

Regulating Conflict of Interest: International Experience with Asset Declaration and Disclosure

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Overview of Conflict of Interest Regulation

Conflict of interest legislation ensures that when government officials decide issues of public policy, their personal interests do not cloud their judgment -- that their decisions will be based solely on what is best for the public as a whole. Conflict of interest laws achieve this objective in two ways. One way involves banning certain blatant conflicts altogether. Ministers and civil servants will thus be prohibited from awarding government contracts to firms they own or from hiring close relatives. The second way conflict of interest law prevents personal concerns from coloring official decisions is by requiring public servants to disclose their private interests. Not all conflicts are immediately obvious. Instead of owning a potential government contractor outright, a minister might own stock in it. Requiring ministers to disclose their shareholdings and other assets will reveal these kinds of less obvious conflicts.

While a conflict of interest bill must be tailored to local conditions, certain principles are found in all of them. Any conflict of interest law should:

- distinguish private from public interest;
- provide mechanisms for the disclosure of private interests;
- identify which private interests are incompatible with decision-making in the public interest;
- establish procedures for excluding these interests from the decision-making process; and
- create processes for resolving accusations of conflict of interest.

Establishing A System For Asset Disclosure

When establishing an asset disclosure program, assume that all, or most all, public servants are honest. The primary aim of the agency in charge of income and asset disclosure is thus to help honest officials who are required to disclose do so correctly. Among the actions the agency can take to foster voluntary compliance are seminars for filers, a help line, and a procedure for requesting advisory opinions where the law is unclear. The opinions should be widely disseminated for they then become a body of law to guide interpretation in future cases.

Once government has gone the extra mile to promote voluntary compliance, it is easier politically for it to bring the enforcement club out of the closet. That club should be of sufficient weight to match the severity of the offense. In other words, the failure to file or a false filing should be treated no less seriously than the solicitation or receipt of a bribe. For example, in Trinidad, in addition to prison time for failure to disclose, the state can require the defendant to forfeit the value of the asset not disclosed.

When beginning a program, start slowly and build up capacity. A common mistake in creating a new agency is to establish it on day one and on day two require thousands of civil servants to file a form with the agency. The agency is unable to meaningful review so many forms so early in its life. Word quickly spreads to this effect, and people don't take the agency or its mandate seriously. In the first round or iteration of the program, require just a handful of senior officials to file declarations.

Besides requiring officeholders to disclose personal and business assets, it is good practice for officials to disclose

- sources of income,
- positions in profit or non-profit firms,
- debts,
- gifts,
- payments for travel, advances, reimbursements, and
- the income and assets of spouses and children living in the family home or dependent upon the official for support.

Asset Disclosure in Practice

How does asset disclosure work in practice? Perhaps the best way to find out is to examine the actual form a public official is required to file. Like all senior officials in the executive, legislative, and judicial branches of the American federal government, President George H.W. Bush is required to declare his income and assets, gifts, reimbursements, outstanding debts, and positions held outside government each year. His completed form for each year can be found on a number of Web sites.

Figure 1: Excerpt from Financial Disclosure Report of US President George H.W. Bush

SF 278 (Rev. 2/2005)
 S.C.F.A. Part 201a
 U.S. Office of Government Ethics
 Reporting Individual's Income

SCHEDULE A continued
(Use only if needed)

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GEORGE W. BUSH

| Assets and Income | Valuation of Assets at close of reporting period | | | | | | | | | | Income: type and amount. If "None (or less than \$20)" is checked, no other entry is needed in Block C for that item. | | | | | | | | | | | | | | | | |
|--|--|--------------------|---------------------|----------------------|-----------------------|-----------------------|-------------------------|-------------------|------------------------|-----------------|---|-----------|----------|--------------------|---------------|--------------------------|-----------------|-------------------|-------------------|--------------------|---|--|---------------------|----------------------|----------------|-----------|--|
| | BLOCK A | | | | | | | | | | BLOCK C | | | | | | | | | | | | | | | | |
| | Value (in thousands \$) | | | | | | | | | | Type | | | | | | | | | | Other Income (Specify Type & Actual Amount) | Date (Mo., Day, Yr.) Only if Homestead | | | | | |
| | None (or less than \$1,000) | \$1,001 - \$10,000 | \$10,001 - \$50,000 | \$50,001 - \$100,000 | \$100,001 - \$250,000 | \$250,001 - \$500,000 | \$500,001 - \$1,000,000 | Over \$1,000,000* | Except Investment Fund | Retirement Fund | Qualified Trust | Dividends | Interest | Rent and Royalties | Capital Gains | None (or less than \$20) | \$201 - \$1,000 | \$1,001 - \$2,000 | \$2,001 - \$5,000 | \$5,001 - \$10,000 | | | \$10,001 - \$50,000 | \$50,001 - \$100,000 | Over \$100,000 | | |
| * RAYMOND JAMES FINANCIAL IRA F/b/o LAURA BUSH | X | | | | | | | | X | | | | | | | X | | | | | | | | | | | |
| * RAYMOND JAMES FINANCIAL IRA F/b/o GEORGE W. BUSH | | | X | | | | | | X | | | | | | | X | | | | | | | | | | | |
| STATE OF TEXAS 401(K) PLAN F/b/o GEORGE W. BUSH | | | | X | | | | | X | | | | | | | | | | | | | | | | | | |
| * GEORGE W. BUSH QUALIFIED DIVERSIFIED TRUST | | | | | X | | | | | X | | | | | | | | | | | | | | | | | |
| LEASE OF REAL ESTATE MCLENNAN CO., TEXAS | | X | | | | | | | | | | | | | | X | | | | | | | | | | | |
| * UNDIVIDED MINERAL INTEREST BEEVES CO., TEXAS | X | | | | | | | | | | | | X | | | | | X | | | | | | | | | |
| 1583.226 ACRES RANCH IN MCLENNAN CO., TEXAS | | | | | | | | X | | | | | | | | | | | | | | | | | | | |
| * GWB RANGERS CORP. 100% OWNER | | | | | | | | | | | | | X | | | | | X | | | | | | | | | |
| * MERRY G. FREEMAN, JR. TRUST | | | | | | | | | | | | | | | | | | | | | | | | | | 12,000.00 | |

