



NOMINEE ETHICS GUIDE

The U.S. Office of Government Ethics (OGE)
supervises the executive branch ethics program.
OGE works with the 4,500 ethics officials in over
130 agencies to protect the integrity of
the government's operations.

———— **NOMINEE ETHICS GUIDE** ————

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A message from OGE's Director

Congratulations on being considered for nomination by the President. Serving as a federal leader is more than a job, it is an honor—one that comes with responsibilities. You will be subject to a variety of ethics laws and regulations, which come with the potential for criminal, civil, and administrative penalties.



At the heart of the ethics program is the principle that public service is a public trust. Government officials must put the public's interests before their own interests. This bedrock principle is an easy one to appreciate, but the complex ethics requirements that flow from it are not necessarily intuitive. They represent numerous policy choices by Congress, Presidents, and federal agencies over the years. You will need to build a working knowledge of these requirements, so you can spot potential issues and seek help from your agency's ethics officials when you need it.

“At the heart of the ethics program is the principle that public service is a public trust.”

Thank you for your willingness to serve your country. I encourage you to make ethics a priority throughout your government service, and I wish you every success.

Handwritten signature of Walter M. Shaub, Jr.

Walter M. Shaub, Jr.
Director

INTRODUCTION

I



what to EXPECT

in the nominee process

- **[Background Check]** You file a Questionnaire for National Security Positions (SF-86) and a supplemental security questionnaire.

The nominee process is just that – a process. Though the sequence may vary, it often includes the following events

- **[Ethics]** You submit a draft public financial disclosure report (OGE Form 278e) through OGE’s electronic filing system (*Integrity*).
- **[Ethics]** Ethics officials review your draft financial disclosure report, ask follow-up questions, and provide instructions for revising the report.
- **[White House]** You provide the White House with your tax returns, draft responses to a Senate Questionnaire, and other information.

- **[Background Check]** The Federal Bureau of Investigation interviews you, and conducts a background investigation.
- **[Ethics]** Ethics officials analyze your revised report for potential conflicts of interest. They prepare an ethics agreement outlining steps you will take to avoid conflicts of interest. You then review the agreement for any factual errors.



- **[Ethics]** OGE preclears (i.e., tentatively approves) your report and ethics agreement.
- **[White House]** White House vetting attorneys review your file and interview you. If your nomination is approved, the White House announces its intent to nominate you. Then, the President nominates you.

- **[Ethics]** You formally file your financial disclosure report and ethics agreement. Then, your agency's Designated Agency Ethics Official (DAEO) certifies the report and provides OGE with an opinion regarding conflicts of interest. Next, OGE's Director certifies the report.
- **[Senate Review]** The White House and OGE transmit your documents to the Senate. Senate committee staffers interview you.
- **[Senate Review]** Within 5 days before your Senate committee hearing, you disclose any income or honoraria earned after the date of your financial disclosure report by filing a letter with the DAEO, who transmits it to the Senate and OGE.
- **[Senate Review]** The Senate committee holds a hearing and takes a vote. Then, the full Senate takes a vote on your nomination.
- **[White House]** If the Senate confirms your nomination, the President may appoint you.
- **[Ethics]** Immediately upon starting in your new position, you request an initial ethics briefing by your DAEO.



— we are here for **YOU**

This complex and challenging process would be daunting for anyone.

The good news is that you are not alone in this process. OGE and your agency's ethics officials will assist you in perfecting your financial disclosure report and executing your ethics agreement.

Your agency's ethics officials will also help you throughout your federal appointment by training you and providing individual guidance on the executive branch ethics rules.

PUBLIC FINANCIAL DISCLOSURE

II

what to gather before you START

Practical tip: The appendix to this guide includes more detailed checklists of what to report.

