

TITLE: CIB 93-17 FINANCIAL DISCLOSURE REQUIREMENTS UNDER A PERSONAL SERVICES CONTRACT (PSC)

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MEMORANDUM FOR ALL CONTRACTING OFFICERS AND NEGOTIATORS

TO: Distribution List FAC

FROM: John F. Owens, Procurement Executive

SUBJECT: FINANCIAL DISCLOSURE REQUIREMENTS UNDER A PERSONAL SERVICES CONTRACT (PSC)

CONTRACT INFORMATION BULLETIN 93-17

Individuals employed by the Agency for International Development (AID) under PSCs are covered by all U.S. Government (USG) ethics laws which apply to direct hire employees. Included is the requirement that certain USG employees must file either the SF-450 Confidential, or the SF-278 Public Financial Disclosure Report. These requirements are imposed by statute, The Ethics in Government Act of 1978, 5 U.S.C. app. 101 et seq., and regulation, 5 C.F.R. Part 2634.

Most employees are not required to file either form and do not make any financial disclosure. Nonetheless, each position must be reviewed to determine whether the filing requirements apply. AID's Office of the Independent Counsel for Ethics, GC/ICE, has already worked closely with EMS personnel and EXO's to review all current employee positions worldwide and to stock and distribute the standard forms locally. A system is in place to review new direct hire positions as they are created. Now AID needs to proceed to review new and modified PSC positions when they are created as well.

Therefore, effective immediately, Contracting Officers and Executive Officers who award PSCs are required, in consultation as necessary with their cognizant Regional Legal Advisor, EMS or GC/ICE, to:

- (1) review each PSC using legal criteria (attached) to determine if a filing requirement applies;
- (2) enter an Ethics Code on the PSC contract cover page: either "N" (files no form), "C" (files the Confidential form), or "P" (files the Public Form); and
- (3) if the PSC is required to file a financial disclosure report, distribute the correct form (photocopies may be used) and help sheet (copies attached) on or before the contract start date. Refer the filer's questions, if any, to your RLA or GC/ICE.

Both PSC cover pages (attached) have been amended to include a place to indicate the appropriate P, C, or N Ethics Code. If for some reason the former versions of the cover page are used, write "Ethics Code: P, " "Ethics Code: C, " or "Ethics Code: N" in the margin of the sheet. The Ethics Code will then be entered and maintained in the Contracting Information Management System (CIMS) database. AID's Office of the Independent Counsel for Ethics, GC/ICE, will then receive monthly

updates of PSC information from CIMS. Monitoring of compliance with the continuing filing requirements, i.e. annual and termination reports, will be the responsibility of GC/ICE, with the cooperation of the EMS offices and EXOs, who will distribute blank forms at the appropriate time.

GC/ICE is available to assist as needed. We can be reached by phone (202-647-8556), fax (202-647-8557) or E-Mail (please write to Tyler Posey or Richard Weiss).

ATTACHMENTS:

- A. "How to Determine PSC Financial Disclosure Filing Requirements"
- B. "SF-278 New Entrant Help Sheet and Checklist"
- C. "SF-450 Help Sheet and Checklist"
- D. Form AID 1420-36A (11/93), Contract With A U.S. Resident Alien For Personal Services Abroad
- E. Form AID 1420-36B (11/93), Contracting With a Cooperating Country National For Personal Services Abroad And Contracting With a Third Country National For Personal Services Abroad

ATTACHMENT A:

HOW TO DETERMINE PSC FINANCIAL DISCLOSURE FILING REQUIREMENTS

First use the criteria listed below to determine whether the PSC must file an SF-278, Public Financial Disclosure Report. If the PSC is not required to file the public report, then determine whether the PSC must file the SF-450, Confidential Financial Disclosure Report. If the PSC is also not required to file the confidential report, then he or she files no report at all. Few PSC employees are expected to meet the criteria that would require them to file.

**PERSONS REQUIRED TO FILE
THE SF-278, EXECUTIVE BRANCH
PUBLIC FINANCIAL DISCLOSURE REPORT**

This filing requirement applies to employees whose "minimum rate of basic pay," is equal to or greater than 120% of GS-15, step 01. For direct hire employees, this "minimum rate of basic pay" refers to the pay rate at step 01 of their employment pay grade. Since PSC's are assigned a pay grade equivalent, they file the SF-278 whenever an employee in the equivalent pay grade would have to file.

Currently, 120% of GS-15-01 equals \$79,930 per year. This amount may rise whenever the GS-15-01 rate of pay rises. The criteria of the previous paragraph currently work out as follows: PSC employees at equivalent levels of AD-16 or higher, Senior Foreign Service, or Senior Executive Service are required to file the public report. PSC employees at equivalent levels of GS-15 or FS-01 or lower are NOT required to file the public report.