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher category of value, as appropriate.

Form 278 (Rev. 2/2005) * SEE NOTE

Figure 1 displays one page from one of the annual reports he has filed, page three of the 13 pages he filed in 2005 listing his assets. There he lists each asset separately along with its value and any income earned from it during the year.

Many know that President Bush owns a ranch in Texas where he often vacations and where he occasionally entertains world leaders. Line seven on figure one shows that this ranch consists of 1,583.226 acres located in McLennan County, Texas and that its estimated value is between \$1 million and \$5 million. The form shows that during 2005 he earned less than \$1,000 in income from it.

Lines one through six on this page show other assets -- his interest in various financial instruments, the retirement plan from when he was governor of Texas, and the ownership of a mineral lease. The asterisk by the entry for line eight, "GWB Rangers Corporation," directs the reader to a note accompanying the disclosure form. That note explains that GWB Ranger Inc. is the company through which he once owned an interest in a baseball team. He sold that interest and the proceeds of the sale are now held by the company.

The U.S. Office of Government Ethics administers the income and asset disclosure program for President Bush and other officials of the Executive Branch. Its Web site [www.usoge.gov/home] explains the U.S. program in more detail and contains an instruction book that President Bush and others required to file were given explaining how to fill out the form and whom to call with questions.

Spread of Asset Disclosure Programs

As concerns about conflict of interest have grown, more and more countries have begun requiring senior officials to submit income and asset declarations similar to the one President Bush files. A recent survey of the 148 countries eligible to receive World Bank support of one

form or another found that in 104, senior officials must disclose their income and assets in some form. Of these 104, 71 nations require officials to declare assets to an anticorruption body or other government entity without disclosing the declarations to the general public while the

Table 1 Disclosure Required (104) Public (33)

| | Public (33) | | Nonpublic (71) | |
|---|---|--|---|---|
| East Asia | Indonesia Marshall Is Mongolia | Philippines Thailand Vietnam | Malaysia Palau | PNG Solomon Is. Vanuatu |
| Eastern Europe/ Central Asia | Albania Bulgaria Croatia Georgia Kyrgyz R Latvia | Lithuania Montenegro Moldova Romania Russia Ukraine | Armenia Azerbaijan Belarus Bosnia/Herz Kazakhstan | Macedonia Poland Serbia Slovak R Turkey |
| Latin America | Argentina Belize Bolivia Brazil | Chile Jamaica Nicaragua Paraguay | Antigua/ Barb Colombia Costa Rica Dominica Dominican Rep Ecuador El Salvador Grenada Guyana Guatemala | Haiti Honduras Mexico Panama Peru St Kitts/Nevis St Lucia Trinidad/Tob Uruguay Venezuela |
| Middle East/ North Africa | Iraq | | Algeria Egypt Iran Lebanon | Morocco Tunisia West Bank/Gaza |
| South Asia | Bhutan | | Bangladesh India Nepal | Pakistan Sri Lanka |
| Africa | Cape Verde Central Africa R Liberia | Sao Tome/Pt South Africa | Benin Burkina Faso Burundi Cameroon Chad Dem Rep Congo Equatorial Guinea Gambia Ghana Kenya Madagascar | Malawi Mali Mozambique Namibia Niger Nigeria Rwanda Rep of Congo Tanzania Uganda Zambia |

remaining 33 require that, in addition to submitting the forms to some official body, they also be published.

