



United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
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DO-95-005

MEMORANDUM

TO: Designated Agency Ethics Officials

FROM: Stephen D. Potts, Director

SUBJECT: Improving the Confidential Financial Disclosure System

Last year, the Office of Government Ethics (OGE) began to assess the need for improving the confidential financial disclosure system, which was created just over two years ago under authority of the 1989 Ethics Reform Act and Executive Order 12674 (see subpart I of 5 C.F.R. part 2634). This DAEOgram will update you on our progress.

BACKGROUND

By DAEOgram DO-94-031 of September 14, 1994, we discussed ongoing efforts at OGE to improve the confidential disclosure system. Earlier in 1994, our single-issue audit of the system's effectiveness had canvassed ethics officials at 75 agencies. In response to the most common concern, our DAEOgram urged agencies to reevaluate their designation of positions for filing and offered guidance designed to limit the number of filers. Subsequently, in October and November 1994, we conducted two brown bag lunches with selected agency ethics officials, to gain further insight into suggestions obtained from the audit for improving the confidential system.

CURRENT INITIATIVES

We have now begun several new phases in our overall plan of improving the confidential disclosure system, which will build on the single-issue audit and brown bag lunches:

1) Position designation

We have concluded that the flexibility afforded agencies by the current regulation at 5 C.F.R. §§ 2634.904 and 2634.905 in designating and excluding positions for filing should be retained. We note that section 201(d) of Executive Order 12674 required OGE to promulgate regulations which would guide agencies in determining which employees should file confidential disclosure reports. Discretion is crucial in order to effectively translate and adapt this uniform system to the unique needs of diverse agencies. Our evaluation of the single-issue audit and brown bag lunch discussions confirmed this diversity and the need for flexibility. The DAEOgram of September

14, 1994, suggested methods by which agencies could use that flexibility to their advantage, such as establishing de facto pay grade floors, or limiting designation by specific levels of authority or the degree of supervision over a position.

We can also offer guidance in interpreting phrases used in the designation and exclusion criteria of the financial disclosure regulation. As noted in the DAEOgram of September 14, 1994, assistance with the terms "personal and substantial" can be found at 5 C.F.R. §§ 2635.402(b)(4) and 2637.201(d). In future DAEOgrams, we may provide additional clarification of other terms by way of examples which are tailored to various agency circumstances. Your specific suggestions in this regard would be appreciated.

2) Revising the SF 450

An OGE committee is actively reviewing the SF 450 and will draft a revision which we hope to distribute for comment later this year. That revision will note the 1993 regulatory change at 5 C.F.R. § 2634.907(a) which eliminated the requirement to disclose deposit accounts in financial institutions, money market funds and accounts, and U.S. Government obligations and securities. The revision will also improve the instructions to the SF 450, and it will, within current regulatory requirements, attempt to make the form itself more user friendly by incorporating some of the ideas which you expressed in the single-issue audit and brown bag discussions.

3) Future amendments to the regulation

A separate OGE committee is exploring the feasibility of modifying the regulation which governs content of confidential disclosure, at subpart I of 5 C.F.R. part 2634, to accommodate significant concerns expressed through our single-issue audit and the brown bag lunches. This is, of necessity, a long-term project, because we must examine the intent of Congress and the President in establishing a confidential system to complement the public system; consider the effect of recent initiatives under the National Performance Review to reinvent Government; determine which agency suggestions for modifying the content of disclosure have broad-based support; evaluate the impact of any major changes on agency ethics programs in the areas of training, supplemental regulations, employee union relations, and effective conflict prevention; and consider Congressional expectations for confidential disclosure as an internal control mechanism.

We will keep you apprised of further developments, and we welcome your continued advice and suggestions.