-
- Earnings by you or your spouse
 - Retirement accounts for you or your spouse
 - Names of your clients
 - Your or your spouse's assets with employers (e.g., stock options)
 - Brokerage and managed account statements
 - Annuities and life insurance (excluding term life)
 - Your dependent child's assets (e.g., college savings plan, UTMA account, etc.)
 - Holdings of trusts for the benefit of you, your spouse, or your dependent child (even if someone else established the trust)
 - Other assets (e.g., stocks, bonds, investment funds, cash, etc.)
 - Liabilities
 - Positions you hold outside the federal government

Before starting on your financial disclosure report, take time to gather the financial information listed here.

five things every NOMINEE

should know

The nominee process can be overwhelming at times. To keep it simple, this section of the guide summarizes basic things every nominee should know.

1. *You need to know what “EIF” means* _____

- One key concept makes filing easier: excepted investment fund (EIF). If an investment fund qualifies as an EIF, you do not need to disclose its underlying holdings. Instead, you disclose the fund’s name and indicate that it is an EIF.
- Publicly traded mutual funds and exchange-traded funds qualify as EIFs.
- Many private equity funds qualify too (unless, for example, they can be acquired only from an employer).
- If an investment fund does not qualify as an EIF, you will need to disclose its underlying holdings.
- To learn more, see the “More on EIF” section in the appendix.

Excepted Investment Fund

An EIF is an investment fund that is...

- 1. Independently managed,*
- 2. “Widely held,” and*
- 3. Either “publicly traded or available” or “widely diversified”*

2. *You may be eligible for a Certificate of Divestiture*

You may be eligible for a Certificate of Divestiture, if ethics officials require you to divest an asset. A Certificate of Divestiture allows you to defer the payment of capital gains tax by reinvesting the proceeds of a sale into “permitted property.” You should be aware of the following:

- The certificate is valid only if obtained before selling an asset.
- You, your spouse, and your minor or dependent child will be eligible to receive certificates after you have become a federal employee.
- A trustee is also eligible when the asset is held in a trust, subject to limitations if ineligible persons are trust beneficiaries.
- The requestor must commit to divesting even if OGE ultimately determines that an asset does not qualify for a certificate.
- “Permitted property” includes U.S. obligations (i.e., Treasuries) and diversified mutual or exchange-traded funds. For this purpose, a fund is diversified if it does not have a stated policy of concentrating in any industry, business, single country other than the U.S., or in the bonds of a single state within the U.S.
- OGE is not able to provide tax advice. Please consult your own tax advisor if you need guidance as to tax matters.

3. *Managed accounts can create conflicts of interest*

Some investors choose managed accounts so they can turn over their investment decisions to professionals. But in the case of senior government officials, managed accounts can lead to criminal conflicts of interest. For this reason, you will likely be required to:

- Divest the account,
- Divest all potentially conflicting assets in the account and direct the manager not to acquire new assets,
- Divest all potentially conflicting assets in the account and direct the manager to acquire only diversified mutual funds and diversified exchange-traded funds, or
- Divest all potentially conflicting assets in the account and direct the manager to obtain your approval before acquiring new assets.

4. *Ongoing financial disclosure requirements apply to appointees*

Filing your nominee report is the beginning, not the end of your ongoing disclosure obligations. During your appointment, you will file:

- Periodic transaction reports (due promptly after any purchase, sale, or exchange of a covered security exceeding \$1,000),
- Annual financial disclosure reports (due each year by May 15), and
- A termination financial disclosure report (due within 30 days of leaving government or moving to a position that does not require public financial disclosure).