While many countries require public officials to file disclosure documents, where the disclosures are made public, officially designated “fact checkers” are aided in reviewing the accuracy of the filings by a host of non-official analysts. In the US, civil society watchdog groups as well as political parties review the forms. The Republican and Democratic parties carefully monitor the forms filed by those from the other party as part of their “opposition research.”

How Disclosure Fosters Better Government

Attention grabbing stories and investigative reports help to increase transparency as well as document progress made to standardize asset disclosure enforcement worldwide. However, these accounts also provide ample evidence that greater transparency in the public sector and stricter asset disclosure requirements are necessary across the globe.

- United States: While in office, US Senator from Kentucky, Walter “Dee” Huddleston, declared income received from a

speaking engagement that took place in the Bahamas on dates when Congress was in session. He should have been in Washington, D.C. conducting the people's business. His Republican opponent seized upon this discrepancy, and it cost Huddleston re-election.

- Philippines: Philippines investigative reporter Tess Bacalla used publicly disclosed asset declaration forms to document the disconnect between low government salaries and the extravagant homes and unexplained property and luxury assets amassed by government workers. In one case, a tax collector with an annual salary of 250,000 pesos or roughly \$5,000USD was living in a mansion with a pool. In another case, a regional director of the tax collection agency had several luxury cars, including SUVs and BMWs, parked in front of his home. Neighbors explained that he and family were the only ones who used them, yet when Bacalla checked his asset disclosure form, they were not listed. Using the motor vehicle registry, she found the cars were falsely registered to friends. As a result of her investigative report, the several tax collection agency officials were forced to resign and are currently facing corruption charges, while others have been suspended pending further investigation.
- Romania: In a huge criminal-justice shake-up, Romania replaced most of its judges and prosecutors. In 2003, 1,200, nearly a third of the total, quit. The old lot cannot be sacked; the judiciary is independent. A new law makes staying unattractive, by requiring officials and their families to publish their assets and incomes on the internet. Villas, cars and other toys are no longer perks of corruption, but an embarrassment. There has been much ridicule of the excuses made by former untouchables. Mr. Nastase, a former Prime Minister, said his wealth came from his wife's elderly aunt, who had applied previously hidden talents to the property market.

Concluding Thoughts: Dos and Don'ts for Asset Disclosure Laws

1) *Require full disclosure*: Remember that the primary purpose of an asset disclosure program is not punitive. Rather, its main purpose is to bolster citizens' confidence in their government by showing that the great majority of public servants live within their means. Full disclosure will put to rest many wild rumors about this or that official.

2) *Make disclosures public*: Disclosures should be made public. This is a growing trend as governments recognize that public disclosure helps boost confidence in government, while at the same, giving journalists and civil society groups a role in policing the accuracy of the disclosures.

3) *Separate administrative from policing functions*: The agency in charge of income and asset disclosure should not be the primary enforcer, for there is a high risk that its role helping to assure voluntary compliance will get lost. Cops and social workers don't mix. The agency can report non-filers to the prosecutor or police, refer allegations of false filings, and conduct some basic checks. In Argentina, the agency in charge cross checks filings against land records. In Madagascar, it compares filings with tax records. Until recently, the Argentine office posted the names of non-filers or those whose declarations appeared to be inaccurate. This was the office's way of pressuring the judiciary to pursue the case.

4) *Clarify legal requirements and roles/responsibilities*: Income and asset disclosure laws have failed in some places because of a lack of clarity about who is required to disclose and to whom, what must be disclosed, what the consequences of an intentional failure to disclose are, and

which entity is responsible for prosecuting failures to disclose. One objection to an income and asset disclosure program is that the dishonest will simply hide their assets, putting them in their spouse's name or the name of an unrelated person. The law needs to be clear that however the asset is formally titled, if the official is the one who enjoys its use and benefit (a common law trust in Anglo-American legal terminology), the official must disclose it. The law should also specify precisely who is required to disclose, either by type of position (minister, secretary general, judge) or according to pay scale. Terms such as "verify" and "investigate" need to be carefully defined in the law. Prosecutors sometimes claim they alone have the power to investigate and thus stymie personnel in anticorruption agencies who seek to inquire into the accuracy of a declarant's statement.

5) Provide appropriate incentives to thwart possible accomplices and simplify prosecution: One strength of an anticorruption enforcement strategy built around income and asset disclosure is that it lessens the threat to civil liberties and abuse of enforcement tools that can result from an aggressive campaign to root out bribery. Bribery is a difficult crime to prove and police and prosecutors often must turn to wiretapping, eavesdropping, sting operations, and other techniques that can easily be abused. The filing of a false declaration is a much easier case to make. It can be made even easier if one provides a bounty for those asked to help an official conceal income or assets. That is, if lawyers, accountants, bankers, and whoever might be approached to help hide assets know that if they turn in the official they get a percentage of what they are being asked to conceal.