

Office of Government Ethics

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Letter to an Employee dated December 20, 1993

Your letter of October 25, 1993, responded to a request for comments on the Executive Branch Personnel Confidential Financial Disclosure Report form (SF 450), and you asked for our feedback. Your concerns are that the form unnecessarily invades privacy by requesting information which serves no purpose in avoiding conflicts of interest, such as data about bank accounts and excepted investment funds (EIFs).

On the issue of reporting bank accounts, we have good news. We recently 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 (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). We have advised agencies of this change and we will be revising the form accordingly.

The excepted investment fund concept was created by Congress as part of the public financial disclosure system for senior officials, and we included it in the confidential system because the public system served as the model. According to the Ethics in Government Act, an EIF reduces the detail required to be reported on financial disclosure forms, such as a fund's underlying holdings. Reduced disclosure is permitted because these funds are widely held, widely diversified or publicly traded, and not self-directed. Therefore, their portfolios can be ascertained from published investment guides or investment managers. Still, this does not relieve the potential for conflicts of interest which EIFs can present.

We agree with you that some EIFs, such as widely diversified mutual funds, will not typically raise conflict issues. However, an industry sector fund which is publicly traded but not widely diversified may present conflicts. Even though the individual share owner cannot control the fund's portfolio he or she will usually have knowledge of its holdings. That is enough under the criminal statute on conflicts (18 U.S.C. § 208) and the executive branch standards of conduct regulation to require that an employee

avoid participating in certain official matters or pursue some other means of conflict avoidance. The same may be true for pension plans with private employers in which the filer or spouse is enrolled. Certain pension funds may qualify as EIFs because they are pooled and managed by an independent third party who maintains a widely diversified portfolio; however, participants in these plans will be provided with information about underlying investments. Therefore, such plans can raise potential conflicts under 18 U.S.C. § 208 and the standards of conduct, particularly since the number of pension participants may be small and shares in the pension plan are not publicly traded like mutual funds.

We share your concern that information disclosed on the SF 450 should be limited to matters which might be expected to present conflicts between private financial interests and official responsibilities. Any financial disclosure system must involve a careful weighing of the competing factors of privacy versus conflict prevention. It is important to note that all information provided under the confidential financial disclosure system is strictly protected by executive branch principles of confidentiality in the Ethics Reform Act of 1989, Executive Order 12674 and the Federal Privacy Act. See 5 C.F.R. §§ 2634.604(b) and 2634.901(d).

Thank you for your inquiry in this matter.

Sincerely,

Stephen D. Potts
Director