

A Brief Introduction to the U.S. Executive Branch Financial Disclosure System

U.S. Office of Government Ethics
(Last Updated 3/7/2018)

I. Background

Forty years ago, the United States Congress enacted the Ethics in Government Act of 1978 (“EIGA”). The EIGA was revolutionary in that it established for the first time a comprehensive system for preventing potential conflicts of interest and unethical behavior by Federal officials. In addition to creating the U.S. Office of Government Ethics (“OGE”) as a supervising ethics office in the executive branch, one of the more notable aspects of the EIGA was the introduction of a uniform system of financial disclosure by high-level officials in all three branches of the Federal government.

II. Overview

There are two financial disclosure systems that are used in the Federal executive branch: a public financial disclosure system for high-level officials and a confidential financial disclosure system for officials who are not required to file a public financial disclosure, but who occupy positions that pose a heightened risk for conflicts of interest.

As required by the EIGA, individuals who serve in the most senior appointed and elected positions of all three branches of Government are required to file public financial disclosure reports upon entry into their positions, annually, and then upon leaving the senior position. For filers in the executive branch, these reports are available to the public upon request from the agency where the individual is employed. If the individual’s financial disclosure report is required to be reviewed by OGE, the report may also be requested from OGE. The financial disclosure reports of the President, Vice President, and the most senior appointed officials are posted directly on OGE’s website, and are available to the public without the need for a request.

Confidential financial disclosures are required from individuals who are in positions below the senior level, and who therefore do not file a public report, but who have duties which create a higher risk for conflicts of interest (e.g., contracting, procurement, federal benefits programs, audits). Individuals holding such positions are required to file the less detailed confidential financial disclosure reports with their employing agencies. These reports are not available to the public and are reviewed for conflicts of interest by the employing agency.

There are approximately 28,000 public financial disclosure reports (filed using the OGE Form 278) and 360,000 confidential financial disclosure reports (filed using the OGE Form 450) that are submitted annually by executive branch officials.

III. Contents of Financial Disclosure Reports

a. Public Financial Disclosure Reports

In general, an individual who is required to file a public financial disclosure report is required to report the following information (once threshold amounts are met) upon entering service in a covered position, annually each year thereafter, and upon termination from the covered position:

- Each individual asset held for the production of income and an indication of its value by category of amount
- Each source of investment income and the type and amount of income by category of amount
- Each source of earned income and the exact amount
- Each liability (by creditor) and the amount owed by category of amount
- Gifts and reimbursements for travel by source, including value or amount
- Purchases, sales, and exchanges of certain assets by date of transaction and category of amount
- Each position held outside of government (officer, director, trustee, partner, employee, etc.) and dates held
- Any continuing arrangement with a former or current employer or agreement for future employment, and the terms of that agreement or arrangement
- For individuals filing for the first time, the name of each major client for whom the individual has provided personal services

For some of these requirements, the individual must provide the same information for a spouse and dependent children. Also, each of the requirements have some minor exceptions.

Individuals must report the value of their financial interests by selecting an appropriate category or range of values. For example, valuation of asset categories begin with “none or less than \$1,000,” “\$1,001 to \$15,000,” “\$15,001-\$50,000,” “\$50,001 to \$100,000,” and so on up to the last category of “over \$50,000,000.” The amounts specified within the categories for reporting the value of assets, investment income, and transactions all differ.

b. Periodic Transaction Reports

In addition to reporting the above information, individuals required to file public financial disclosure reports are also under a continuing obligation while in a covered position to promptly report the sale, purchase, or exchange of any securities (such as stocks or bonds). These transaction reports are publicly available and must be filed no later than 45 days from the date of the reported transaction, or 30 days from the date the individual received notice of the transaction, whichever is earlier.

c. Confidential Financial Disclosure Reports

The information that is required to be reported on a confidential financial disclosure report is generally similar to that required in a public financial disclosure report but less detailed information is required in some instances. For example, confidential financial disclosure filers are not required to report the value of assets or the amount of income they received from a specific source, but they are required to identify any assets and sources of income, with certain

exceptions

IV. Review of Financial Disclosures Reports Generally

In the executive branch, both the public and confidential financial disclosure reports are reviewed by the department or agency in which the individual filer serves, primarily for purposes of identifying potential or actual conflicts of interest. A conflict of interest is determined by applying the restrictions contained in certain statutes and standards in the context of the official duties and responsibilities of the individual. When information on a report indicates a potential conflict of interest with those duties and responsibilities, the employing entity works with the individual to determine appropriate steps he or she must take in order to avoid engaging in an official or private activity that will change the potential for a conflict into an actual conflict. Such steps may include: divestiture of an asset, resignation from an outside position, termination of an outside activity, recusal from certain official actions, change of official assignments or duties, or written waivers. An individual can place his or her assets into a “blind trust” approved by OGE, but this is never required.

