

**Note:** The CD Request Format that is attached to this advisory was updated by Program Advisory PA-19-10.



June 3, 2016  
PA-16-04

## PROGRAM ADVISORY

**TO:** Designated Agency Ethics Officials

**FROM:** David J. Apol  
General Counsel

**SUBJECT:** Release of OGE's Certificate of Divestiture Reference Guide

The U.S. Office of Government Ethics (OGE) is pleased to announce the release of a one-page reference guide on Certificates of Divestiture (CD). This guide is designed for employees, but will also assist ethics officials in navigating the CD process, thereby reducing recurring questions and increasing efficiency.

This guide summarizes the key elements of the CD program, including the purpose behind the program and eligibility requirements. Moreover, it provides instructions on how employees can request a CD, and what to do after one is issued. A copy of the reference guide is attached.

As a reminder, OGE previously developed a suggested format for agencies to use when requesting CDs for their employees (attached). Because the format contains a checklist of required information when submitting a request, it is strongly recommended that agencies utilize this format. If agencies elect not to use the request format, ethics officials may still refer to the suggested format to ensure all required information is included in their request, or consult the CD regulations at 5 C.F.R. 2634, subpart J.

In addition to the information in the request format, agencies are required to submit a request signed by the employee committing to unconditional divestiture of the asset(s). All requests must also include a copy of the employee's most recent financial disclosure report or, if the employee is not required to file a financial disclosure report, a listing of the employee's interests that would be required to be disclosed on a confidential financial disclosure report. In those cases where the assets are held within a trust, the filer will need to submit a copy of the trust document as well as a list of the trust's current holdings, unless the holdings are listed in the employee's most recent financial disclosure report.

**Attachments:** CD Reference Guide and CD Request Format

## CERTIFICATES OF DIVESTITURE

As an executive branch employee, your agency or the Office of Government Ethics (OGE) can direct you to sell, or otherwise divest, an asset in order to avoid a conflict of interest or the appearance of one. If selling the asset will result in a capital gain, you may be eligible for a Certificate of Divestiture to offset the tax burden of complying with the government's conflict of interest requirements. (Note, however, that a special government employee is not eligible.)

You, your spouse, and your dependent or minor child are eligible to request a Certificate of Divestiture. A trustee is also eligible when the asset is held in a trust, except in certain cases in which ineligible persons are also beneficiaries of the trust. The person requesting a Certificate of Divestiture (*i.e.*, you, your spouse, your dependent or minor child, or a trustee) must commit in writing to divesting the asset even if a Certificate of Divestiture is not issued.

*A Certificate of Divestiture allows you to defer the payment of capital gains tax by reinvesting the proceeds of a sale into "permitted property."*

To request a Certificate of Divestiture, contact your agency ethics official. If your agency supports the request, your agency ethics official will assemble the necessary documents and submit the request to OGE. OGE will then review the submission to determine whether (1) the request meets applicable procedural requirements and (2) whether divestiture is reasonably necessary to avoid a conflict of interest. OGE will either issue a Certificate of Divestiture to you through your agency ethics official or notify your agency ethics official that your request has been denied.

Do not sell the asset until your agency ethics official provides you with the Certificate of Divestiture or notifies you that OGE has denied your request. A Certificate of Divestiture is valid only if obtained *before* selling an asset. Within 60 days of the sale, you must reinvest the proceeds of the sale in "permitted property." Permitted property is limited to U.S. government obligations (*i.e.*, Treasuries), diversified mutual funds, and diversified exchange-traded funds.

For this purpose, "diversified" means the fund does not have a stated policy of concentrating in any industry, business, single country other than the U.S., or the bonds of a single state within the U.S.

When you file your taxes, complete part IV of IRS Form 8824 to defer payment of capital gains on the sale of the asset pursuant to a Certificate of Divestiture. You will need to pay the deferred capital gains later when you sell the permitted property.

