

Office of Government Ethics

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Memorandum for a General Counsel of a Federal Agency dated May 1, 1992

Your letter of April 20, 1992, inquired whether a senior Government employee could preclude conflict of interest questions under the "seeking employment" restriction by giving his resume to an employment search firm and asking that it not disclose to him the identity of those to whom the resume has been distributed. Law firms and companies doing business with [your agency] would be among those to whom the resume might be distributed. You have suggested that recusal would only become necessary when he learns of the actual identity of prospective employers.

I cannot give you an unqualified approval of that procedure, under the principles enunciated in the proposed uniform standards of conduct regulation. That proposed regulation does have language and an example about an employment search firm, which illustrates that seeking employment would begin once the search firm reports to the individual the identity of those companies whom it has contacted. See section 2635.603(c) of the proposed regulation, and example 1 following. However, instructing the search firm to withhold that information from the employee might not necessarily serve to fully insulate him.

Section 2635.603(b) of the proposed regulation defines seeking employment as the direct or indirect making of unsolicited communications to potential employers. While knowledge of the identity of those contacted would normally be a condition precedent to the commencement of "seeking employment" with them, Government employees are enjoined by section 101(n) of Executive Order 12674 [as modified by Executive Order 12731] to avoid any actions creating the appearance that they are violating the standards of conduct. The particular facts could indicate such an appearance, even absent an individual's specific knowledge of his prospective employers' identity, especially for a senior employee. It would be relevant to consider whether the employee may reasonably be viewed as having constructive knowledge, the nature and timing of matters pending with the employee at his agency, the number of potential private employers in his field of expertise, and the likelihood that those potential employers will include companies having matters before him.

This advice is based on the proposed uniform standards of conduct regulation. However, even under current rules, the appearance of impropriety which can result from the use of resumes requires recusal under circumstances suggesting loss of impartiality in performance of Government responsibilities.