

Office of Government Ethics
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Letter to an Employee dated December 15, 1993

Your letter of November 11, 1993, expressed concerns about the Executive Branch Personnel Confidential Financial Disclosure Report form (SF 450). In particular, you questioned whether the criteria for designating positions for filing was too broad, you asked what justifies the invasion of privacy which occurs with submission of an SF 450, and you cited the requirement for disclosure of personal information such as bank accounts as a "campaign of aggressive spying on people's private lives" which will not make the Government more ethical.

Based on feedback such as yours which we received over the past year, 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).

The Ethics Reform Act of 1989 authorized creation of a confidential disclosure system, and Executive Order 12674 directed its establishment as a uniform system for the executive branch. The executive order was implemented at subpart I of 5 C.F.R. part 2634, which became effective in October 1992. That regulation offers guidance about which positions should be designated for confidential reporting, but leaves the actual designation to each agency, as specified by the executive order. The regulatory guidance on determining who should file refers to positions GS-15 and below in which employees may participate personally and substantially in matters such as contracting and procurement, administering or monitoring grants and similar programs, regulating or auditing non-Federal entities, and other activities which could have a direct and substantial economic effect on outside interests or which present a significant potential for conflict of interest.

Agencies may exclude employees even though they meet these filing requirements, if it is determined that the duties of a position make remote the possibility of a real or apparent conflict of interest; or the duties involve a low level of responsibility

and substantial degree of supervision or inconsequential effect of potential conflict on Government integrity; or an alternative procedure has been approved by the Office of Government Ethics as adequate to prevent conflicts. These guidelines for designations and exclusions are designed to provide agencies with the flexibility necessary because of significant differences in their programs and operations, while still maintaining basic uniformity. The criteria are quite similar to what has been in place since 1965 under an executive order. If you believe that, based on these criteria, your position should not be designated for filing, the regulation at 5 C.F.R. § 2634.906 allows you to seek review of that determination by the head of your agency or someone delegated by him.

We share your concerns that information disclosed on the SF 450 should be limited to matters which might be expected to present conflicts between your private financial interests and official responsibilities. Any financial disclosure system must involve a careful weighing of the competing factors of privacy versus conflict prevention. Based on suggestions from various executive branch agencies and some staff members at the General Accounting Office and legislative committees, we determined that the new confidential disclosure system should be modeled generally on the public financial disclosure system which was established by Congress for employees above GS-15. Normally the same information is essential for filers of confidential reports, because its utility in preventing conflicts outweighs privacy concerns.

Therefore, the SF 450 requires disclosure of certain assets held for investment or the production of income which are worth more than \$1,000, as well as earned and investment income exceeding \$200; liabilities which exceed \$10,000; outside positions and employment agreements or arrangements; and gifts or reimbursements totaling \$250 or more from the same source. The regulation details various exceptions and exclusions, and there is no requirement to indicate actual dollar amounts or values. It is important to note that all information elicited under the confidential financial disclosure system is strictly protected by executive branch principles of confidentiality under the Ethics Reform Act of 1989, Executive Order 12674 and the Federal Privacy Act. See 5 C.F.R. §§ 2634.604(b) and 2634.901(d).

A primary justification for disclosure of the information required by both the public and the confidential systems is the criminal conflict of interest statute, 18 U.S.C. § 208. That

statute prohibits executive branch employees from participating in Government matters where they have a financial interest or where others such as their spouse, dependent children, general partners, and employers have a financial interest. In addition to 18 U.S.C. § 208, several other criminal statutes and regulations, such as the standards of ethical conduct at 5 C.F.R. part 2635, make necessary this disclosure of financial information so that agency ethics officials can help employees avoid violations.

Because of the complexity and criminal nature of many of these rules, it has long been the practice of the executive branch, as specified by executive orders and statutes, to require affirmative disclosure of financial information from employees whose positions are determined by their agency to present potential conflicts. Such disclosures help insure that employees are not left unassisted in their efforts to avoid ethical violations. The confidential system is not meant to question the assumption that employees are basically honest, but simply to assist them and to help insure public confidence in Government integrity.

October 1993 marked the second annual reporting cycle under the new confidential system. We now plan to evaluate the system's overall effectiveness, so that we can make any needed adjustments to insure that the SF 450 is truly responsive to the needs of agencies in helping their employees avoid conflicts of interest.

Sincerely,

Stephen D. Potts
Director