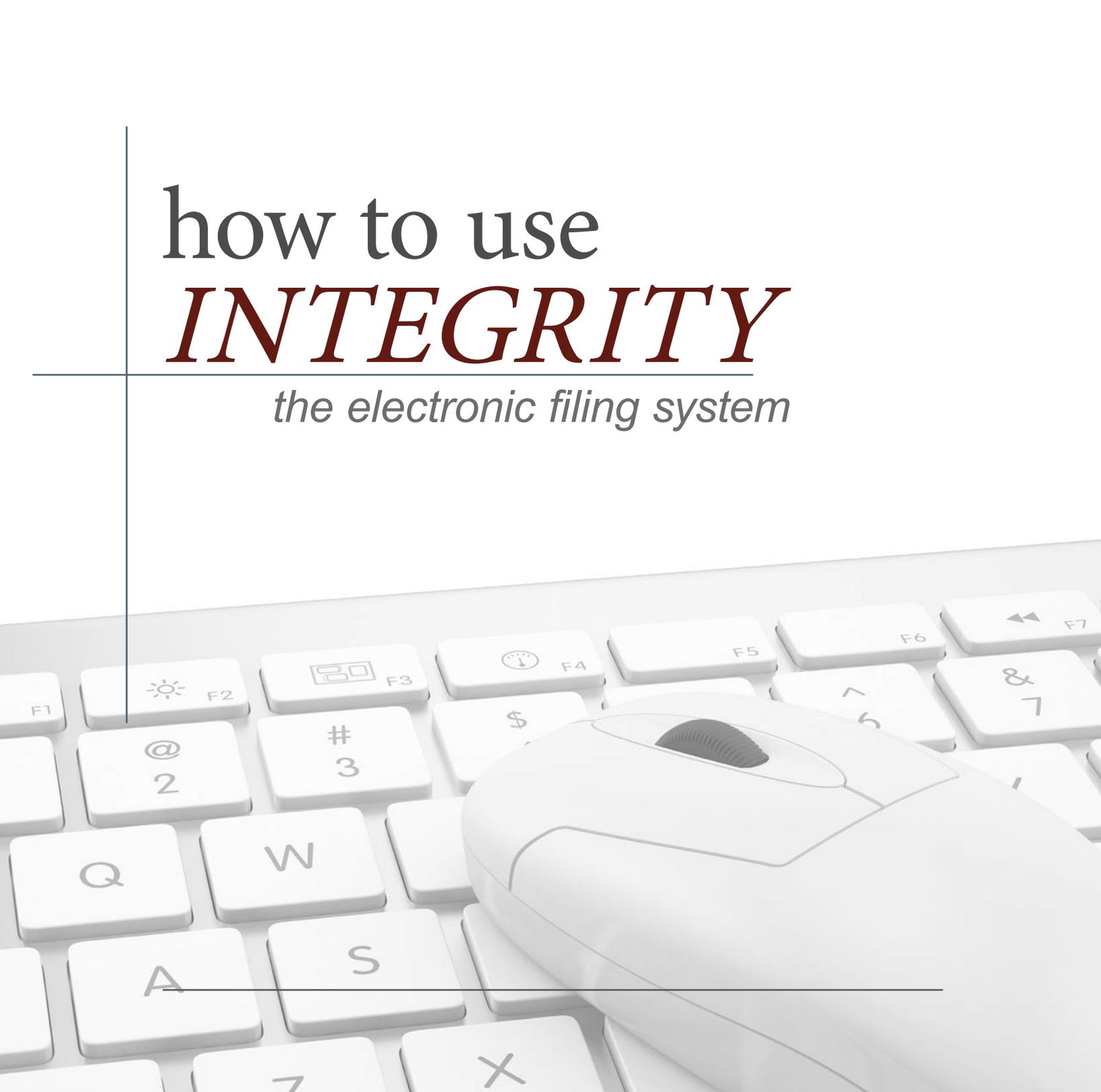
To learn more, see the “Ongoing Financial Disclosures” section in the appendix.

5. *Public means public*

Your financial disclosure report is available upon request, in its entirety, to the public for six years. For that reason, you should avoid disclosing unnecessary sensitive information in your report.

DO NOT DISCLOSE:

- **Your child’s name**
- **Where your child works**
- **Your spouse’s name**
- **Street addresses**
- **Personal phone numbers**
- **Account numbers**
- **Social Security numbers**



how to use ***INTEGRITY***

the electronic filing system

- 1. Logging into *Integrity***
If you are new to Integrity, the Presidential Personnel Office (PPO) or Presidential Transition Team (PTT) will register you as a filer.