**PERSONS REQUIRED TO FILE
THE SF-450, EXECUTIVE BRANCH
CONFIDENTIAL FINANCIAL DISCLOSURE REPORT**

If the employee is required to file the public report according to the criteria in the previous section, then DO NOT use this section. Persons not required to file the public report under the criteria above, are designated to file the confidential report on a case by case basis as appropriate, using the criteria below. Under these criteria, clerical positions should always be designated "N," non-filer. Thus, only non-clerical positions need be actually reviewed for confidential report filing status.

ANSWER THE FOLLOWING QUESTIONS:

QUESTION #1. Do the duties and responsibilities of the position require the employee to participate substantially through decision making or the exercise of significant judgement in activities which have a direct and substantial economic effect on the interests of any non-Federal entity, such as:

- a. Contracting or procurement;
- b. Administering or monitoring grants, cooperative agreements, guarantees or other federally-conferred financial or operational benefits;

c. Regulating or auditing any non-Federal entity?

IF THE ANSWER IS YES, GO TO QUESTIONS 2, 3 AND 4.

IF THE ANSWER IS NO, THE POSITION DOES NOT HAVE TO FILE.

QUESTION #2. Are the duties of the position such that there is only a remote possibility that the incumbent will be involved in a real or apparent conflict of interest? IF THE ANSWER IS YES, THE POSITION DOES NOT HAVE TO FILE.

QUESTION #3. Everyone has a supervisor or immediate superior, but is there also a substantial degree of supervision and review over the position? IF THE ANSWER IS YES, THE POSITION DOES NOT HAVE TO FILE.

QUESTION #4. Are the duties of the position such that the effect of any potential conflict on the integrity of the service would be inconsequential? IF THE ANSWER IS YES, THE POSITION DOES NOT HAVE TO FILE.

IF THE ANSWER IS NO TO ALL THREE QUESTIONS, THE POSITION MUST BE DESIGNATED TO FILE.

IF THE ANSWER IS YES TO ANY OF THE THREE, THE POSITION DOES NOT HAVE TO FILE.

GUIDANCE:

1. The "participation" described in Question #1 can also be through advice or recommendation, not only exercise of final decision-making authority.

2. However,

a. The participation must be substantial which means that the employee's involvement must be of significance to the matter. It requires more than official knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. For example, clearance of a PIO/T for the purpose of confirming that the funds have been reserved is not substantial. But clearance of a PIO/T for technical sufficiency on the scope of work would be substantial, even though the employee makes no changes.

b. The judgment exercised must be significant. It is not significant if policy, procedures, regulations or other directives limit the discretion of the employee to interpret or adapt the directives in specific cases.

c. The impact of the decision must be economic and direct and predictable. Direct and predictable means there is a real, as opposed to a speculative, possibility of economic benefit or detriment to a private sector entity. Policy matters of general applicability are usually too broad in nature to have a direct and predictable economic effect on a specific firm or firms.

3. Even if the answer to Question #1 is Yes, the position still does not qualify for designation if the answer to any of the remaining questions is Yes.

4. We have to strike an appropriate balance between the agency's need to resolve conflicts of interest and the employees' privacy interest in the information requested. Please exercise your discretion to designate only those positions for which filing is appropriate and AVOID OVER-DESIGNATION.

5. You should carefully review positions when answering Question #3 to determine if there is substantial supervision and therefore no filing requirement. PSC employees are usually subject to substantial supervision. Therefore designating a PSC employee to file should be the exception rather than the rule.

6. For the benefit of RLAs called upon to give guidance, the above criteria for determining confidential filing status are derived directly from regulation, including examples, codified at 5 C.F.R. Part 2634.904 and 2634.905.

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**SF-278 FINANCIAL DISCLOSURE REPORT:
NEW ENTRANT HELP SHEET AND CHECKLIST**

The U.S. Office of Government Ethics (OGE), a separate government-wide ethics agency which created the SF-278, requires precise compliance with financial disclosure laws. Therefore A.I.D.'s Office of the Independent Counsel for Ethics, GC/ICE, has prepared the following information and checklist to help you fill out your SF-278. For additional help, call GC/ICE at (202) 647-8556.

The SF-278 must be filed within 30 days after entering a position covered by the filing requirement. The reporting periods of the entrance report are listed in the checklist below, next to the heading for each schedule of the report. The same form is then filed annually, due May 15 and reports only on the period of the previous calendar year. Finally, the same form is filed within 30 days after leaving a position covered by the filing requirement, in order to report the period starting where the last filing ended up until the last day in the position. Extension of filing deadlines may be requested for good cause. For any form which is more than 30 days late, there is a \$200 late fee. Waiver of the late fee can only be granted by OGE, upon written request and for good cause.

