



December 13, 1995
DO-95-043

MEMORANDUM

TO: Designated Agency Ethics Officials

FROM: Stephen D. Potts, Director

SUBJECT: Financial disclosure guidance

This memorandum offers guidance on several recent questions about the public and confidential financial disclosure systems.

Use of Attachments in Lieu of Entering Data Directly on Forms

Some filers have questioned why they are not being allowed to attach account statements or other printed information in lieu of recopying the data onto the disclosure form. The Office of Government Ethics (OGE) has advised them that the regulation at 5 C.F.R. § 2634.311(c) specifically allows disclosure in that manner, so long as the material clearly and concisely reports all information required by the relevant part of the form. This applies to both the confidential and the public systems. They must also sign in the designated box on the form's cover sheet, by which they certify the accuracy of information on the form "and all attached statements."

Use of Official Time to Complete Financial Disclosure Reports

Some filers have complained that they are not permitted to prepare their financial disclosure reports on official time. While the regulation does not speak to this issue, we have advised them that, because completion of the SF 450 or SF 278 is a requirement of their Government position, they should be allowed to use reasonable periods of official time, in amounts to be determined by their agency.

Use of Standard Forms by Persons Who are Not Government Employees

Some agencies have inquired about using the standard confidential financial disclosure form (SF 450) to collect information from persons who are not Government employees, such as outside contractors or members of advisory committees who are appointed to represent outside interests. After consulting with agencies responsible for administering Governmentwide forms and the Freedom of Information/Privacy Acts, we have determined that the SF 450 should only be used by persons who are current or prospective Government employees. Use by others would exceed the Privacy Act and paperwork reduction purposes stated on the form. Also, such use would be

outside the authority of the relevant Privacy Act system of records, the Ethics in Government Act, and Executive Order 12674.

Superseded Regulations

Agency regulations on the confidential financial disclosure system administered by OGE were superseded as of October 1992, by the new uniform regulation (5 C.F.R. part 2634). Because those agency regulations became ineffective at that time, agencies should have taken steps to remove them from the Code of Federal Regulations. See OGE's DAEOgrams dated April 9, June 25, and August 25, 1992, and the uniform regulation's preamble. We are discovering that some agencies have not yet revoked their superseded regulations, thereby creating confusion for employees. Revocation will require a submission to the Federal Register, which, as indicated in our DAEOgram of June 25, 1992, does not need prior OGE approval.

If an agency wishes to retain a superseded regulation or a portion thereof, that will require prior OGE approval. Criteria in 5 C.F.R. § 2634.103 allow such regulations only in special or unique circumstances. In most instances, an agency's internal written procedures pursuant to 5 U.S.C. app. § 402(d)(1) will be sufficient, without a supplemental regulation.

Enforcement Against Delinquent Filers

A number of agencies have asked for guidance on how to compel filers to submit disclosure reports when due. The regulation at subpart G of 5 C.F.R. part 2634 details the appropriate enforcement methods specified at 5 U.S.C. app. § 104. In addition to the civil remedy and late filing fee for the public system, agencies may take disciplinary action (such as reprimand, suspension, demotion, or removal) in accordance with personnel laws and regulations, against any individual for failing to file public or confidential reports or for filing such reports late.

Agencies may approach these delinquencies just as they would any other misconduct (such as insubordination or failure of employees to carry out the requirements of their Government position). This Office has not attempted to prescribe a table of recommended disciplinary actions, nor would it be appropriate for us to do so. Each case is unique and should be resolved under existing personnel rules.

Determining Who Files Public Reports

There is some confusion as to what positions meet the pay equivalency criteria for filing public financial disclosure reports. The statute and implementing regulation specify that the filing requirements apply to those whose positions are classified above GS-15 or for which the rate of basic pay (excluding locality pay) outside the General Schedule is fixed at or above 120% of the amount authorized for a GS-15, Step 1. See 5 U.S.C. app. § 101 and 5 C.F.R. § 2634.202(c). Our interpretation of that language, based on legislative history, has long been that a position's rate of basic pay (the triggering threshold) is the amount authorized for the lowest step of the position's pay grade. See page 2-2 of *Public Financial Disclosure: A Reviewer's Reference*, published by OGE last year, and OGE informal advisory letter 81 x 22.

It is the level of responsibility, as represented by the pay grade, not an individual employee's step or amount of pay within that grade, that controls. In the General Schedule, employees paid at GS-15, Steps 7 through 10, actually receive more pay than the threshold amount for filing, but they are not required to file because the rate of basic pay (lowest step) for the GS-15 pay scale does not meet that threshold. Similarly, in a pay system outside the General Schedule, only those employees for whom the lowest step of their position's grade meets the threshold must file. For positions that are not compensated as part of a grade for which there is a range of pay steps or similar pay levels, the actual rate of pay for the position controls.

Public Access to SF 278s

The statute and implementing regulation require that, beginning 30 days after receipt, agencies permit inspection or furnish a copy of SF 278 reports to persons requesting such inspection or copy. Some agencies have attempted to restrict access by permitting inspection only, instead of providing copies. This is contrary to the statute's provisions, which permit the public to request either inspection or a copy. Members of the public anywhere in the world should be able to request copies of reports, so long as they sign the required certification. Agencies may collect reasonable copying fees, in accordance with agency regulations. See 5 U.S.C. app. § 105 and 5 C.F.R. § 2634.603.