Public Financial Disclosure:
A Reviewer's Reference

Second Edition

U.S. Office of Government Ethics

TABLE OF CONTENTS

1.0 INTRODUCTION 1-1
- 1.1 Using this Manual 1-2
- 1.2 Overview of the Office of Government Ethics 1-5
- 1.3 Bases for Financial Disclosure 1-6

PART I: THE REVIEW PROCESS

2.0 THE DISCLOSURE SYSTEM 2-1
- 2.1 Officials Required to File 2-2
- 2.2 Reporting Forms 2-10
- 2.3 Types of Reports and Filing Deadlines 2-11
- 2.4 Extensions 2-14
- 2.5 Late Filing Fee 2-16
- 2.6 Filing Penalties 2-20

3.0 REPORT CONTENTS 3-1
- 3.1 The Cover Page 3-2
- 3.2 Applicable Schedules and Reporting Periods 3-6
- 3.3 Schedule A: Assets and Income 3-7
- 3.4 Schedule B, Part I: Transactions 3-17
- 3.5 Schedule B, Part II: Gifts, Reimbursements, Travel 3-21
- 3.6 Schedule C, Part I: Liabilities 3-26
- 3.7 Schedule C, Part II: Agreements or Arrangements 3-28
- 3.8 Schedule D, Part I: Positions Held Outside Government 3-29
- 3.9 Schedule D, Part II: Sources of Compensation Over $5,000 3-31

4.0 REVIEW PROCEDURES 4-1
- 4.1 Basic Procedures 4-2
- 4.2 Tools of Review 4-4
- 4.3 Obtaining Additional Information 4-5
- 4.4 Certification Requirements 4-12
- 4.5 Public Availability and Retention 4-13
- 4.6 Forwarding Reports to OGE 4-16

5.0 RESOLVING CONFLICTS OF INTEREST 5-1
5.1 Ethics Agreements 5-2
5.2 Disqualification 5-4
5.3 Waivers & Exemptions 5-6
5.4 Reassignment 5-13
5.5 Divestiture or Resignation 5-14
5.6 Qualified Trusts 5-19
5.7 Other Financial Arrangements 5-21
5.8 Processing Ethics Violations 5-22

PART II: REVIEWING COMMON ENTRIES

6.0 EMPLOYMENT, OWNERSHIP, AND OUTSIDE ACTIVITIES 6-3
6.1 Business Ownership and Employment Relationships 6-4
6.2 Law Firms 6-19
6.3 Farm Assets and Income 6-26
6.4 Honoraria 6-29
6.5 Outside Positions 6-32

7.0 INVESTMENT VEHICLES 7-1
7.1 Excepted Investment Funds 7-2
7.2 Defined Benefit & Defined Contribution Plans 7-6
7.3 Individual Retirement Accounts (IRAs) 7-15
7.4 Annuities 7-17
7.5 Life Insurance Policies 7-20
7.6 Investment Clubs 7-23
7.7 Trusts and Estates 7-27
7.8 Prepaid Tuition Plans 7-33

8.0 INVESTMENTS 8-1
8.1 Bank and other Cash Accounts 8-3
8.2 Corporate Securities 8-8
8.3 Government Securities 8-15
8.4 Mutual Funds and Unit Investment Trusts 8-21
8.5 Limited Partnerships 8-27
8.6 Futures and Options 8-32
8.7 Real Estate and Mortgage Investments 8-36
8.8 Collectibles, Metals, and Intellectual Property 8-43

9.0 GIFTS 9-1
9.1 Non-Travel Gifts 9-2
9.2 Travel-Related Gifts and Reimbursements 9-8

10.0 LIABILITIES AND FUNDS RECEIVABLE 10-1
10.1 Liabilities 10-2
10.2 Funds Receivable 10-8

PART III: APPENDIXES

11.0 FEDERAL ETHICS LAWS AND REGULATIONS IN BRIEF 11-1
11.1 Criminal Conflict of Interest Statutes 11-3
11.2 Standards of Conduct Regulations 11-10
11.3 Other Conflict of Interest Provisions 11-22
11.4 Special Limitations on Senior Noncareer Employees 11-24

