:

"Manifestly it is improper, and not in the interest of good Government, for a public employee who has handled a matter for the Government to leave public service and subsequently represent the other side, just as it is improper for an attorney in private practice to accept employment in matters adversely affecting any interest of a former client with respect to which confidence has been reposed. This principal is self-evident as to all matters in which the Government has an interest, and about which the former employee acquired knowledge or took action in connection with his official duties.1/ There is no distinction in this respect between monetary claims and non-monetary claims, or between claims by moving parties and defensive ones. Such conduct should be considered illegal as well as unethical in all cases."

1/ Such practice is clearly condemned by the Canons of Professional Ethics of the American Bar Association. Canon 36 provides in part:

"A lawyer, having once held public office or having been in the public employ, should not after his retirement accept employment in connection with any matter which he has investigated or passed upon while in such office or employ."

Salaries from Other Sources

18 United States Code § 1914 prohibits any Government official or employee from receiving any salary for the services performed by him for the Government of the United States from any source other than the Government of the United States, except as may be contributed out of the treasury of any state, county, or municipality, and provides that no person, association, or corporation shall make any contribution to, or in any way supplement the salary of, any Government official or employee for the services performed by him for the Government of the United States. The statute expressly includes in this prohibition a salary received from a private person or source if it is paid or received as compensation or part compensation for the services rendered to the Government. It also has been held to
apply if the officer or employee renders the same or similar service to both the government and a private person (33 Op. Atty., Gen. 273). It does not, however, prohibit payment for services rendered exclusively to private persons or organizations and which have no connection with the services rendered to the government (38 Op. Atty., Gen. 581; 39 Op. Atty., Gen. 501).

D. Misuse of Information and Speculation in Commodities

1. Section 710(f) of the Defense Production Act of 1950, as amended, provides that no officer or employee may use confidential information received by virtue of his office or employment for speculating on any commodity exchange or disclose such information for the purpose of aiding any other person to speculate (the term "speculate" in § 710(f) does not include any legitimate hedging transaction or purchase on sale which is accompanied by actual delivery of the commodity.)

2. §18 United States Code § 1902 imposes additional restrictions on the use of such information for speculation.

3. §18 United States Code § 1905 imposes general restrictions on the release or use of confidential business information by government employees.

E. Bribes and Gifts

1. Section 512 of the Mutual Security Act of 1954, as amended, provides in part as follows:

"Whoever offers or gives to anyone who is or in the preceding two years has been an employee or officer of the United States ... and whoever, being or having been an employee or officer of the United States in the preceding two years, solicits, accepts, or offers to accept any commission, payment, or gift in connection with the procurement of equipment, materials, commodities, or services under this Act in connection with which procurement said officer, employee, former officer or former employee is or was employed or performed duty or took any action during such employment, shall upon conviction thereof be subject to a fine not to exceed $10,000 or imprisonment for not to exceed three years, or both: Provided, that this Section shall not apply to persons appointed pursuant to Sections 308 or 530(a) of this Act."

2. Section 202 of Title 18 of the United States Code provides in part as follows:

"Whoever, being an officer or employee ... of the United States ..., asks, accepts, or receives any money, or any check, order, contract, promise, ... gratuity ..."
with intent to have his decision or action on any question, matter, case or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, or in his place of trust or profit, influenced thereby, shall be fined not more than three times the amount of such money or value of such thing or imprisoned not more than three years or both, and shall forfeit his office or place and be disqualified from holding any office of honor, trust, or profit under the United States."

V. Experts and Consultants

Section 532(a) of the Mutual Security Act of 1954, as amended, provides in part as follows:

"Service of an individual...as an expert or consultant under Section 530(a) ... shall not be considered as service or employment bringing such individual within the provisions of ... 18 United States Code §§ 281, 283, § 284, 5 United States Code § 927 or of any other Federal law imposing restrictions, requirements, or penalties in relation to the employment of persons, the performance of services, or the payment or receipt of compensation in connection with any claim, proceeding, or matter involving the United States, except insofar as such provisions of law may prohibit any such individual from receiving compensation in respect of any particular matter in which such individual was directly involved in the performance of such service, ...

Note: Section II of this manual order, particularly paragraph J of that Section, imposes a number of restrictions applicable to experts and consultants despite the statutory exemptions noted in this paragraph.

V. Administration

A. Waivers

The requirements of Section II, to the extent they go beyond statutory requirements, may be waived, by the Deputy Director of ICA or the Deputy Director for Management, in exceptional cases where it is clear that the added non-statutory requirements of Section II are not necessary in order to protect the public and the agency from conflicts of interest or abuse of the employee's position or authority, and where application of the additional non-statutory restrictions of Section II would work a severe hardship upon the employee or the waiver is deemed to be clearly in the interest of the agency.
D. Procedure

Any requests for waivers shall be routed through the following offices in the order given: (1) Office of Personnel Security and Integrity, (2) Office of Personnel, (3) to any office of direct interest, (4) Office of the General Counsel, and (5) Office of the Deputy Director for Management.

1. Upon any indication that an employee is engaged in private business activities not compatible with his public employment, the employee’s supervisor or other appropriate official shall require him to explain in writing the nature of such activities, in sufficient detail to permit a reasonable appraisal of their relationship to possible relationship to the employee’s public employment. Refusal to submit such a statement will be considered prima facie evidence of the incompatibility of the private activities with the employee’s Government work.

An employee engaged in private activities which he believes may be subject to question should initiate a review of the circumstances by explaining the facts in a letter addressed to his supervisor, who will take steps to obtain a decision with respect thereto.

2. Heads of offices and divisions are responsible for initially determining whether the private business activities of employees are compatible with their public employment, since they are in the best practical position to appraise any possible conflict of interest. The head of the appropriate office or division will therefore review each case arising under this order, and will forward his report and recommendation to the Deputy Director for Management, through the offices indicated above, for his decision. The employee shall be given a full opportunity to present his side of the case. If the employee requests, or if the Deputy Director for Management considers it advisable, an informal hearing will be held, before not less than 3 ICA employees designated by the Deputy Director for Management, who shall report their findings in writing to the Deputy Director for Management for decision or his recommendation to the Deputy Director of ICA.

C. Violations

Violations of this order shall be grounds for disciplinary action, including separation, in addition to such action as may be appropriate with respect to violations of criminal statutes.