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Office of Government Ethics
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LEGAL ADVISORY

FROM: Robert I. Cusick, Director

SUBJECT: PUBLIC FINANCIAL DISCLOSURE REPORT GUIDANCE FOR
PRESIDENTIAL CANDIDATES

This legal advisory provides guidance to potential Presidential and Vice Presidential¹ candidates concerning the public financial disclosure reporting requirements that apply to them. The Ethics in Government Act of 1978 (EIGA) requires that candidates for the office of President of the United States file a Public Financial Disclosure Report (OGE Form 278) with the Federal Election Commission (FEC).² After the initial filing with the FEC, the Office of Government Ethics (OGE) reviews and certifies that the candidate's report satisfies the requirements of EIGA.

This legal advisory includes a flow chart for individuals to use as a tool in determining whether or not they are deemed a candidate for the purpose of filing OGE's Public Financial Disclosure Report. The FEC is available to consult with individuals regarding their candidacy status, and OGE is available to consult with candidates and campaigns for technical filing compliance resources.

¹ The public financial disclosure requirements apply equally to candidates for the offices of President and Vice President of the United States. 5 U.S.C. App. § 101(c). In most cases the filing requirements for Vice Presidential candidates will not become operative until a Presidential candidate announces his or her choice of a Vice Presidential nominee. However, candidate filing requirements do not apply to an incumbent President or Vice President as they are already subject to incumbent filing requirements. *Id.*

² 5 U.S.C. App. § 101(c); 5 C.F.R. 2634.201(d). EIGA requires that candidates disclose their financial interests. 5 U.S.C. App. § 102; 5 C.F.R. § 2634.104(a). For example, the information required in OGE's Public Financial Disclosure Report includes a brief description of any financial interest held by the filer, the filer's spouse, and dependent children, as well as the individuals' noninvestment and investment income. 5 U.S.C. App. § 102; *see generally* 5 C.F.R. §§ 2634.301-311. EIGA *does not* require disclosure of contributions received or expenditures made in connection with the candidate's campaign. 5 C.F.R. § 2634.311(a). However, FECA has separate reporting requirements for contributions received or expenditures made in connection with the candidate's campaign. *See, e.g.*, 11 C.F.R. § 101.3.

I. When Does Someone Become a Presidential “Candidate” Who Is Required to File a Public Financial Disclosure Report?

For the purposes of both EIGA and the Federal Election Campaign Act of 1970 (FECA), a candidate is defined as an “individual who seeks nomination for election, or election, to Federal Office.”³ An individual is a candidate for the purpose of filing OGE’s Public Financial Disclosure Report once any of these following events occur:

- The individual receives contributions or makes expenditures aggregating in excess of \$5,000;
- The individual consents to have another person receive contributions or make expenditures on his or her behalf, and that person spends or receives more than \$5,000;
- The individual, after receiving written notification from the FEC that another person has received contributions or made expenditures in excess of \$5,000, fails to send a letter disavowing such activity to the FEC within 30 days; *or*
- Any combination of the foregoing conditions with aggregate contributions or expenditures in excess of \$5,000.

An individual may fall within the definition of candidate when he or she authorizes another person to collect or spend funds on his or her behalf. For example, if an individual gives a campaign manager the authority to receive contributions on his or her behalf and the campaign manager raises \$6,000 at a fundraiser supporting his or her nomination, the individual is now a candidate subject to EIGA public financial disclosure reporting requirements. Nonetheless, an individual cannot involuntarily become a candidate. In order to be a candidate, the individual must acquiesce to any actions taken on his or her behalf, either through delegation of authority to another person or failure to disavow activities taken by another person.

However, funds raised or spent for the purpose of “testing the waters” (i.e. determining whether to become a candidate) do not count toward the threshold for determining candidate status. Under the reporting exemption for individuals who are “testing the waters,” activities conducted to determine whether an individual will become a candidate may include conducting polls, making telephone calls, and traveling.

The FEC may determine that the individual has crossed the line from testing the waters into active candidacy if an individual takes actions indicating that he or she has decided to become a candidate. These include but are not limited to:

- Using public advertising to publicize the individual’s intention to campaign for federal office.
- Raising funds in excess of what could reasonably be expected to be used for exploratory activities or undertaking activities designed to amass campaign funds that would be spent after the individual becomes a candidate.

