Office of Government Ethics
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Letter to a United States Senator dated December 9, 1993

In your letter to me (with enclosure) dated November 19, 1993, you requested information about the Executive Branch Personnel Confidential Financial Disclosure Report form, SF 450, on behalf of one of your constituents. In particular, it appears that there are questions as to whether the SF 450 violates his privacy by requiring disclosure of certain income sources of [your constituent] and his family.

Regarding [your constituent's] first concern, 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 on April 7, 1992, at subpart I of 5 C.F.R. part 2634, which became effective in October 1992. That regulation offers guidance to agencies about which positions should be designated for confidential reporting and creates a uniform system. 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 asks for disclosure of information which they were not previously required to report.

For many employees, it is simply a matter of becoming familiar with the new financial disclosure system, learning about the applicable criminal statutes and administrative standards of ethical conduct through agency training, and seeking advice and counsel from their agency ethics officials. For example, among those filers whose complaints about the SF 450 have been forwarded to this Office in the past three months and who identified their employing agency, nearly three-fourths are employees of [one Department]. Not coincidentally, this is the first annual reporting cycle during which the SF 450 has been used at [the Department]. For most other agencies where this standard form was also used last year, complaints have been relatively few.

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 various 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 which was established by Congress. By statute, the public system requires disclosure of all the information about which you inquired. Normally the same information is essential for filers of confidential reports, because its utility in preventing conflicts outweighs privacy concerns.

Therefore, the SF 450 requires disclosure of certain assets held for investment or the production of income which are worth more than $1,000; earned and investment income exceeding $200; liabilities which exceed $10,000; outside positions and employment agreements or arrangements; and gifts or reimbursements totaling $250 or more from the same source. The regulation details various exceptions and exclusions. It is important to note 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 or dependent child 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). 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 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.

October 1993 marked the second annual reporting cycle under the new confidential system. We now plan to evaluate the system's overall effectiveness, so that we can make any needed adjustments to insure that the SF 450 is truly responsive to the needs of agencies in helping their employees avoid conflicts of interest.

[Your constituent's] second concern is answered to a large extent by a recent adjustment. Based on feedback received over the past year, we have removed 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 (including Treasury bonds, bills, notes, and savings bonds) and U.S. Government Securities. See final rule published at 58 Federal Register 63023-63024 (November 30, 1993). It should be noted that while disclosure of money market mutual funds is no longer required, other mutual funds must still be reported. Mutual funds other than money market mutual funds may espouse specific sector investment strategies which in turn could present conflicts with respect to certain confidential filers.

Finally, [your constituent] is incorrect in believing that he cannot attach computer-generated information to the SF 450 but must make disclosures directly on the form. The regulation at 5 C.F.R. § 2634.311(c) specifically permits filers to attach copies of brokerage reports, bank statements, or other material which, in a clear and concise manner, readily discloses all information which the filer would otherwise have been required to enter on the standard form.

Thank you for your inquiry. We have enclosed an extra copy of this response and [your constituent's] letter for reference.

Sincerely,

Stephen D. Potts
Director