12.0 PROCESSING PRESIDENTIAL NOMINEE REPORTS 12-1

13.0 SF 278 CASE STUDIES 13-1
13.1 Case 1: You Are the Filer 13-2
13.2 Case 2: You Are the Reviewer 13-10

14.0 MODEL DOCUMENTS 14-1
14.1 Notification of Filing Requirement 14-2
14.2 Cautionary Letter 14-4
14.3 Model Ethics Agreement 14-6
14.4 Recusal Letter 14-9
14.5 Screening Arrangements 14-12
14.6 Model 18 U.S.C. §208(b)(l) Waiver 14-15
14.7 Agency Procedures for Collection and Review of SF 278s 14-18
14.8 SF 278 Review Checklist 14-25

15.0 SAMPLE FORMS 15-1

16.0 REFERENCE MATERIALS 16-1
16.1 Abbreviations 16-3
16.2 Glossary 16-5
16.3 Index 16-11

November 2004

The Office of Government Ethics originally developed this reference manual in March 1994. We are pleased to reissue it now, with all changes that have been made to date.

This manual's purpose is to ensure the consistent, comprehensive and accurate review of executive branch employees' public financial disclosure reports. It aims to increase Government efficiency by providing uniform guidance and interpretation to agency ethics officials.

We have designed this guide primarily for the beginning and intermediate-level reviewer. The detailed summaries of review procedures and optional model documents should ease administration of the financial disclosure system. As you use this reference manual, you may have suggestions for revision. We welcome your ideas and urge you to contact us.

While this book provides a needed resource for ethics counselors, your review work must stand on your own judgment and analysis. The intention is not to create additional requirements but to specify the boundaries within which conflict of interest analysis may occur. Financial disclosure review should not be limited to satisfying technical disclosure requirements. Rather, ethics officials must focus on the research and analysis necessary to identify and resolve conflicts of interest.

The efforts of agency ethics officials, together with the Office of Government Ethics, are crucial in achieving the goals of maintaining the Government's integrity and fostering excellence in public service. This guide will play a significant role in that process.

1.0 INTRODUCTION

The Ethics in Government Act of 1978, as amended, requires senior officials in the executive, legislative and judicial branches to file public reports of their finances as well as other interests outside the Government. The statute and the Office of Government Ethics's (OGE) regulations specify which officials in the executive branch file a Standard Form 278 (SF 278). Unlike confidential financial statements filed by some mid-level employees, the SF 278 is available to the public. Reviewing officials within each agency certify and maintain these reports. Agencies do, however, forward reports of Presidential appointees requiring Senate confirmation and certain other reports to OGE for additional review and certification.

Although a financial disclosure report sometimes reveals a violation of law or regulation, the primary purpose of disclosure is to assist agencies in identifying *potential* conflicts of interest between a filer's official duties and her private financial interests and affiliations. Once a reviewing official identifies a potential conflict of interest and consults with the filer's supervisor as necessary, several remedies are available to avoid an actual or apparent violation of Federal ethics laws and regulations.

A Caveat: Uses and Misuses

OGE has developed this reference manual on public financial disclosure for use by ethics officials at executive branch agencies. While it is a comprehensive reference, the statutes and regulations serve as the ultimate authorities. **If this *Reference's* language and format differ from the underlying statutes, regulations, or the instructions accompanying the standard reporting form, then reviewers must follow those primary sources.** Other cautions:

- All of the forms in Chapters 1 through 10 are sample forms only and they may have been altered to focus on particular aspects of disclosure review. Filers may use only the official standard forms.
- This work does not directly offer advice on Confidential Financial Disclosure Reports (OGE Form 450). Reviewers of the confidential form may, however, find the detailed information in *Part II: Reviewing Common Entries* to be a useful supplement to *OGE Form 450: A Review Guide* (September 1996).
- While some examples use the names of actual investment companies or funds, OGE expresses no opinion about the quality of any specific private entity or investment.