If you are overseas, the report is turned in to your Controller or if you have no Controller, your Chief Program Officer or Budget Officer for intermediate review before being forwarded to your RLA or GC/ICE for certification. AID/W filers send their form directly to GC/ICE, Room 6892 NS.

I. Front Page

1. ___ Did you make photocopies of blank pages to use as practice or extension sheets?
2. ___ Did you list your new position using the proper AID office symbol, e.g., "Supervisory Development Officer, USAID/XXX/YYY?"
3. ___ Did you list your previous U.S. government positions within the past 12 months or indicate "None"?
4. ___ Did you give the date of appointment to your new position?

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2. ___ PENSIONS: Did you indicate on Schedule A whether your spouse's or your pension is a "defined benefit" or "defined contribution" plan? "Asset Value not readily ascertainable" may be written in, if that is the case, instead of marking an asset value. If the plan is widely diversified, then you may mark "Excepted Investment Fund" for the Type; otherwise you will need to list separately all the underlying assets of the pension fund). If the plan is already paying out, then the exact amount must be listed. Did you also list any pension interest held by you on Schedule C, Part II Agreements or Arrangements?

3. ___ PARTNERSHIPS: Did you indicate whether you are a limited or general partner? Did you indicate the line of business of the partnership (e.g., real estate investment)? If you are a general partner, did you also report it on Schedule D under "Positions Held Outside U.S. Government?"

4. ___ INSURANCE and ANNUITIES: If you have a "variable" policy, did you list the names of the investments held within the policy? Did you list the value of any insurance benefits actually received in the "Actual Amount" category?

5. ___ TRUSTS: Did you identify each individual investment held by a trust of which you, your spouse or dependent child either created or hold a vested beneficiary interest? You must report the assets of the trust unless (1) it meets the criteria for an excepted investment fund (EIF) or excepted trust (ET), see definition in the form instructions.

6. ___ INDIVIDUAL RETIREMENT ACCOUNTS (IRA's): Did you list each asset contained within any IRA held by you, your spouse or dependent child? Many IRA's contain only mutual funds - please see next item, II.B.9: MUTUAL FUNDS.

7. ___ MUTUAL FUNDS: Did you report the name of the investment firm AND the specific fund (e.g., Merrill Lynch, Basic Value Fund"). If the fund matches the definition of EIF in the form instructions, did you mark the Type of Income column labeled "Excepted Investment Fund?" (Otherwise you must list all the underlying assets of the fund separately.)

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III. Schedule B, Part I: Transactions and Part II: Gifts, Reimbursements, & Travel Expenses

1. ___ Did you mark the box at the top of the page, entitled "New Entrant/Nominee/Candidate: Schedule Not Applicable?" (Keep records for the next filing.)

IV. Schedule C: Liabilities

For the period beginning January 1 of the previous year up until the time of filing:

1. ___ Did you list each separate debt with over \$10,000 owed at any time during the reporting period, except: debts owed to close family members; mortgages secured by personal residences; secured loans for the purchase price of a car, household furniture or appliances; and revolving charge accounts without more than \$10,000 borrowed at the close of the reporting period.

2. ___ Did you include the name and address of the creditor, the type of liability, the date, term and interest rate, and the highest value of the liability during the reporting period?

V. Schedule D

For the period including the last TWO (2) full calendar years and the current year up until the time of filing:

1. ___ Did you list all positions held outside the U.S. government on Schedule D, Part I, and also report on Schedule A any position for which you received compensation over \$200 during that Schedule's reporting period?

2. ___ For any position listed on Schedule D, Part I that is not also listed on Schedule A, did you indicate that the position is EITHER (1) unpaid OR (2) did not pay over \$200 during that Schedule's reporting period?

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3. ___ Did you list all sources of \$5000 or more compensation received by you (or by your business affiliation for services provided directly by you) on Schedule D, Part II. Did you also list these as appropriate on Schedule D, Part I and on Schedule A?

VI. BEFORE YOU SEND IN YOUR REPORT:

1. ___ Did you check "None" if there was no entry for a Schedule or Part of a Schedule?

2. ___ Did you sign and date the front page?

3. ___ Did you make a copy of the form for yourself?

ATTACHMENT C: PAGE 1

**SF-450 FINANCIAL DISCLOSURE REPORT:
HELP SHEET AND CHECKLIST**

The U.S. Office of Government Ethics, a separate government-wide ethics agency which created the SF-450, requires precise compliance with financial disclosure laws. Therefore A.I.D.'s Office of the Independent Counsel for Ethics, GC/ICE, has prepared the following information and checklist to help you fill out your SF-450. For additional help, call GC/ICE at (202) 647-8556.

The SF-450 must be filed within 30 days after entering a position covered by the filing requirement and reports on the period of the preceding 12 months. The same form is then filed annually, due Oct. 31 and reporting on the previous fiscal year. Extension of filing deadlines may be requested for good cause.

