Office of Government Ethics
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Letter to a United States Congressman
dated November 10, 1993

Your letter of October 28, 1993, asked for information about Standard Form 450, the Executive Branch Personnel Confidential Financial Disclosure Report. In particular, you were concerned about aspects of that form which some employees view as an unreasonable invasion of privacy, such as disclosure of financial information about a spouse, deposit accounts at financial institutions, stocks, bonds, tax shelters, real estate, and liabilities.

The Ethics Reform Act of 1989 authorized creation of a confidential disclosure system at 5 U.S.C. app. § 107(a)(1), and section 201(d) of Executive Order 12674 directed its establishment as a uniform system for the executive branch. The executive order mandate was implemented at subpart I of 5 C.F.R. part 2634, which became effective in October 1992. Previously, confidential disclosure in the executive branch had been based on Executive Order 11222 of 1965, with relatively little uniformity and no standard form. For employees at some executive branch agencies, this will mean that the new SF 450 requires disclosure of information which they were not previously required to report.

We share employees' concerns that information disclosed on the SF 450 should be limited to matters which might be expected to present conflicts between their 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 other 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. The public system includes by statute all the information about which you inquired. Normally this same information is also essential for filers of confidential reports, because its utility in preventing conflicts outweighs privacy concerns. It is important to note further that all information elicited under the confidential financial disclosure system is strictly protected by executive branch principles of confidentiality and the Federal Privacy Act. See

5 U.S.C. app. § 107(a), 5 C.F.R. §§ 2634.604(b) and 2634.901(d), and section 201(d) of Executive Order 12674.

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. This attribution to an employee of the financial interests of a spouse makes disclosure of such interests necessary for any meaningful conflict analysis and avoidance. Even for filers of public financial disclosure reports, the Federal courts and the Department of Justice have found this requirement to be Constitutional and not an unreasonable invasion of privacy. See DuPlantier v. United States, 606 F.2d 654, 669 (5th Cir. 1979), cert. denied, 449 U.S. 1076 (1981), and Opinions of the Office of Legal Counsel in volume 4 at page 340 (1980).

A meaningful test for conflicts also justifies disclosure of information about the various liabilities and assets concerning which you inquired. 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 by employees who might have potential conflicts, so that they are not left unassisted in their efforts to avoid ethical violations. We certainly believe that Federal employees are basically honest. The confidential disclosure system is not meant to question that principle but simply to assist employees and to help insure public confidence in Government integrity.

We have found that some information required by the statutory public disclosure system may be unnecessary in a confidential system. For example, we recently initiated action to remove 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 proposed rule published at 58 Federal Register 46096-46097 (September 1, 1993). Comments on

that proposal have been highly favorable, so we hope to go forward with a final rule later this year.

October 1993 marks the second annual reporting cycle under the new confidential system. After that, we plan to evaluate its overall effectiveness. We can then make any further needed adjustments to insure that the SF 450 is truly responsive to the needs of agencies in helping their employees avoid conflicts of interest. We may discover that, like the matter of bank accounts discussed above, other disclosure elements of the public system are not essential for confidential filers.

Sincerely,

Stephen D. Potts
Director