

Office of Government Ethics

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Letter to a Designated Agency Ethics Official dated May 25, 1994

Your letter of May 20, 1994, requested our opinion as to whether an employee must disclose outstanding fees for legal or other services as a liability on a public financial disclosure report. For the reasons indicated below, we find that such fees, like any other liability, are required to be reported unless they fall within one of the exceptions specifically enumerated in the statute.

The Ethics in Government Act, 5 U.S.C. app. § 102(a)(4), requires that annual reports "include a full and complete statement with respect to . . . identity and category of value of the total liabilities owed to any creditor . . . which exceed \$10,000 at any time during the preceding calendar year. . . ." Excluded are liabilities owed to certain family members, mortgages secured by a personal residence, and loans secured by motor vehicles, household furniture, or appliances. The statute also limits the disclosure requirement for revolving charge accounts to those with an "outstanding liability which exceeds \$10,000 at the close of the preceding calendar year." Otherwise, all liabilities owed to a creditor are required to be disclosed on an annual report, and the statute contains similar requirements for new entrant and termination reports. Contrary to your assertion that the statute is somewhat ambiguous on this point, we believe that it sets forth a clear mandate.

Nowhere in the statute or its legislative history can we find any indication that the terms "liabilities" and "creditor" were intended to be limited to cash loans or to be defined in a manner other than their ordinary usage. Liabilities are commonly considered to encompass any debt or financial obligation. Likewise, a creditor normally includes anyone to whom a debt is owed. While the Office of Government Ethics has authority to interpret the financial disclosure requirements for the executive branch, we have no authority to restrict the terms "liabilities" and "creditor" to cash loans. Liabilities owed to creditors typically include promissory notes, mortgages, debts arising out of installment sales agreements, outstanding fees for personal services, revolving charge accounts such as credit card balances, outstanding bills for consumer goods and services, contractual financial obligations, overdue tax liabilities, and any other debt owed to a creditor.

Regulatory implementation at 5 C.F.R. § 2634.305 and instructions to

the public financial disclosure report form (SF 278) closely follow the statutory language, repeating the basic requirement to disclose liabilities owed to any creditor. Part I of Schedule C of the SF 278 requires identification of the type of liability. As you mentioned, examples on the form describe how to report a loan, but that is merely illustrative of the various types of liabilities which must be disclosed. Columns on the form for the interest rate and term may or may not be applicable, depending on the type of debt or obligation which is being reported.

Your letter suggests that fees for services and other outstanding bills should not be considered reportable liabilities owed to creditors because they often involve matters of a personal nature unrelated to Government service, such as legal fees, medical bills, and church pledges. While there may be an issue as to whether a church pledge would be considered a debt, in general, we do not believe that the personal nature of liabilities can transform their essential character as obligations or debts owed to creditors. Much of the public financial disclosure system does concern personal matters not related to Government service, but the legislative history indicates a balancing of the need to promote integrity through public disclosure versus individual privacy concerns. Furthermore, the requirement to disclose liabilities is tempered by the statutory exclusions enumerated above.

Based on what we believe to be an unambiguous statutory mandate, we must require that outstanding fees for legal or other services be disclosed on a public financial disclosure report, subject only to the exclusions enumerated in the statute.

Sincerely,

Stephen D. Potts
Director