Office of Government Ethics
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Letter to an Employee dated December 20, 1993

Your letter of November 21, 1993, responded to a request for comments on the Executive Branch Personnel Confidential Financial Disclosure Report form (SF 450), and you asked for our feedback. We understand that you are a management specialist in a GS-12 position with [an agency], currently involved in commercial acquisition. Your specific concerns are the time required to complete the form outside of work hours, the basis for disclosing financial information not directly related to Government duties (especially for your wife and children), and the invasion of privacy which may occur when reports are passed between various offices for review.

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. See subpart I of 5 C.F.R. part 2634. 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. To the extent practical, however, you may be permitted by your agency to use work hours in completing the SF 450, since that is an official requirement of your position.

Regarding the need to disclose information which you suggested might not present direct conflicts with Government duties, such as mutual funds, IRAs, and the holdings of family members, it is important to recognize that the laws and regulations on conflict of interest are quite comprehensive and sometimes complex. We share your concern that information disclosed on the SF 450 should be limited to matters which might be expected to present conflicts between private financial interests and official responsibilities. However, often the potential for conflict is subtle and may arise, for example, from the underlying assets held in an investment vehicle, such as an IRA. Similarly, a mutual fund may present conflicts through its underlying holdings, particularly if it concentrates investments in a particular sector of the economy.

The fact that an asset may be held by your wife or dependent child rather than you personally does not alter the potential for conflict. In that regard, a criminal statute, 18 U.S.C. § 208, as well as the standards of conduct regulation, prohibits Government employees from participating in official matters where they or their spouse or minor children have a financial interest.

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.

Any financial disclosure system must involve a careful weighing of the competing factors of privacy versus conflict prevention. We recognize the intrusive nature of a system which collects personal financial information, but we believe the new confidential disclosure system strikes the right balance overall. Regarding your agency's requirement that supervisors review disclosures, this is not inappropriate, as it helps them avoid making assignments which create conflicts. However, reviewers must be made aware that all information revealed under the confidential financial disclosure system is strictly protected by executive branch principles of confidentiality in 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). We agree that this may need renewed emphasis.

The Privacy Act system of records under which SF 450 reports are maintained requires safeguards such as holding reports in locked file cabinets. See Federal Register notice of February 22, 1990, at volume 55, page 6329. We have also suggested to agencies that they pass these reports between offices in sealed envelopes. Of course, as you noted, even that is not a perfect system of ensuring privacy. At some point we must place a degree of trust in those charged with this special responsibility of protecting highly sensitive information. The Privacy Act contains both civil and criminal penalties for certain types of violations, and we would encourage you to contact your inspector general's office if you have any specific instances of violations. For our part, we will

redouble our efforts to inform agency ethics officials of the special privacy concerns associated with the SF 450.

Sincerely,

Stephen D. Potts
Director