The form is turned in to your Controller or if you have no Controller, your Chief Program Officer or Budget Officer for intermediate review before being forwarded to your RLA or GC/ICE for certification. The information contained on your form is confidential and treated in accordance with the Privacy Act.

Top of Front Page

1. ___ Did you make photocopies of blank pages to use as practice or extension sheets?
2. ___ Did you list your new position using the proper AID office symbol, e.g., "Development Officer, USAID/XXX/YYY ?"
3. ___ Did you list your previous U.S. government positions within the past 12 months or indicate "None"?
4. ___ Did you give the date of appointment to your position?

Part I:: Assets and Income

A. Generally.

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1. ___ Did you list every asset held for the production of income by you, your spouse or dependent child that EITHER (1) earned more than \$200 during the reporting period OR (2) had a fair market value at the end of the period of more than \$1,000 (\$5,000 for checking, savings, money market or CD accounts)? Did you list at least the county, state and country (if foreign) where any income-producing or investment property is located?

2. ___ Did you list all sources of more than \$200 of non-investment income, received during the reporting period by you, your spouse or dependent child? (U.S. Government pay, retirement and other federal benefits are excluded and do not have to be reported.)

3. ___ Did you indicate whether the listed asset/income is held Jointly ("J"), by your spouse individually ("S") or your dependent child ("DC")? (optional)

4. ___ Did you indicate the nature of any income and mark EIF or ET (see definitions on p.2 of instructions on the form) where appropriate for each asset listed?

B. Specific Types of Assets and Income

1. ___ RENTAL PROPERTY: Did you report gross, not net, rental income (before any deductions for depreciation/maintenance)? Did you also report any mortgages over \$10,000 on rental property on Schedule C? Did you indicate "no mortgage" or "mortgage below \$10,000" if the mortgage is below the reporting limit or if there is no mortgage?

2. ___ PENSIONS: Did you indicate on Schedule A whether your spouse's or your pension is a "defined benefit" or "defined contribution" plan? "Asset Value not readily ascertainable" may be written in, if that is the case, instead of marking an asset value. If the plan is widely diversified, then you may mark "Excepted Investment Fund" for the type; otherwise you will need to list separately all the underlying assets of the pension fund). If the plan is already paying out, then the exact amount must be listed. Did you also list any pension interest held by you, on Part IV: Agreements and Arrangements?

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3. ___ PARTNERSHIPS: Did you indicate whether you are a limited or general partner? Did you indicate the line of business of the partnership (e.g., real estate investment)? If you are a general partner, did you also report it on Part III: "Positions Held Outside U.S. Government?"
4. ___ INSURANCE and ANNUITIES: Did you remember to list these assets and list the value of any insurance benefits actually received in the "Actual Amount" category?
5. ___ TRUSTS: Did you identify each individual investment held by a trust which you, your spouse or dependent child either created or hold a vested beneficiary interest? You must report the assets of the trust unless (1) it meets the criteria for an excepted investment fund (EIF) or excepted trust (ET), see definition in the form instructions.
6. ___ INDIVIDUAL RETIREMENT ACCOUNTS (IRA's): Did you list each asset contained within any IRA held by you, your spouse or dependent child? Many IRA's contain only mutual funds - please see next item, 9: MUTUAL FUNDS.
7. ___ MUTUAL FUNDS: Did you report the name of the investment firm AND the specific fund (e.g., Merrill Lynch, Basic Value Fund"). If the fund matches the definition of "Excepted Investment Fund" in the form instructions, did you indicate EIF? (Otherwise you must list all the underlying assets of the fund separately.)

Part II: Liabilities

1. ___ Did you list each separate debt with over \$10,000 owed at any time during the reporting period, except: debts owed to close family members; mortgages secured by personal residences; secured loans for the purchase price of a car, household furniture or appliances; and revolving charge accounts without more than \$10,000 borrowed at the close of the reporting period.
2. ___ Did you include the name and address of the creditor, the type of liability?

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Part III: Outside Positions

1. ___ Did you list all positions held outside the U.S. government during the reporting period, and also report on Part I any position for which you received compensation over \$200 during that Schedule's reporting period?
2. ___ For any position listed that is not also listed on Schedule A, did you indicate that the position is either (1) unpaid OR (2) did not pay over \$200 during the reporting period?

Part IV: Agreements and Arrangements

1. ___ Did you list the any arrangement for future employment, payments or benefits? Did you list the age or year when a future pension benefit will begin payment?

BEFORE YOU SEND YOUR REPORT TO YOUR CONTROLLER OR BUDGET OFFICER:

1. ___ Did you check "None" if there was no entry for a Part?
2. ___ Did you sign and date the front page?
3. ___ Did you make a copy of the form for yourself?

[FORMS AID 1420-36A AND 1420-36-B ARE NOT ATTACHED]