The purpose of financial disclosure reports in the executive branch is primarily to proactively identify and prevent conflicts of interest as opposed to detect illicit enrichment. These reports are not net worth statements. However, when information on a financial disclosure report indicates that a violation of the conflict of interest laws has occurred, that matter is referred to appropriate authorities for further investigation and possible prosecution and/or administrative sanction. Notably, making a false statement on a financial disclosure report is a crime.

V. Review of Financial Disclosure Reports for High-Level Executive Branch Officials

OGE has instituted a stringent financial disclosure and conflicts of interest review for the highest level political appointees in the executive branch. In many ways this review process is similar to that used for other filers; however, there are a few additional safeguards introduced. This review process applies to all individuals who are considered for nomination to positions requiring appointment by the President, with the advice and consent of the U.S. Senate.

a. Prospective Nominee Submits a Financial Disclosure Report

- As a practice, each individual whom the President is considering appointing to a position in the executive branch which requires Senate confirmation submits a financial disclosure report.

b. A Technical Review of the Report is Conducted

- The technical review sets the stage for the conflicts review. The technical review helps ensure that the individual has correctly reported all relevant information so that a full conflicts review can take place.
- The agency in which the individual might serve and OGE work collaboratively to review the form to ensure that it is complete, consistent, and technically accurate. During this stage, typically the agency works with the individual, asking the individual a variety of questions to clarify the entries on the report and helping the individual to

- ensure that all required information is properly disclosed.
 - OGE and the agency also consult publicly-available resources such as finance websites, search engines, and government websites. The goal is to understand the nature of the individual's financial holdings because different assets have different disclosure requirements. This information also informs the conflicts review (see next heading).
 - Likewise, publicly-available background information about the individual might trigger the reviewer to ask additional questions of the individual.
- c. *A Conflict of Interest Review of the Report is Conducted***
- The basic questions that drive the conflicts review are:
 - Will the individual's holdings or activities conflict with the individual's ability to carry out fully the official responsibilities and duties of the office for which he or she is being considered?
 - Will the individual's current private employment or activities be prohibited or restricted once in office?
 - These questions are answered by applying the conflicts of interest and other ethics statutes and regulations. This review does not rely upon the subjective view of the reviewer as to what might constitute a conflict of interest.
- d. *An Ethics Agreement is Prepared and Signed by the Nominee***
- Once potential conflicts of interest are identified, the agency and OGE work with the individual to determine what steps that individual must take, should he or she be appointed, in order to avoid conflicts with the financial interests, outside positions, relationships, and activities listed on the report.
 - The steps required may include one of or a combination of the following actions: divestiture of conflicting assets; resignation from positions; a limitation on certain outside activities; a public agreement to recuse from taking actions on certain specific matters that may come before the individual if appointed; and/or an agreement to ask for a waiver in certain limited circumstances. The creation of a blind trust might be an available action, but it is never required.
 - These actions are reduced to writing in an "ethics agreement" that is signed by the individual.
- e. *The Financial Disclosure Report and Ethics Agreement are Sent to the Senate***
- Historically, a President rarely nominates an individual before the OGE Director is satisfied that there has been disclosure of the financial and other interests required by law and that the individual has agreed to take the necessary steps to avoid potential conflicts of interest.
 - Once the President has formally nominated an individual for a position, OGE will transmit a certified financial disclosure report and signed ethics agreement to the Senate committee considering the individual's nomination. The report and ethics agreement are then publicly available.
- f. *OGE Follows-up to Ensure Ethics Agreement Compliance***