³ 5 U.S.C. app. § 101(c), cross referencing § 301 of FECA, codified at 2 U.S.C. § 431(2); 11 C.F.R. § 100.3.

- Making or authorizing statements that refer to the individual as a candidate for a particular office.
- Conducting activities close to the election or over a protracted period of time.
- Taking action to qualify for the ballot under state law.

In addition, an individual receiving contributions or making expenditures in order to determine whether or not to become a candidate is not deemed a candidate for the purpose of filing OGE's Public Financial Disclosure Report.⁴ For example, an individual hires a professional polling company and pays them \$20,000 to conduct polls in numerous states in order to determine whether or not he or she will garner support as a candidate for President. The individual appears only to be "testing the waters" absent other activities in pursuit of nomination or election.

II. How Does a Candidate for President Comply With the Legal Requirement to File a Public Financial Disclosure Report?

Once an individual is deemed a candidate for the office of President of the United States, EIGA requires the individual file an OGE Form 278 Public Financial Disclosure Report. An individual who becomes a candidate on or before April 15th of any year is required to file OGE's Public Financial Disclosure Report by May 15th of that calendar year with the FEC.⁵ An individual who becomes a candidate after April 15th must file OGE's Public Financial Disclosure Report within 30 days of becoming a candidate. Please note the Flow Chart in this advisory summarizes the information presented in this section to assist in complying with EIGA reporting requirements.

After a presidential candidate has entered the race and filed his or her initial public financial disclosure report, the candidate must file an annual OGE Public Financial Disclosure Report with the FEC on or before May 15th *each* successive year in which the individual continues to be a candidate.⁶ This filing requirement includes the year in which the election occurs, but does not include any year subsequent to the election even if a former candidate continues to raise money to pay campaign debt. For example, an unsuccessful former candidate who raises money in 2013 and 2014 to pay campaign debts is *not* required to file OGE's Public Financial Disclosure Report in 2013 or 2014 because the years are subsequent to the 2012

⁴ 2 U.S.C. § 431(2); 11 C.F.R. §§ 100.72(a), 100.131(a).

⁵ 5 U.S.C. app. § 101(c); 5 C.F.R. 2634.201(d)(1).

⁶ 5 U.S.C. App. § 101(c); 5 C.F.R. § 2634.201(d)(2). *See also* 11 C.F.R. § 100.3(b). For purposes of EIGA, and prior to an election, the requirement to file a Public Financial Disclosure Report (OGE Form 278) ends when the candidate is no longer seeking nomination or election to the office of President. 5 U.S.C. App. § 101(c). When a candidate states clearly and unambiguously that he or she has withdrawn from the race, there is no further requirement to file an OGE Form 278. Whether the mere "suspension" of a campaign terminates the filing requirement depends on what is meant by the "suspension." If there is a possibility that the campaign may again become active, then public financial disclosure reporting requirements continue.

election. However, there may be continuing obligations to file other documents with the FEC under FECA for these years.⁷

A. Information Required in OGE's Public Financial Disclosure Report

EIGA requires that candidates for the office of President of the United States disclose their financial interests.⁸ The information required in the Public Financial Disclosure Report, OGE Form 278, includes a brief description of any financial interest held by the filer, the filer's spouse, and dependent children, as well as these individuals' noninvestment and investment income. OGE Form 278 and resources on how to properly report financial interests are available on OGE's Web site at <http://www.oge.gov>. For more information on how to properly report financial interests on OGE Form 278, contact OGE at (202) 482-9300.

B. OGE's Public Financial Disclosure Report must be Filed with the FEC

A candidate must initially file OGE's Public Financial Disclosure Report with the FEC. For more information on how to file a Public Financial Disclosure Report with the FEC, contact the FEC's Office of General Counsel's General Law and Advice Division at (800) 424-9530. After the FEC receives the submission, it sends a copy to OGE for review. OGE's review of the candidate's financial interests ensures legal compliance with reporting requirements under EIGA. Because the reporting requirements under EIGA are very detailed, it is usually necessary for a candidate or a candidate's representatives to consult with OGE to ensure technical compliance with the law.

