

OFFICE OF GOVERNMENT ETHICS

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**Letter to an Independent Counsel
dated July 27, 1998**

This is in response to your request of June 29, 1998, that our Office review and reconsider our interpretation of the financial disclosure regulation at 5 C.F.R. § 2634.301(a), under which we require an employee who serves as trustee to report the holdings and income of the trust on the employee's financial disclosure statement. After reviewing your request and the applicable statute and regulations, we have determined that our interpretation requiring a trustee to disclose the assets of a trust is correct. However, based on the information that you have provided, we have determined that you may submit to us a confidential list of the assets and income of the four trusts for which you serve as trustee.

Under section 102(f)(1) of the Ethics in Government Act of 1978, at 5 U.S.C. app. (the Act), each reporting individual must report "the holdings of and the income from a trust . . . with respect to which a beneficial interest in principal or income is held by, such individual, his spouse, or any dependent child." This section does not specifically require that trustees disclose the assets of a trust. However, under section 102(a)(3) of the Act, a filer must report "any interest in property held during the preceding calendar year" Our position has been, and continues to be, that a filer who is a trustee must report the assets of a trust which are "held" for the benefit of another. See generally Black's Law Dictionary 1512 (6th ed. 1990). Because section 102(a)(3) requires the disclosure of such assets, we believe that it would have been unnecessary for Congress to specifically require the disclosure of assets by a trustee under section 102(f)(1).

Moreover, ethics policy concerns support the concept that trust assets should be required to be reported. One reason Congress enacted Title I of the Ethics in Government Act was to provide ethics officials with an opportunity to examine an employee's interests for potential conflicts. Under the conflict of interest law at 18 U.S.C. § 208, an employee who serves as trustee may not act in any particular Government matter that would affect the financial interest of the trust. By reviewing a listing of trust assets, an ethics official can alert the filer to situations that may create potential conflicts of interest.

We have adopted a policy which provides one exception to the reporting requirement that trustees disclose the assets of a trust.

In order to accommodate privacy concerns and to alleviate the burden on filers in a narrow class of cases, we allow a trustee to disclose the assets of a trust to the ethics official for conflicts analysis on a confidential basis and have not required the reporting of the assets on the public financial disclosure report. These cases are limited to circumstances in which the trustee serves without compensation in a non-commercial setting, and where none of the "interested parties" (the filer, the spouse, and minor or dependent children) or persons living in their household, or their lineal relatives have beneficial interests in the trust. You have informed us that you will not receive compensation as a trustee of any of the four trusts. Also, no interested parties, persons living in your household, or lineal relatives have a beneficial interest in the trusts. Finally, you are on leave of absence from your firm, will not be compensated by your firm during your leave of absence, and will not receive benefits from your firm. Based on these facts, we will permit you to disclose the assets of the four trusts on a confidential basis.

When you file your financial disclosure form, you should enclose the list of assets of the four trusts separately to ensure that it is excluded from production of your form should it be requested by a member of the public pursuant to 5 C.F.R. § 2634.603. While the assets of the trusts need not be listed on Schedule A, you must list your position as trustee of the four trusts on Schedule D, part I.

Please do not hesitate to contact me or members of my staff if you have any questions.

Sincerely,

Stephen D. Potts
Director