

**Office of Government Ethics**  
**87 x 9 -- 08/24/87**

**Letter to a Designated Agency Ethics Official**  
**dated August 24, 1987**

This is in response to your letter of August 18, 1987, by which you refer to the instructions to Form SF-278 (Executive Personnel Financial Disclosure Report), and ask for further guidance as to the reporting of interests in non-public entities.

The instructions relating to the reporting of non-public entities appear principally in subdivision (e) of the "General Instructions," which begins at page 2, column 1. This material is further amplified by the discussion of "What to Show on the Form," which begins on page 2, column 4.

Although from your comments it would seem that you construe the instructions to delegate significant discretion to reviewing officials to prescribe "the appropriate degree of disclosure" for an agency's personnel, this is not the case. This Office deems Title II of the Ethics in Government Act to impose a uniform disclosure standard for the executive branch. We have attempted in the above-referenced instructional material to define the disclosure standard in detail. The phrase you have quoted, concerning the requirement that reporting individuals must provide sufficient information to give reviewers an adequate basis for the conflicts analysis required by the Act, is developed and explained by the discussion of this matter in the instructions. From your comments, we assume that you understand that listed securities, and other entities such as publicly available mutual funds, the activities and holdings of which are available in standard reference materials (such as Moody's Manuals) need no further elaboration. An adjunct principle is that a widely-diversified investment fund managed on a group basis by an independent third party fiduciary, which is a financial institution such as a bank or insurance company (not an individual broker or independent investment advisor), need not be further elaborated if these facts are included with the identification of the interest, even though the underlying portfolio might not be ascertainable by a reviewer. The nature of such arrangements has been determined to adequately ameliorate conflicts and standards concerns.

Although some aspects of this issue might seem subtle and complex, the central theme is quite straightforward and may be generally stated as follows: an identification of an entity which is an asset or income source in Block A of SF-278 Schedule A is incomplete unless, as appropriately attributable to the reporting individual, the description reveals --

- (i) the nature of any trade or business which is actively conducted by or through the entity, and
- (ii) any portfolio investments or other attributions from the entity which are not solely incidental to the trade or business disclosed.

Accordingly, a non-public entity which is engaged in the active conduct of a trade or business is sufficiently identified by noting the entity and the trade or business, and separately reporting any portfolio investments held through the entity. All interests and activities attributable to the reporting individual, but solely incidental to that trade or business, would not require further SF-278 entries, except for liabilities which are recourse obligations. Under generally accepted principles, a private investment pool could never constitute the active conduct of a trade or business -- therefore, the underlying assets and sources of income of a pool always must be reported in detail.

The activity of a law firm would constitute the active conduct of a trade or business; therefore, the identity of the firm and the notation that it is engaged in the practice of law is sufficient -- subject to the requirement that recourse liabilities of the reporting individual and interests in investments or other businesses not solely incidental to the legal practice attributable to him because of the interest in the firm, are separately reportable. Of course, an analysis of issues arising under provisions such as 18 U.S.C. §§ 203, 205, and 208, and the Standards of Conduct, may require the individual to disclose privately to ethics program reviewers information in addition to that in the public report.

A vested interest in a pension plan is reported as a separate line item. If the funds of the pension plan are placed in widely-diversified investments and independently managed on a group basis by a separate financial institution (which is a bank, insurance company, or other appropriate fiduciary), a notation

identifying the manager and reciting these facts is a sufficient Block A entry. If these conditions are not present, identification of the individual underlying assets is required, as in the case of any other private investment pool. See generally, 83 OGE 1.

The disclosure appropriately required in the case of a limited partnership or any other entity would follow the same principles discussed above: separate identification of -- (i) the active conduct of a trade or business, (ii) attributions not solely incidental to identified trades or businesses, and recourse liabilities, and (iii) portfolio investments and the holdings and activities of investment pools.

The following examples of appropriate entries in Block A of SF-278 Schedule A illustrate the principles explained in this discussion:

1. Texas 87-1 Limited Partnership: oil and gas exploration in Texas
2. IRA Merrill Lynch --
  - a. Rowe Price International Bond Fund
  - b. AT&T Bond
3. Jones and Jones, law firm --
  - a. Compensation for services
  - b. Pension plan -- annuity with New England Life Insurance Co.
  - c. Profit Sharing Plan:
    - Office bldg., Bethesda, MD
    - New Age Partners --
      - Montgomery Title Co.
      - Mortgage on commercial bldg.,  
Gaithersburg, MD
      - Fidelity Daily Inc. Fund
4. Georgetown Corporation --
  - a. Director's Fee
  - b. Deferred Director's Fees (general corporate obligation)
5. Ace Corporation Pension Plan: fully funded, independently managed by Riggs Nat'l Bk, placed in diversified investments, no holdings in Ace Corp.

We are not aware of the manner in which the instructions to the SF-278 differ from your past practices, or the types of situations existing on prior filings of your personnel which now concern you. In general, we would urge an emphasis of program resources on the correctness of present and future filings.

Sincerely,

Donald E. Campbell  
Deputy Director