

January 29, 2001

Jane S. Ley, Esq.
Deputy Director for Government Relations
and Special Projects
Office of Government Ethics
1201 New York Avenue, N.W., Suite 500
Washington, D.C. 20005-3917

Dear Ms. Ley:

The Nuclear Regulatory Commission (NRC) appreciates the opportunity to submit comments to the Office of Government Ethics (OGE) for its consideration in preparing the OGE report mandated by the Presidential Transition Act of 2000 on improving the financial disclosure process for Executive Branch Presidential nominees. The Commission supports the enactment of legislation reforming both the financial disclosure process and the reporting requirements for Presidential nominees as well as all other senior Executive Branch employees who are required to file a Public Financial Disclosure report (SF 278).

As you are aware, Presidential nominees currently fill out differing financial disclosure reports for the White House, the Office of Government Ethics, and the Congress. Streamlining the process so that only one financial disclosure report is filed by a nominee would make the confirmation process less burdensome and costly for the nominee.

In developing its recommendations on improving the financial disclosure process, OGE should reconsider the major purposes of the financial disclosure regime. The NRC advocates that the major objective of the financial disclosure requirements for both Presidential nominees and senior career civil servants is to facilitate for conflict-of-interest determinations. Many filers justifiably consider their financial information to be sensitive personal information and reasonably question why they are required to provide financial information that is not relevant for conflict-of-interest determinations. The significant amount of the detailed information now provided by senior government officials does not affect public confidence in the integrity of the government, as few members of the public have ever requested access to financial disclosure reports filed by NRC employees.

Under the NRC recommended approach, some of the detailed information that is currently provided by filers should no longer be required. For example, filers would not be required to report the types of income generated by the identified assets, such as dividends or interest. They should also not report assets such as U.S. Savings Bonds and Treasury bills, savings accounts, checking accounts, money market funds, collectibles, certificates of deposit, state and local government defined benefit pensions, municipal bonds and non-sector mutual funds. If any of the items listed above were seen to present potential conflicts of interest for employees of a Federal agency, OGE could authorize that agency to require the reporting of that information by its senior employees. See 5 U.S.C. App. § 402(d)(2) and 5 CFR § 2634.103.

Consistent with this approach, this is the opportune time to align the financial disclosure reporting thresholds with the regulations on disqualifying financial interests. See 5 C.F.R. Part 2640, which implements 18 U.S.C. 208(b)(2). In my letter of December 5, 2000, which provided NRC comments to OGE on the proposed amendments to these regulations, NRC recommended that filers should not be required to report financial interests below the OGE thresholds. Currently, OGE regulations provide that employees may participate in particular matters involving a party if their stockholdings in that entity do not exceed \$5,000. In a September 6, 2000, notice of a proposed rulemaking, OGE proposed to raise the \$5,000 threshold to \$15,000. Yet employees are required to report all stockholdings valued at more than \$1,000. The Commission believes that there is no policy justification for reporting *de minimis* financial interests. The current requirement is not only burdensome to the nominee and employee but also to the agency. Many hours are spent each year contacting nominees and employees who have not provided the required information on *de minimis* financial interests. In addition, the reporting of *de minimis* interests undermines the credibility of the Federal ethics regime, as it is hard to explain to nominees and employees why ethics officials need information on financial holdings that are deemed by OGE to be remote and inconsequential. Accordingly, nominees and employees should not be required to report such stockholdings.

Consideration should also be given to the elimination of reporting by category of the approximate value of a stockholding. Once the value of a stockholding exceeds the OGE threshold (be it \$5,000 or \$15,000), the employee must disqualify himself or herself from particular matters involving parties which affect that entity, regardless whether the value of that stockholding exceeds the reporting threshold by \$1 or by \$1 million. Therefore, the approximate value of the holding becomes significant only if a waiver is sought. In such a case, agency ethics officials would request the precise value of the holding from the employee. This approach would fulfill the purposes of the ethics laws, while preserving employee privacy to the extent possible.

We recommend that the dollar threshold for reporting financial interests on other schedules of the financial disclosure form, such as liabilities and compensation by one source, be revisited. Many of these thresholds have not been revised to take into account the inflation of the past two decades.

Finally, we believe that OGE should consider seeking a change to existing statutes, such as section 201(e) of the Energy Reorganization Act of 1974, and Executive Order 12674 as amended by Executive Order 12731, to permit non-career Presidential appointees to receive a small amount of outside earned income, if otherwise in conformity with the ethics laws and regulations. Under NRC's proposal, a Presidential appointee would be allowed to receive a limited amount as compensation for work which is unrelated to Federal employment and would not create an appearance of a conflict of interest, such as serving as a referee for a youth soccer or basketball league or as a member of a board of a nonprofit organization. Currently, under 5 C.F.R. § 2636.304, non-career employees (other than Presidential appointees) are permitted to earn outside income up to an amount equaling 15 % of the basic pay for level II of the Executive Schedule. Moreover, we understand that rules of conduct for the Senate and the House of Representatives permit members of Congress and their senior staff to accept outside earned income, for certain limited activities, up to an amount equaling 15% of their pay (subject to a cap). We have not seen any supporting justification for treating Presidential appointees differently. Therefore, OGE should consider seeking legislative changes to conform the outside

earned income restrictions for Presidential appointees with the more reasonable requirements for non-Presidential appointees.

We appreciate your consideration of our comments. If you need further information or wish to discuss our views, please contact John Szabo at (301) 415-1610 or jls@nrc.gov.

Sincerely,

/RA/

Karen D. Cyr,
General Counsel and Designated
Agency Ethics Official

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