Financial disclosure reports are the primary tool used to identify and resolve potential conflicts of interest between an employee's official duties and his or her private financial interests and affiliations.

- You will then automatically receive an email from notifications@integrity.gov.
- The email will provide a User ID for logging into *Integrity*.
- After following instructions to set a password, you will be able to log in online by going to integrity.gov.

- *Integrity* works best with Google Chrome. Download Google Chrome for free at google.com/chrome. *Integrity* also works with Safari, Firefox, and Internet Explorer (version 9 and above). If you use Internet Explorer 9, be sure to enable Adobe Flash Player.
- You can grant a designee access to your report. Click “Manage My Designees” in the “My Tools” section of *Integrity’s* main page. Then, click “Add a New Designee” and provide your designee’s email. Your designee will receive an email with instructions.



2. *Filling Out Your Financial Disclosure Report*

Integrity provides data entry tables designed to guide you through the report. In some cases Integrity asks a series of questions before adding your responses to certain tables.



- Be sure to read the instructions for each table. The various tables cover different periods of time (i.e., “Reporting Periods”).
- Note that some tables focus specifically on assets and income items that are related to employment or retirement (e.g., salary, stock options, 401(k) holdings, etc.). A separate table near the end of the report focuses more generally on other types of assets and income. The table headings and instructions will indicate what to enter in each table.

3. *Submitting Your Financial Disclosure Report*

After completing a draft report, you will need to submit it to PPO (or PTT).

- Click the word “Submit” in the left side navigation menu.



- Then, scroll to the bottom of the page, and certify your draft.

Submit OGE Form 278e

4. *Revising your report*

After you submit your report, ethics officials will use Integrity’s “comment” feature to ask follow-up questions.

- They will contact you to let you know when they have made comments on your report.
- To see the comments, go to the “Report Data (Summary)” page and click the link to “Comments of Reviewing Officials.”
- There are usually several rounds of questions and revisions, so please respond to questions and revise your report promptly.
- Integrity’s “Change History” section allows you to track all revisions to your report. Click on “Audit Trail” in the left navigation menu, then select “Change History” to see all revisions.

5. *Revising your report*

When OGE has “precleared” your report, your agency’s ethics officials will ask you to sign the ethics agreement they have provided you. Later, they will ask you to log into Integrity again and certify your final report if the President nominates you.

ETHICS LAWS AND REGULATIONS

III



succeed in GOVERNMENT

It would be impossible for this guide to train you fully on ethics, but this section will introduce a few basic concepts. With this overview, you will be able to contact your agency's ethics officials when certain issues arise.

Succeed in government by spotting ethics issues

1. Conflicting Financial Interests

Criminal law prohibits you from participating as a government official in particular matters affecting the financial interests of the following:

- You
- Your spouse
- Your minor child
- A general partner
- Any organization in which you serve as officer, director, trustee, general partner, or employee
- Any organization with which you are negotiating for employment

The concept of participating is not limited to final decisions. It also includes recommendations, deliberations, assigning work, approving funding, and other common activities.

2. *Impartiality*

The ethics rules prohibit you from participating as a government official in any particular matter involving specific parties if you have a “covered relationship” with a party to the matter (or with the representative of a party), whenever a reasonable person would question your impartiality. You have a “covered relationship” with:

- Members of your immediate family
- Members of your household
- Close relatives
- Any individual or organization to whom you provided services in the past year
- Any individual or organization to whom your spouse is currently providing services
- Any organization in which you held a position in the past year or are currently serving as an “active member”
- Certain other individuals and organizations