Contact your agency ethics official for more information about Certificates of Divestiture. Note that OGE and your agency ethics official are not able to provide tax advice. Please consult your own tax advisor instead if you need guidance as to tax matters. Your tax advisor should consult 26 U.S.C. § 1043 and 5 C.F.R. part 2634, subpart J.

*A Certificate of Divestiture is not an employee benefit; it is designed to reduce the financial burden of complying with ethics laws.*

**REQUEST FOR A CERTIFICATE OF DIVESTITURE**  
(to be completed by the agency, not by the requesting employee)

requesting employee and position title:	employing agency and component:		
agency point of contact:	telephone number for agency point of contact:		
signature of Designated Agency Ethics Official:			date:

**For complete instructions on requesting a Certificate of Divestiture, please review 5 C.F.R. part 2634, subpart J.**

1. Provide the requested information about the property being divested and the owner(s) of that property. Indicate whether each property owner is one of the following: (a) a government employee; (b) a spouse, a minor child or a dependent child of a government employee; or (c) a trustee of a trust for the benefit of an eligible person. For stock, provide the number of shares of stock owned. For a partnership, provide the percentage of the partnership owned.

<b>description of the property</b>	<b>quantity or percentage owned</b>	<b>owner(s) of the property</b>	<b>relationship to the employee</b>
McDonald's Corp. Play Toys, LP	57 shares 12.24% interest	John A. Jones	self
General Electric, Co.	251 shares	John A. Jones (joint) Mary B. Jones	self spouse
The Home Depot, Inc.	165 shares	Mary B. Jones	spouse
Merck & Co., Inc.	33 shares	William C. Smith	trustee
Coca-Cola, Co.	55 shares	John A. Jones (as custodian) Robert D. Jones	self dependent child

<b>description of the property</b>	<b>quantity or percentage owned</b>	<b>owner(s) of the property</b>	<b>relationship to the employee</b>

**If you need additional space to accommodate your responses please [click here](#) for a continuation page**

2. Provide a brief description of the employee's position or provide a citation to a statute that establishes the duties of the position. **(Please [click here](#) for a continuation page for response if needed.)**

3. Provide a detailed explanation of the basis for your conclusion that divestiture is reasonably necessary to comply with Federal ethics rules (including an indication as to the date on which the requirement to divest first applied). **(Please click here for a continuation page for response if needed.)**

4. Indicate how the property was acquired (e.g., purchase prior to appointment, inheritance after appointment, gift prior to appointment, etc.). If various items of property were acquired in different ways, be specific about how the various items were acquired (e.g., “Except for the Microsoft stock, the employee purchased all of the property before beginning government service in July 2001. The employee’s spouse inherited the Microsoft Stock earlier this month on September 3, 2007.”). **(Please click here for a continuation page for response if needed.)**

5. Please address all items below:

a. Have you enclosed a written request from the employee that contains an unconditional statement that the property owner(s) will divest the property? No Yes

b. Have you enclosed the employee’s most recent financial disclosure report or the equivalent? No Yes

c. Is any other financial interest of the employee “similar or related” to the property being divested? No Yes

d. Is any of the property held in a tax-deferred retirement plan? *Indicate which property is held in the plan in your response to Item 6.* No Yes

e. Was any of the property acquired through an employee benefit plan (e.g., stock options, restricted stock, etc.)? *Indicate which property was acquired in this manner and the type of employee benefit plan in your response to Item 6.* No Yes

f. If any of the property is held in a trust, have you enclosed the trust agreement? N/A No Yes  
*Indicate which property is held in a trust in your response to Item 6.*

6. Provide any additional information that you would like OGE to consider when processing the request. (Use this space to address the timing of the request, if it is submitted after the deadline for divestiture.) **(Please click here for a continuation page for response if needed.)**

7. Print this document and submit the signed original with all enclosures to the following address: **Director, U.S. Office of Government Ethics, 1201 New York Avenue, NW, Suite 500, Washington, DC 20005-3917.**