



July 18, 2024  
PA-24-03

PROGRAM ADVISORY

TO: Designated Agency Ethics Officials

FROM: Shelley K. Finlayson  
Acting Director

SUBJECT: Listing Information about Individuals Granted Certain Conflict of Interest  
Waivers

The U.S. Office of Government Ethics (OGE) is issuing this Program Advisory to announce its plan to list information about individuals who receive conflict of interest waivers (waivers) issued under 18 U.S.C. § 208(b)(1) in its [Officials' Individual Disclosures Search Collection \(Collection\)](#).<sup>1</sup> This Advisory describes why, how, and when OGE will make this information available, and reminds agencies that they may withhold from public disclosure information that would be exempt from disclosure under the Freedom of Information Act (FOIA). This Advisory also provides information about compliance with the Privacy Act, and reminds agencies about the requirement to consult, when practicable, with OGE on such waivers and to timely provide OGE with copies of issued waivers.

**Effectuating Existing Transparency Requirements**

In drafting the primary financial conflict of interest law, 18 U.S.C § 208, Congress made clear that waivers can be made available to the public, upon request, from the issuing agency using the process described in the Ethics in Government Act at 5 U.S.C. § 13107.<sup>2</sup> Specifically, 18 U.S.C. § 208(d)(1) states:

Upon request, a copy of any determination granting an exemption under subsection (b)(1) or (b)(3) shall be made available to the public by the agency granting the exemption pursuant to the procedures set forth in section 13107 of title 5. In making such determination available, the agency may withhold from disclosure any

---

<sup>1</sup> OGE recently added a routine use to the OGE/GOVT-1 Governmentwide system of records which permits OGE, as well as agencies, to post on their websites information regarding individuals who have received a conflict of interest waiver pursuant to 18 U.S.C. § 208. *See* U.S. OFF. OF GOV'T ETHICS, OGE/GOVT-1, SYSTEM OF RECORDS NOTICE: EXECUTIVE BRANCH PERSONNEL PUBLIC FINANCIAL DISCLOSURE REPORTS AND OTHER NAME-RETRIEVED ETHICS PROGRAM RECORDS (2024). Note: OGE may in the future list the names of individuals who receive 18 U.S.C. § 208(b)(3) waivers.

<sup>2</sup> *See* 18 U.S.C. § 208(d)(1).



information contained in the determination that would be exempt from disclosure under section 552 of title 5. For purposes of determinations under subsection (b)(3), the information describing each financial interest shall be no more extensive than that required of the individual in [their] financial disclosure report under chapter 131 of title 5.

Although these waivers are already required to be released upon request by the issuing agency using the process described in 5 U.S.C. § 13107, currently the public has no way to identify who has received a waiver in order to submit such a request. Therefore, to effectuate the transparency and public access required under the statute, OGE will begin posting certain identifying information about individuals who receive waivers issued under 18 U.S.C. § 208(b)(1) in its Collection on OGE's website. The Collection will list the waiver recipient's first and last name, their official position if they are a political appointee, the type of waiver issued, and the name of the employing agency. The Collection will also direct the public to request the waiver from the issuing agency by providing a link to the [Agency Ethics Program Contact Information](#) webpage. OGE will begin to list the names of individuals whose waivers OGE receives on or after August 22, 2024.

OGE listing the names of 18 U.S.C. § 208(b)(1) waiver recipients on its website does not alter the authority or responsibility of the issuing agency to release a waiver, subject to authorized redactions, or to maintain the official record.<sup>3</sup> Within an agency, the office responsible for responding to [Requests for an Individual's Ethics Documents \(OGE Form 201\)](#) is responsible for fulfilling the request. OGE reminds agencies that pursuant to 18 U.S.C. § 208(d)(1) and 5 C.F.R. § 2640.304(b)(1) they may withhold from public disclosure any information contained in a waiver that would be exempt from disclosure pursuant to the FOIA. Agency ethics officials are encouraged to consult with their FOIA office to determine what redactions are appropriate under these authorities and the FOIA.

### **Reminder Regarding Privacy Act Statements**

Please note that the information in these waivers continues to be Privacy Act-protected information.<sup>4</sup> As such, individuals providing this information must receive a Privacy Act statement at the time the information is collected.<sup>5</sup> To that end, agencies are reminded that they should continue to work with their Privacy Office to ensure that proper notification is provided. To assist agencies, OGE has attached to this Program Advisory a Privacy Act statement your agency may use.

### **Consultation with and Providing a Copy of Issued Waivers to OGE**

OGE reminds agencies that they should continue to consult, when practicable, with OGE prior to issuing a waiver under 18 U.S.C. § 208.<sup>6</sup> Agencies must also timely send OGE copies of any waivers they issue, as well as the names of waiver recipients, when a waiver is issued either

---

<sup>3</sup> *Id.*

<sup>4</sup> *See* 5 U.S.C. § 552a.

<sup>5</sup> *See id.* § 552a(e)(3).

<sup>6</sup> 5 C.F.R. § 2640.303.

to an individual or a class of individuals.<sup>7</sup> OGE will list the name of the waiver recipient(s) to its website after it has received a copy of the waiver that has been issued.

Agency ethics officials who have questions about this Program Advisory may contact their OGE Desk Officer.

Attachment

---

<sup>7</sup> *Id.*

## *Privacy Act Statement*

*Individuals seeking a conflict of interest waiver pursuant to 18 U.S.C. § 208 must provide this information in order for their request for a waiver to be considered. The information will be reviewed by government officials to determine whether the issuance of such a waiver is justified under the particular circumstance. The information will also be used to permit transparency with regard to waivers issued.*

*Failure to provide the requested information may result in the denial of the waiver or the revocation of a previously granted waiver. Pursuant to 18 U.S.C. § 208(d)(1), waivers may be released to the public upon a proper request to the issuing agency (which is the agency at which the waiver recipient is employed). The waiver recipient's first and last name, government position, the type of waiver issued, and name of the employing agency may be publicly posted to the Office of Government Ethics website or the employing agency's website, in accordance with [OGE/GOVT-1](#), Executive Branch Personnel Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records (routine uses "b" and "c"). Please see [OGE/GOVT-1](#) for more information about the maintenance and disclosure of this information.*