3. *Gifts*

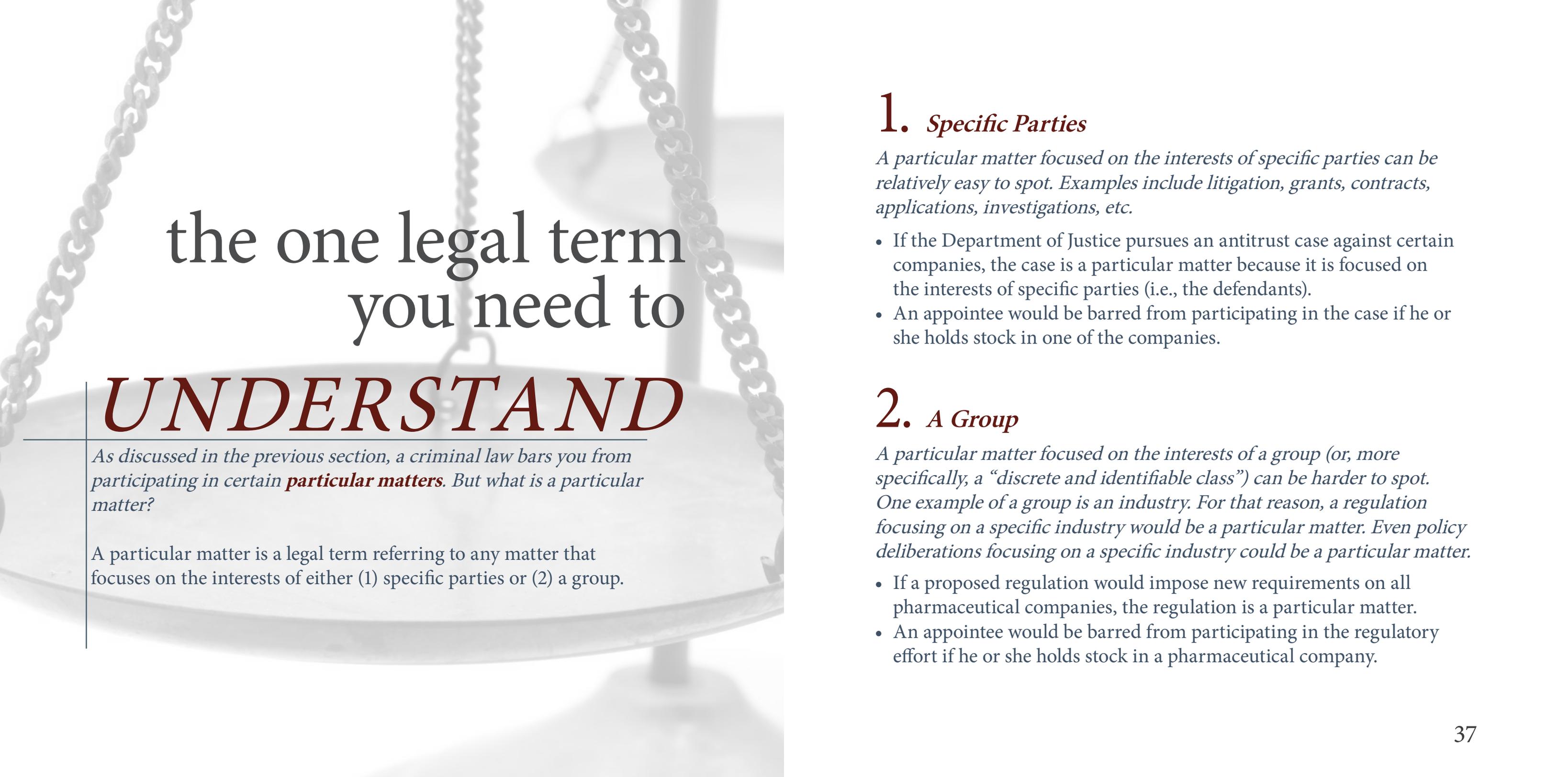
Of all the ethics rules, the gift rules probably cause the greatest culture shock to new appointees. While the gift rules can seem strict, it may help to remember that the standard is not whether a gift would actually influence you. The rules exist partly to avoid even the appearance of inappropriately profiting from your government position.

- The general rule of thumb is that you cannot accept a gift given either because of your official government position or by a prohibited source. OGE’s regulations define “prohibited source” to mean those who do or seek to do business with your agency, those regulated by your agency, and those affected by your agency’s activities.
- You are also prohibited from accepting gifts from other government employees who earn less than you do or who are your subordinates.
- Limited exceptions exist, but you need to consult with ethics officials before relying on them.

