

OFFICE OF GOVERNMENT ETHICS

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Letter to an Agency Ethics Official  
dated May 4, 1998

It has come to our attention during a routine ethics program review at a Department activity that some [Department] filers of the standard public financial disclosure report (SF 278) are being required to certify thereon at the time of filing that their reported interests are not in conflict with their official duties. Because this practice is impermissible, we must ask that it be rescinded.

The certification in question consists of a stamp or sticker which is printed or affixed at the bottom of the SF 278 cover sheet, as follows: "Reporting Individual's Certification. The signature of reporting individual is a certification that the interests represented in the report are not in conflict with that individual's official duties." In addition to finding this statement on some SF 278s filed by [Department] officials, we subsequently discovered that it also appears on the sample SF 278 prescribed by [the Department's regulation].

By letters of December 5, 1997, and March 9, 1998, we noted a similar alteration of the OGE Optional Form 450-A for [the Department's] confidential financial disclosure filers, and we asked that its use be terminated. As indicated in those letters, such a notation transforms financial disclosure reports into certificates of no conflict, which is not allowed by the controlling regulation at 5 C.F.R. part 2634. That concern is even more critical with respect to the public SF 278, whose requirements are established by statute. The only permitted filer certification, which is pre-printed on the SF 278, concerns the accuracy of disclosures: "I certify that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge and belief." This certification is necessary as a means of enforcing the civil penalty provisions of 5 U.S.C. app., § 104 against filers who knowingly and willfully falsify or incompletely report required information. No other filer certification is permitted by law or regulation on an SF 278.

In addition to being unauthorized by either the financial disclosure statute (5 U.S.C. app., §§ 101-111) or the governing regulation (5 C.F.R. part 2634), the [Department's] policy of

having some SF 278 filers certify upon filing that their disclosed interests do not conflict with their duties raises several other concerns. For example, it may misleadingly reassure the public that an SF 278 filer is immediately free of conflicts; improperly suggests that such a certificate would be enforceable against the filer as a separate violation beyond the substantive conflict-of-interest statutes (Title 18, U.S. Code), the regulatory Standards of Ethical Conduct for Employees of the Executive Branch (5 C.F.R. part 2635), and other related ethical principles; may suggest to filers that they should not disclose items that could conflict; and is vague as to the meaning of the term "conflict." Furthermore, requiring a certificate of no conflict upon filing effectively undermines the statutorily permitted three-month period ordinarily provided for compliance with any ethics agreements to eliminate potential conflicts. It also appears to relieve reviewers of their responsibility under the disclosure law and regulation to determine whether there are possible conflicts with official duties under applicable ethical principles. Additionally, this certificate modifies a standard form, which does not appear to have been approved by the General Services Administration or the Office of Management and Budget.

For all the above reasons, we must ask that the filer's certificate of no conflict, which is being added to the SF 278 by certain [Departmental] agencies and is specified in the [regulation], be removed as unauthorized. In the interim, we will be suggesting to [Departmental] agencies during our ethics program reviews that filers should not be required to sign the altered format, that SF 278s should not be released to the public with such a certification, and that the certificate is unenforceable. Until this situation is corrected, we will be noting these concerns in our program review reports for [Departmental] agencies, with an indication that the matter has been brought to your office's attention for resolution.

We request that your office correct this situation by issuing guidance as soon as possible to affected [Departmental] agencies, and by modifying the [regulation]. Thank you in advance for your cooperation.

Sincerely,

Stephen D. Potts  
Director