

The U.S. Executive Branch Financial Disclosure System

(Updated 9-7-12)

Overview

As required by the Ethics in Government Act of 1978, individuals who serve in the most senior appointed and elected positions of all three branches of Government are required to file a personal financial disclosure report upon entry into the senior position, annually, and then upon leaving the senior position. These reports are available to the public upon request. Some of these reports are also available online.

There is also an additional, but confidential financial disclosure system. Individuals in positions below senior level, the duties of which create a higher risk for conflicts of interest (e.g., contracting, procurement, federal benefits programs, audits), are required to file less detailed financial disclosure reports with their employing agencies. These reports are not available to the public but are reviewed for conflicts of interest by the employing agency.

In the executive branch there are approximately 28,000 public financial disclosure reports and 360,000 confidential financial disclosure reports filed annually.

In the executive branch, both the public and confidential financial disclosure reports are reviewed by the department or agency in which the individual 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 create a blind trust, but it 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 an actual conflict of interest may have occurred, that matter is referred to appropriate authorities for further investigation and possible prosecution and/or administrative sanction. Making a false statement on a financial disclosure report is a crime.

Reporting Categories

In general, the publicly available reports require the following information to be reported (once threshold amounts are met):

- 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 the spouse and dependent children. Also, each of the requirements have some minor exceptions.

To report a category of amount, the form provides a box to tick that would specify a range of amount. 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.

References

- Statutory basis for the financial disclosure systems: 5 U.S.C. app section 101 et. seq
<http://www.gpo.gov/fdsys/pkg/USCODE-2009-title5/html/USCODE-2009-title5-app-ethicsing-title1.htm>
- Implementing regulations for the Public system 5 C.F.R. Part 2634
<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=cbc7425f9cf4949f6e219b8737e5b2b2&rgn=div5&view=text&node=5:3.0.10.10.8&idno=5>
- For the confidential system 5 C.F.R. Part 2634 Subpart I
<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=cbc7425f9cf4949f6e219b8737e5b2b2&rgn=div5&view=text&node=5:3.0.10.10.8&idno=5#5:3.0.10.10.8.9>
- Public financial disclosure form OGE 278
<http://www.oge.gov/Forms-Library/OGE-Form-278--Public-Financial-Disclosure-Report/>
- Confidential financial disclosure form OGE 450
<http://www.oge.gov/Forms-Library/OGE-Form-450--Confidential-Financial-Disclosure-Report/>
- Nominee and New Entrant 278 Guide
<http://www.oge.gov/Financial-Disclosure/Public-Financial-Disclosure-278/Nominee-and-New-Entrant-278-Guide/Nominee---New-Entrant-278-Guide/>

- Public Financial Disclosure: A Reviewer's Reference
<http://www.oge.gov/Financial-Disclosure/Docs/Financial-Disclosure-Guide/>
- PAS Nominee Ethics Agreement Guide
[http://www.oge.gov/Financial-Disclosure/Docs/PAS-Nominee-Ethics-Agreement-Guide-\(PDF\)/](http://www.oge.gov/Financial-Disclosure/Docs/PAS-Nominee-Ethics-Agreement-Guide-(PDF)/)

Financial Disclosure Review Process to Prevent Conflicts of Interest for High-Level Executive Branch Officials

1. Prospective Nominee Submits a Financial Disclosure Form

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

2. Technical Review

- The technical review sets the stage for the conflicts review; the technical review helps ensure that the individual has 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.

3. Conflicts Review

- 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.

4. Ethics Agreement

- 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.”

5. Financial Disclosure and Ethics Agreement 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 steps identified as necessary.
- Within five days of the President nominating an individual, OGE transmits 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.

6. Monitoring Compliance with the Ethics Agreement

- 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.

7. Annual and Termination Reports Receive Two Levels of Review

- All individuals who have gone through this 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.

Value of this Process to the Ethics Program

- This process ensures that the future, most 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 and the ethics agreements provides the public a clear understanding of what potential conflicts of interest may exist for each individual and reassurance that the conflicts will be addressed.