- Once the individual is appointed, OGE, along with the agency in which the person now serves, monitors this agreement to ensure that the steps agreed upon have been taken by the individual. Usually those steps are required to be completed within 90 days of appointment.
- OGE ensures compliance with the commitments made in an individual's ethics agreement by requiring the individual to provide a written certification of their compliance to their agency and to OGE.
- These written certifications of ethics agreement compliance are posted on OGE's website. If an individual fails to timely file a certificate of compliance, OGE will note that the individual has not filed his or her certificate on OGE's website.
- An employee who has made a material misrepresentation or omission on the certification form may be subject to disciplinary action or criminal prosecution for making a false certification or writing.

g. *Following Years' Annual and Termination Reports Also Receive Two Levels of Review*

- All individuals who have gone through the above process and who have been appointed are required to continue to file annually and at termination of service. These reports are reviewed first by the agency in which the individual serves and then again by OGE.

h. *Value of this Process to the Ethics Program*

- This process ensures that senior officials in the executive branch have a personal and direct understanding of how the conflicts of interest requirements affect them.
- The process also serves as a personal and positive introduction to the agency ethics official and to the existence of the ethics program in the department or agency in which the individual may serve.
- Through this process, the ethics program gains continued support from the leadership of the department or agency.
- The public release of the financial disclosure reports, the ethics agreements, and the certifications of ethics agreement compliance provide the public a clear understanding of what potential conflicts of interest may exist for each individual and reassurance that the conflicts will be addressed.

Key Reference Documents

Ethics in Government Act provision related to financial disclosure (5 U.S.C. app section 101 et seq.) <https://www.gpo.gov/fdsys/pkg/USCODE-2010-title5/pdf/USCODE-2010-title5-app-ethicsing.pdf>

Implementing regulations for the public and confidential financial disclosure system (5 C.F.R. Part 2634) <https://www.gpo.gov/fdsys/pkg/CFR-2011-title5-vol3/pdf/CFR-2011-title5-vol3-part2634.pdf>

Public financial disclosure form (OGE 278e)

[https://www.oge.gov/web/oge.nsf/OGE%20Forms/48EAF45DA952AAB685257FFD006CCE93/\\$FILE/OGE%20Form%20278e_PDF%20ver.pdf?open](https://www.oge.gov/web/oge.nsf/OGE%20Forms/48EAF45DA952AAB685257FFD006CCE93/$FILE/OGE%20Form%20278e_PDF%20ver.pdf?open)

Periodic transaction report form (OGE 278-T)

[https://www.oge.gov/web/oge.nsf/OGE%20Forms/72F79E10F1D9185385257EC100609ED2/\\$FILE/OGE%20Form%20278T%20\(June%202015\)%20\(fillable\).pdf?open](https://www.oge.gov/web/oge.nsf/OGE%20Forms/72F79E10F1D9185385257EC100609ED2/$FILE/OGE%20Form%20278T%20(June%202015)%20(fillable).pdf?open)

Confidential financial disclosure report form (OGE 450)

[https://www.oge.gov/web/oge.nsf/OGE%20Forms/98A9E45F947BE66B85257EC10064B655/\\$FILE/oge450%20\(Jan2017\)%20\(fillable\).pdf?open](https://www.oge.gov/web/oge.nsf/OGE%20Forms/98A9E45F947BE66B85257EC10064B655/$FILE/oge450%20(Jan2017)%20(fillable).pdf?open)

Public Financial Disclosure Guide

<https://www.oge.gov/Web/278eGuide.nsf>

Confidential Financial Disclosure Guide

[https://www.oge.gov/Web/OGE.nsf/Resources/Confidential+Financial+Disclosure+Guide+\(2016\)](https://www.oge.gov/Web/OGE.nsf/Resources/Confidential+Financial+Disclosure+Guide+(2016))

Ethics Agreement Guide

[https://www.oge.gov/Web/oge.nsf/Resources/PAS+Nominee+Ethics+Agreement+Guide+\(MS+Word\)](https://www.oge.gov/Web/oge.nsf/Resources/PAS+Nominee+Ethics+Agreement+Guide+(MS+Word))

Certificate of Ethics Agreement Compliance form

[https://www.oge.gov/web/OGE.nsf/OGE%20Forms/DFD8052EC2CDD45F8525811D00702F29/\\$FILE/EA%20Certification%20-%20June%202017.pdf?open](https://www.oge.gov/web/OGE.nsf/OGE%20Forms/DFD8052EC2CDD45F8525811D00702F29/$FILE/EA%20Certification%20-%20June%202017.pdf?open)