1.1 USING THIS MANUAL

This manual is divided into three major parts that provide the most commonly used financial and legal background information necessary to review an SF 278, the Executive Branch Public Financial Disclosure Form. The first part provides an overview of the entire system. The second part focuses on distinct types of holdings and explains how they are disclosed and analyzed. The third part provides a list of abbreviations, a short glossary, an index, several suggested form letters, guides, and other information.

More experienced reviewers may wish to use the table of contents and index to find the sections in which they are particularly interested. This *Reference* organizes the details of OGE's policies and practice in one work. For example, *Section 4.3: Obtaining Additional Information* discusses more than two dozen common assumptions that OGE makes when reviewing SF 278s, which help eliminate unnecessary follow-up with filers.

Persons new to financial disclosure may find that the first section provides a useful general orientation to the area. In addition, new reviewers may find basic descriptions of investments and investment vehicles in chapters 7 and 8 to be especially helpful.

Many sections of this manual contain cross-references and some repetition of information. This repetition is intentional; it will allow this manual to be used as a reference resource as specific questions arise on financial disclosure, review procedures, or conflicts of interest.

GLOSSARY ENTRIES

Readers may notice an occasional phrase in SMALL CAPITALS. This sign indicates terms that are included in the glossary at the end because they have specific meanings that are unique to disclosure review. Phrases in italics often indicate relevant cross-references.

Citations

Citations to applicable statutes, regulations, and executive orders, along with references to selected interpretive opinions, appear in the margins. These citations are intended to direct researchers toward sources of further information. In addition, OGE encourages reviewers to research other relevant OGE opinions for guidance.

5 U.S.C. App. §

- The Ethics in Government Act of 1978, as amended by the Ethics Reform Act of 1989, and various other provisions are codified in Title 5 of the *United States Code* in an appendix. Citations herein to "5 U.S.C. App. {section number}" are to the U.S. Code appendix containing the Ethics in Government Act of 1978.

Pub. L. _ - _

- Public laws may be cited as an alternate source for statutes. The citation is Pub. L. (number of Congress)-(page number).

E.O.12674 §

- Citations to Executive Order 12674 of April 12, 1989 "Principles of Ethical Conduct for Government Officers and Employees," as modified by Executive Order 12731 of October 17, 1990, 3 C.F.R., 1990 Compilation, pp. 306-311 are abbreviated "E.O. 12674."

5 C.F.R. §

- Unless otherwise noted, the Office of Government Ethics issued the regulations referenced. They are in Title 5, Chapter XVI, of the *Code of Federal Regulations*. The Standards of Ethical Conduct for Employees of the Executive Branch (5 C.F.R. part 2635) are referred to as the "Employee Standards of Ethical Conduct" or the "Standards of Conduct."

__FR____ (__)

- All regulations were initially published in the *Federal Register,* listed as [volume number] FR [page numbers] (date of publication).

OGE__x__
__OGE__

- Formal and Informal opinions of the Office of Government Ethics are compiled in *The Informal Advisory Letters and Memoranda and Formal Opinions of the United States Office of Government Ethics.* The informal opinion citation is: OGE [year] x [opinion number], while the formal opinion citation is: [year] OGE [number].

OGE DAEOgram
of ___

- OGE periodically issues memoranda, called DAEOgrams, to provide guidance to DESIGNATED AGENCY ETHICS OFFICIALS. These DAEOgrams are often incorporated into OGE's published opinions. DAEOgrams are cited by the date of issuance.

Certain citations to cases outside of OGE's jurisdiction are solely bibliographic in nature. Such citations include those to legislative history, academic works, court cases, and the forms, regulations, and decisions of any Government agency other than OGE.

__F.2d__ (__)
__ U.S. _ (__)

- Decisions by Federal courts are cited using the form: [volume number] F.2d, or U.S., [page number] (court and year).

__ Op. O.L.C. __ (__)

- This citation refers to opinions of the Office of Legal Counsel, Department of Justice. The citation form is [volume number] Op. O.L.C. [page number] (year of opinion).

__ M.S.P.R. __ (__)

- The *Merit Systems Protection Reporter* compiles the decisions of the Merit Systems Protection Board. The citations use the form: [volume number] M.S.P.R. [page number] (year).