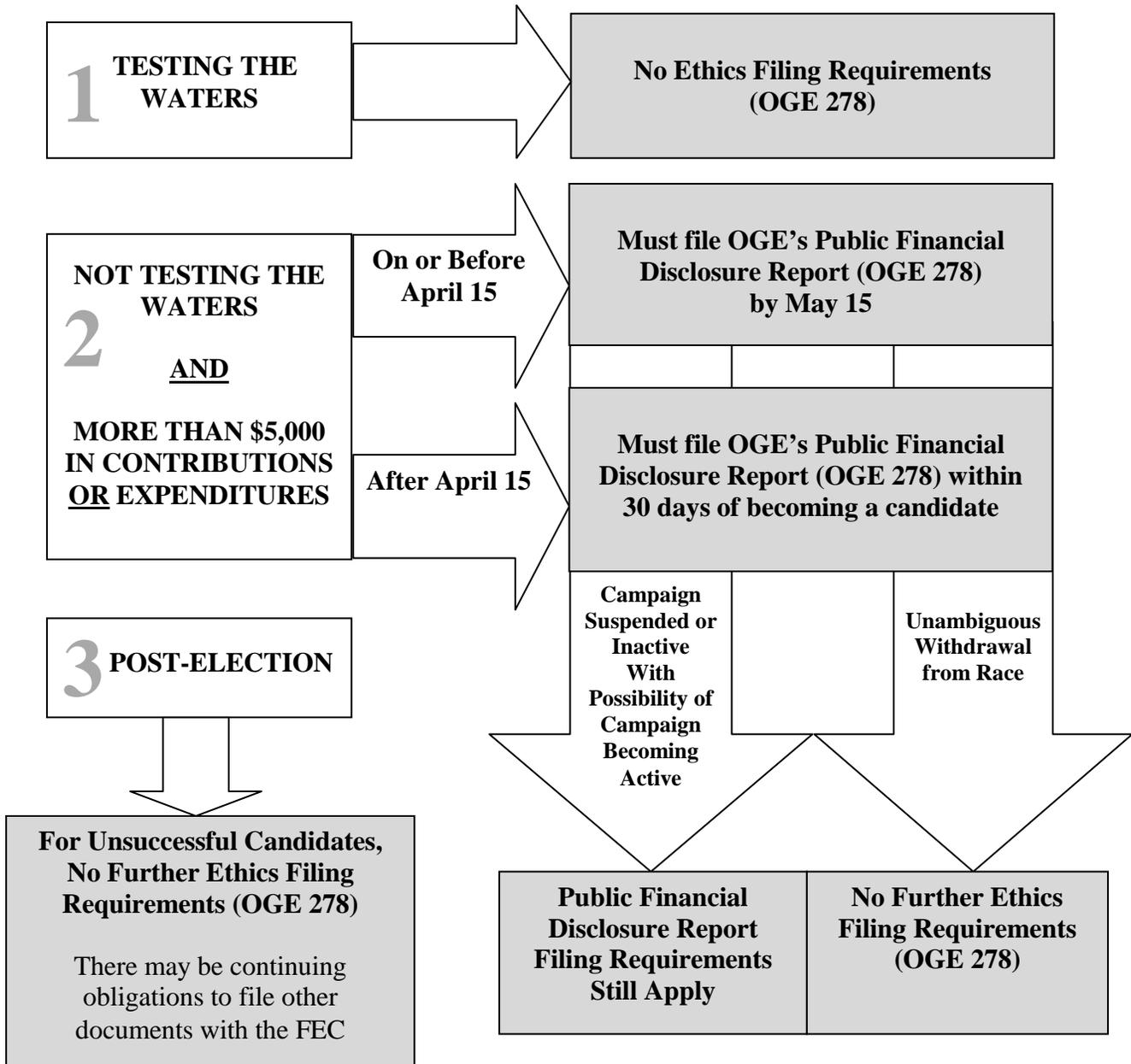
IV. Conclusion

The timely, accurate filing of OGE's Public Financial Disclosure Report is not only required under EIGA, but helps bolster public confidence in the integrity of the presidential campaign and election process. OGE is available to consult with candidates and campaigns regarding technical filing compliance issues and resources on how to properly report financial interests.

⁷ See, e.g., 2 U.S.C. § 431; 11 C.F.R. § 100.3(b).

⁸ 5 U.S.C. App. § 102; 5 C.F.R. § 2634.104(a).

Flow Chart: When does someone become a Presidential “Candidate” who is required to file a Public Financial Disclosure Report?⁹



⁹ The FEC is available to consult with individuals regarding their candidacy status, and OGE is available to consult with candidates and campaigns for technical filing compliance resources.