United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
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April 7, 2006
DO-06-011

MEMORANDUM

TO: Designated Agency Ethics Officials

FROM: Marilyn L. Glynn
Acting Director

SUBJECT: Scope of Public Financial Disclosure Reporting Exception for Compensation from an Individual with Whom the Filer is in a Privileged Relationship

As noted in *Public Financial Disclosure: A Reviewer's Reference* (2nd Ed., November 2004), current law provides an exception to the requirement that nominees and new entrants report the names of their major clients on Schedule D, Part II of the SF 278. See Reviewer's Reference page 3-31. Under this exception, the filer need not report "any information which is considered confidential as a result of a privileged relationship, established by law, between such individual and any person . . . ." 5 U.S.C. app. § 102(a)(6)(B).

This exception does not extend, however, to the name of a major client of a filer merely because the filer had previously established an attorney-client relationship with that client. See 5 C.F.R. § 2634.308(b)(6)(Example). Rather, the exception applies only in the narrow set of circumstances described below. Assuming that a filer was involved directly in providing services to a client, the filer must disclose the client's identity unless it is protected by a court order, is under seal, or is considered confidential because: (1) the client is the subject of a pending grand jury proceeding or other non-public investigation in which there are no public filings, statements, appearances, or reports that identify him or her; (2) disclosure is prohibited by a rule of professional

conduct that can be enforced by a professional licensing body; or (3) a privileged relationship was established by a written confidentiality agreement, entered into at the time that the filer's services were retained, that expressly prohibits disclosure of the client's identity.

Unfortunately, the *Reviewer's Reference* on page 3-31 appears to oversimplify the exception by stating that disclosure of a former client is not required if the filer and the client entered into a confidentiality agreement when the filer was retained. For the exception to apply, however, a confidentiality agreement entered into between a filer and a client must expressly prohibit disclosure of the client's identity. A standard retainer agreement usually would not contain such a provision.

We recommend that you annotate your copy of the Reviewer's Reference to clarify how the exception would apply in the case of a confidentiality agreement. In addition, if some of a filer's clients are not disclosed pursuant to the exception, you should ensure that a statement that "certain confidential clients are not reported" is included on Schedule D, Part II. As always, thank you for your assistance in these matters. If you have any questions, please feel free to contact Seth Jaffe, Attorney-Advisor, at 202 482-9303.