



United States
Office of Government Ethics
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DO-94-031

MEMORANDUM

TO: Designated Agency Ethics Officials

FROM: Stephen D. Potts
Director

SUBJECT: Improving the confidential financial disclosure system

Over the past several months, the Office of Government Ethics' (OGE's) Office of Program Assistance and Review has been conducting a study to determine the effectiveness of the confidential financial disclosure system. After interviewing ethics officials at 75 agencies and analyzing their comments, we believe that a number of improvements should be instituted.

The most consistent concern which agencies expressed about the system was the process of designating positions in which employees are required to file an SF 450. While the 1992 regulation offered greater flexibility to agencies, it had the unintended effect of increasing the number of filers. In order to correct this over-designation and to insure that only those employees whose duties present potential conflicts have to file, we strongly urge agencies to reevaluate their designations. If you want to accomplish this in connection with the upcoming annual filing cycle on October 31, you may grant a blanket extension of the due date, under your authority in 5 C.F.R. § 2634.903(d), while you are performing that reevaluation. Some agencies, however, may find this task more time-consuming and will need to postpone their reevaluation of designations until next year's filing.

In reevaluating which positions require confidential disclosure, consider the following guidance:

For those positions involving responsibilities enumerated in 5 C.F.R. § 2634.904(a)(1), the regulation compels designation only if the employee will be required to participate personally and substantially through decision or the exercise of significant judgment. For assistance with the terms "personal and substantial," see the definitions at 5 C.F.R. §§ 2635.402(b)(4) and 2637.201(d). Additionally, the exclusion criteria in § 2634.905 should be considered in conjunction with the designation process, to eliminate designation of positions where, for example, there is a substantial degree of supervision or only a remote possibility of a conflict of interest. Thus, not all employees who must sign a procurement integrity certification under the Office of Federal Procurement Policy Act must also be required to file a confidential financial disclosure report. Agencies may

use an appropriate demarcation, such as a position's monetary level of procurement authority, a de facto pay grade floor, or degree of supervision over the position.

For positions being designated under the more general criteria in 5 C.F.R. § 2634.904(a)(2), designations should be limited to those pay grades where the duties and responsibilities clearly make filing necessary and relevant. As a concrete example, I have recently reviewed our filer designations at OGE and have determined that those desk officers, management analysts, and attorneys who have previously been designated for filing under § 2634.904(a)(2) but who do not have supervisory responsibilities will no longer be required to file. Applying the designation criteria in § 2634.904(a)(2) and the exclusion criteria in § 2634.905, I no longer believe that employees in these positions need to file, because the possibility of a conflict of interest in their work is remote and because there is a substantial degree of supervision and review over their positions. This cutoff at the supervisor level may not be suitable for all agencies or for all positions. As other alternatives, agencies may wish to establish de facto pay grade floors or limit designations for certain positions to those with discrete levels of technical responsibility.

The other major concerns expressed by agency ethics officials during our study centered on the degree and nature of required disclosures. I believe that the experience which we have gained over the past two years with the new confidential disclosure system, coupled with our recent study, supports the need for some changes in this regard. However, I want to insure that agencies have a voice in this reconsideration process. Therefore, I plan to hold one or more brown bag lunches this fall to specifically consider appropriate policy changes to the substantive disclosure requirements of the confidential system. This may ultimately lead to regulatory amendments, as well as revisions to the SF 450. In the interim, please continue to use the current SF 450 and any alternative or supplementary systems which OGE has previously approved for your agency. For any questions that arise, please consult with your OGE desk officer.

I look forward to working with you in improving our confidential financial disclosure system, so that it will continue to serve as an effective tool in conflict prevention and counseling.