

Office of Government Ethics

02 x 1

**Memorandum dated April 24, 2002,
from Marilyn L. Glynn, General Counsel,
to Designated Agency Ethics Officials
Regarding Financial Disclosure Issues
Concerning Trustees, Executors,
and Administrators**

This memorandum provides guidance concerning the reporting of the assets and income of trusts and estates with respect to which a reporting individual serves as trustee, executor, or administrator. As described below, filers of financial disclosure reports under the Ethics in Government Act of 1978, as amended, will no longer be required to report the assets or income of trusts and estates with respect to which they, their spouses, or their dependent children serve as trustee, executor, or administrator. However, filers are still required to report their positions as trustee, executor, or administrator as outside positions.

As we recently advised you, the Office of Legal Counsel (OLC) at the Department of Justice has issued an opinion concluding that a trustee of a private trust does not necessarily have a personal financial interest in particular matters affecting the holdings of a trust. DO-01-029 dated December 19, 2001 [OGE Informal Advisory Memorandum 01 x 12]. We also indicated that we would be providing additional guidance concerning the reporting of trust holdings on financial disclosure statements, where the filer or the filer's spouse or dependent child serves as trustee of a private trust. The present memorandum provides such guidance, as well as related guidance concerning the reporting of assets of an estate for which the reporting individual serves as executor or administrator.

Historically, the Office of Government Ethics (OGE) required the reporting of assets and income of a trust in which the filer or the filer's spouse or dependent child served as trustee. See, e.g., *Public Financial Disclosure: A Reviewer's Reference* 7-30 (1994). Specifically, OGE required that all trust holdings and income be listed on Schedule A of the SF 278, except in very narrow circumstances. This was true even where the filer, spouse, or dependent child had no "beneficial interest in the principal or income" of the trust, within the meaning of section 102(f)(1) of

the Ethics in Government Act.¹ See OGE Informal Advisory Letter 98 x 12. Section 102(a)(3) of the Act requires filers to report "any interest in property held," and OGE took the position that a trustee, as legal owner of the trust assets, holds a reportable interest in the trust property. A significant reason for this view was OGE's understanding that a trustee always has a personal financial interest, under 18 U.S.C. § 208(a), in any matter affecting the holdings of the trust.

Now OLC has clarified that a trustee--generally and with certain qualifications--does not have a personal financial interest in all matters affecting the assets of a trust, for purposes of section 208. See DO-01-029. In light of this opinion, OGE is modifying its view with respect to the scope of disclosure required. Notwithstanding any prior advice to the contrary, OGE has determined that filers will not be required to report the assets and income of a trust with respect to which they (or their spouses or dependent children) serve as trustee.²

We want to emphasize that any employee who serves as a trustee still has an imputed "organizational" interest in all trust property, under section 208, pursuant to the OLC opinion. Consistent with this analysis, filers still must report any positions as trustee of a private trust on Schedule D of the SF 278. See 5 C.F.R. § 2634.307(a). (Of course, filers only report such outside positions as they themselves hold, not positions held by their spouses or dependent children.) Moreover, as discussed more fully in DO-01-029, there are various circumstances in which the trustee of a private trust may have a personal financial interest in the holdings of the trust, under section 208. Therefore, employees should be counseled, as appropriate, that trustee positions may raise conflict of interest issues, even where there is no duty to report the trust holdings or income on a financial disclosure statement.

¹ Section 102(f)(1) requires the reporting of trust assets and income where the filer, spouse or dependent child has a beneficial interest in the trust, without regard to whether any of these individuals serves as trustee.

² Note, however, that fees received for services as a trustee, executor, or administrator are subject to reporting as income on Schedule A. Likewise, fees for such services are subject to any relevant outside earned income limitations. See OGE Informal Advisory Letter 82 x 6.

OGE has reached similar conclusions with respect to executors and administrators of estates. Based largely on an analogy to trustees, OGE at one time required filers to report the holdings and income of any estate which they served as executor or administrator. See *Reviewer's Reference* at 7-30 (comparing executors and administrators with trustees). Now, consistent with OGE's revised interpretation respecting trustees, filers no longer will be required to report the holdings and income of an estate which they (or their spouses or dependent children) serve as executor or administrator. Similar to trustee positions, however, a filer's position as executor or administrator of an estate still must be reported on Schedule D of the SF 278. See 5 C.F.R. § 2634.307(a); OGE Informal Advisory Letter 82 x 6, n.3.³

³ Section 2634.307(a) refers to executors, but does not specifically mention administrators. However, the duties of executors and administrators with respect to an estate are so similar--the principal distinction being whether the decedent died intestate--that OGE construes the reporting requirement as encompassing both positions. See, e.g., *Black's Law Dictionary* 591 (1999)(executor defined as "person named by a testator to carry out the provisions in the testator's will. Cf. ADMINISTRATOR").