Many of the sources cited in this guide, in addition to being available in collected volumes, are accessible through one or more electronic research services, such as LEXIS, or WESTLAW.

OGE as a Contact Point

When complex issues arise in connection with financial disclosure, reviewers should first contact ethics officials at their own agency. If questions persist, they should contact OGE through their agency's OGE desk officer.

Comments on This *Reference* Manual

We Welcome Your Comments

As agency ethics officials become familiar with this *Reference,* they are **strongly encouraged to direct comments and suggestions to OGE.** Constructive ideas will be useful in revising or improving both the contents and the format of this publication. For comments sent via e-mail, the subject line should indicate that the note includes comments on this *Reference.*

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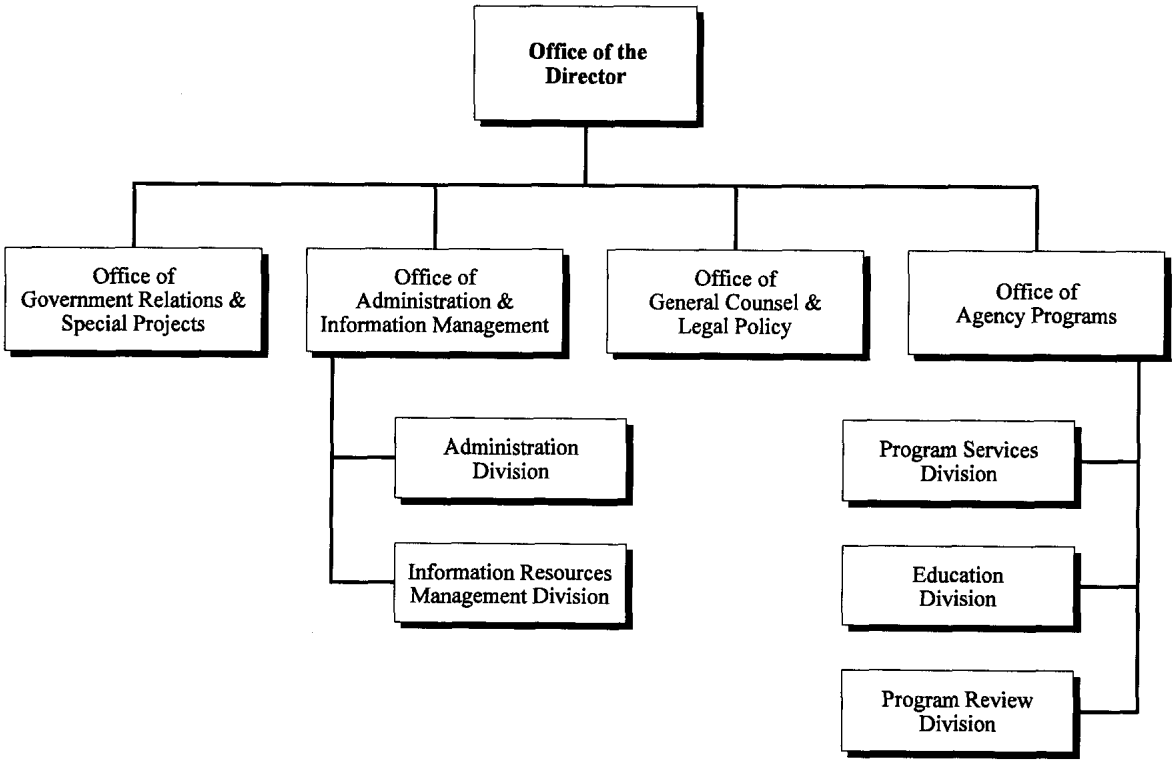
1.2 OVERVIEW OF THE OFFICE OF GOVERNMENT ETHICS

While originally part of the Office of Personnel Management (OPM), the Office of Government Ethics (OGE) became a separate agency in the executive branch in 1989. OGE provides overall direction for policies related to preventing conflicts of interest on the part of officers and employees of the executive branch. The chart below summarizes the organization of OGE's offices.

