# Office of Government Ethics
## 93 x 37 -- 12/20/93

### Letter to a Special Government Employee dated December 20, 1993

Thank you very much for taking the time to provide what I consider to be quite useful and constructive suggestions on improving the Executive Branch Personnel Confidential Financial Disclosure Report form (SF 450). We received your letter in late November, and I wanted to respond to your request for our reaction and comments.

You make a valid point that completion of the SF 450, particularly for special Government employees (SGEs) such as yourself, may have become overly complex. While the Office of Government Ethics (OGE) was responsible for establishing a uniform confidential disclosure system and standard reporting form a couple of years ago, we could not do so in a vacuum. Many forces were at work, such as the prior history of the confidential system, Congressional and public interest, and the requirement that we consult with the Department of Justice and others for guidance in creating the program. The most important goals were to assist Government employees in avoiding violations of the criminal statutes and administrative rules on conflicts of interest, as well as to promote public confidence in Government integrity.

By way of background, the Ethics Reform Act of 1989 and Executive Order 12674 authorized creation of a confidential disclosure system, and it was established as a uniform system for the executive branch in October 1992. Previously, confidential disclosure had been based on a 1965 executive order, with relatively little uniformity and no standard form. For employees at some agencies, this will mean that the new SF 450 may take more time to complete than was required in the past to fill out their agency's disclosure form, until they become more familiar with the SF 450 and its requirements.

As you point out, for some employees the estimate of time required to complete the SF 450 may be understated, particularly when they use this form the first year. Attaching standard brokerage statements for managed accounts in lieu of actual entries on the SF 450 may save a considerable amount of time. While you are correct that some agencies may find this difficult to decipher,

we would encourage reviewers to accept such information and become more familiar with how to read it.

On the question of the excepted investment fund (EIF), that concept was created by Congress as part of the public financial disclosure system for senior officials, and we included it in the confidential system because the public system served as our model. According to the Ethics in Government Act, an EIF reduces the detail required to be reported on financial disclosure forms, such as a fund's underlying holdings. Reduced disclosure is permitted because these funds are widely held, widely diversified or publicly traded, and not self-directed. Therefore, their portfolios can be ascertained from published investment guides or investment managers. Still, this does not relieve the potential for conflicts of interest which EIFs can present.

Some EIFs, such as widely diversified mutual funds, will not typically raise conflict issues. However, a fund that focuses on an industry or geographic sector which may be publicly traded but not widely diversified can present conflicts. Even though individual share owners cannot control the fund's portfolio, they are charged with having knowledge of its holdings. The specific nature of those focused holdings can raise a real possibility, or at least the appearance, that the Government employee might lose impartiality in the performance of official duties. That is enough under the criminal statute on conflicts (18 U.S.C. § 208) and the executive branch standards of conduct regulation to require that an employee avoid participating in certain matters or pursue some other means of conflict avoidance. Agency reviewers must assess this in terms of the specific responsibilities of a filer's position description.

IRA accounts will not themselves qualify as EIFs because they are self-directed investment vehicles. Therefore, the individual assets held as an IRA must be separately disclosed and analyzed for possible conflicts with Government duties. However, certain assets within IRAs, such as mutual funds, may qualify as EIFs, in which case the specific fund names must be disclosed but not the assets in those funds' portfolios.

Your suggestion that employees be permitted to use their previous report as a reference or starting point for each successive year's filing is acceptable, so long as the new submission bears a signature and date to recertify that all information is current and accurate, with any changes noted.

However, this would need to be accomplished in a manner that provides affirmative disclosures by attaching the previous report, rather than a mere statement of no change.

The requirement to provide dates and amounts for each honorarium is based on a similar statutory requirement for those full-time senior officials who must submit public financial disclosure reports. Because we modeled the confidential system on the public system, we will likely continue that requirement. This may entail some considerable effort on the part of those who have frequent speaking engagements. However, the subject of honoraria is so equated with ethics concerns by Congress and the public that we believe that information's utility outweighs other concerns.

Concerning the question of separately identifying those assets held by you, your spouse, or dependent children, there is no requirement to do so. As you point out, the criminal statute on conflicts, 18 U.S.C. § 208, attributes the financial interests of your spouse and dependent children to you for purposes of conflict analysis. The SF 450 and governing regulations permit but do not require separate identification. Some employees prefer to separately disclose, especially where the spouse holds a considerable portion of the assets. If filers choose to separately identify these disclosures, they must remember that they are required to aggregate financial interests for themselves, their spouse and their dependent children from each single source in determining whether the applicable threshold values are met.

October 1993 marked the second annual reporting cycle under the new confidential system, so we now plan to evaluate its overall effectiveness and make any needed adjustments to insure its usefulness. We have already taken some steps to improve the system, based on comments received. For example, we recently removed the requirement on the SF 450 to disclose deposit accounts at banks, savings and loan associations, credit unions, and similar financial institutions, as well as money market mutual funds, U.S. Government obligations (Treasury bonds, bills, notes, and savings bonds) and U.S. Government securities. See final rule published at 58 Federal Register 63023-63024 (November 30, 1993).

One important question which we must now face is whether a single standard form is really practical for both full-time employees and SGEs. [A] Department, the parent for your agency, has been discussing with us the possibility of using a different disclosure form for SGEs at [your agency], which would be more

narrowly focused on disclosure of data that might be expected to present conflicts with [agency] functions.

Thank you again for your time and very helpful suggestions.

Sincerely,

Stephen D. Potts
Director