4. *Misuse of Position*

You must never misuse your official position to improperly benefit your own private interests or the private interests of another. Government positions, authority, and resources may be used only for officially authorized purposes. Misuse can take many forms, including:

- Helping a former business associate gain access to government decision-makers
- Helping a friend in dealings with the government
- Directing subordinates to perform outside work for you in a personal capacity
- Using government resources for personal pursuits, etc.



the one legal term
you need to

UNDERSTAND

As discussed in the previous section, a criminal law bars you from participating in certain **particular matters**. But what is a particular matter?

A particular matter is a legal term referring to any matter that focuses on the interests of either (1) specific parties or (2) a group.

1. *Specific Parties*

A particular matter focused on the interests of specific parties can be relatively easy to spot. Examples include litigation, grants, contracts, applications, investigations, etc.

- If the Department of Justice pursues an antitrust case against certain companies, the case is a particular matter because it is focused on the interests of specific parties (i.e., the defendants).
- An appointee would be barred from participating in the case if he or she holds stock in one of the companies.

2. *A Group*

A particular matter focused on the interests of a group (or, more specifically, a “discrete and identifiable class”) can be harder to spot. One example of a group is an industry. For that reason, a regulation focusing on a specific industry would be a particular matter. Even policy deliberations focusing on a specific industry could be a particular matter.

- If a proposed regulation would impose new requirements on all pharmaceutical companies, the regulation is a particular matter.
- An appointee would be barred from participating in the regulatory effort if he or she holds stock in a pharmaceutical company.

breadth of ethics *LAWS & REGULATIONS*



The breadth of ethics laws and regulations

A wide range of ethics laws and regulations apply to appointees, and many of them come with criminal, civil, or administrative penalties. It would not be possible to list them all here, but we can illustrate their breadth by listing the following examples:

- Representing others before the government
- Participating in certain matters affecting a prospective employer with which you are seeking, or negotiating for, employment
- Engaging in certain fundraising activities
- Receiving outside earned income
- Receiving compensation for teaching, speaking, or writing related to official duties
- Permitting the use of your name in the name of a law firm or other entity that provides services involving fiduciary relationships
- Engaging in compensated service on a board of directors
- Receiving (or paying) a share of compensation for representational services performed by anyone in a particular matter in which the United States is a party or has a direct and substantial interest
- Engaging in certain communications with (or appearances before) the government after terminating government service
- Receiving (or paying) a supplementation of government salary
- Accepting bribes or illegal gratuities

PREPARE FOR YOUR
APPOINTMENT

IV



being an ethical *LEADER*

Now is the time to think about the message you want to send when you begin your federal service. As a senior leader, you will play a key role in your agency's ethical culture. Here are a few ways to make ethics a priority:

- Schedule an initial ethics briefing right away
- Comply with your ethics agreement on time
- Complete your new employee and annual ethics training on time
- File your financial disclosure reports on time
- Monitor your financial interests for possible conflicts of interest
- Communicate your agency's core values and foster an ethical culture
- Invite ethics officials to speak for a few minutes at the beginning of senior staff meetings
- Ensure that your agency's ethics office has the leadership support and staffing resources it needs



initial ethics

BRIEFING

Ethics

Schedule your initial ethics briefing

When you begin your government service, you should request an initial ethics briefing. Ask your agency's ethics officials to go over these items:

- Conflicts of interest created by any financial interests you acquired after completing your nominee financial disclosure report
- Your recusal obligations under the criminal conflict of interest laws and the Standards of Conduct
- How to implement your ethics agreement
- Deadlines for filing your financial disclosure reports
- Your eligibility for Certificates of Divestiture
- The deadline for attending annual ethics training

Visit OGE's website:

www.oge.gov

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UNITED STATES OFFICE OF
GOVERNMENT ETHICS



Preventing Conflicts of Interest
in the Executive Branch