Office of Government Ethics

Organizational Chart



1.3 BASES FOR FINANCIAL DISCLOSURE

Statutes

5 U.S.C. App. (Ethics in Government Act of 1978)

Two major laws, the Ethics in Government Act of 1978 and the Ethics Reform Act of 1989, create the statutory framework for financial disclosure.

Since 1979, the Ethics in Government Act has required senior executive branch employees to file public financial disclosure reports.

Pub. L. 101-194 as amended by Pub. L. 101-280

Title II of the Ethics Reform Act of 1989 substantially revised the Ethics in Government Act's financial disclosure requirements, effective January 1, 1991. The Ethics Reform Act merged the public financial disclosure requirements for all three Government branches into Title I of the Ethics in Government Act. In addition to extensive technical amendments, other amendments to Title I have made minor adjustments. Always consult the pocket part to 5 U.S.C. App. for the most current statutory text on financial disclosure requirements.

Regulatory Guidance

5 C.F.R. part 2634

OGE first published executive branch-wide regulations implementing the public financial disclosure system in 1980 at 5 C.F.R. part 734. Effective December 5, 1989, OGE redesignated these regulations as 5 C.F.R. part 2634. On April 7,1992, OGE issued revised regulations to implement the Ethics Reform Act of 1989. (Since 1992, OGE has issued various minor changes to these regulations, which now appear in the C.F.R.).

Agency Summaries

5 C.F.R. §2634.103

Some agencies have developed summaries of this system or issued internal directives. At a minimum, they are required by law to have internal written *procedural* guidance on financial disclosure. Agencies may issue such internal documents without consulting OGE, provided that they are consistent with OGE's regulations (see *Section 14.7: Agency Procedures for the Collection and Review of SF 278s* for a model). Any supplemental regulations, however, require OGE's concurrence.

Purpose of Financial Disclosure

The theory of public financial disclosure is rooted in post-Watergate concepts of "Government in the Sunshine," which aims to promote public confidence in the integrity of Government officials. While some disclosure elements may seem more relevant to avoiding conflicts of interest than others, OGE has no authority to alter the statutory requirements.

OGE's regulation and the SF 278 format must reflect the law's mandates and its dual purpose:

- avoiding conflicts of interest through reviewer analysis of disclosures, and
- ensuring public confidence in Government through disclosure as an end in itself.

An understanding of these goals will help ensure the full cooperation of those whom the law requires to file SF 278s, so that their reports are accurate, complete, and timely. It also underscores for reviewers the vital importance of their task.

PART I:

THE REVIEW PROCESS

2.0 THE DISCLOSURE SYSTEM

This chapter summarizes the procedural aspects of the public financial disclosure system (see *Section 14.7: Agency Procedures for Collection and Review of SF 278s*, for a model of an agency public financial disclosure system). This chapter also describes some of the duties of the ethics official within the financial disclosure process.

Notification

Ethics officials must determine who meets the filing criteria and must maintain a current list of filers. Agencies should notify filers of the requirements and provide the necessary forms well in advance of the applicable filing deadline.

Nominee Reports

Reviewers must review, certify, and forward to OGE reports of persons whom the President nominates for positions that require Senate confirmation (PAS EMPLOYEES). Certification by the DAEO is non-delegable. These reports come through the White House and receive priority in the review process (see *Chapter 12*).

Extensions of Due Dates

Each agency specifies who can receive, evaluate, and grant or deny requests for filing extensions, for up to 45 days. An agency may grant an additional extension of up to 45 days.

Receipt

The reviewer must ensure that reports are marked or stamped with the date of receipt by the agency.

Collection of Late Reports and Fees

Reviewers must collect reports from delinquent filers. Filers must pay a $200 late filing fee for reports they file more than 30 days late.

Review, Counseling, and Certification

Within the 60 days after receipt, reviewers must complete an initial review of the report, begin any necessary conflict of interest counseling and determine if any ethics agreements are required. An ethics official must certify each report in the "Agency Ethics Official's Opinion" block upon satisfactory completion of review.

Forwarding to OGE

After agency certification, the agency must send the DAEO's SF 278 report, reports of PAS officials and certain other reports to OGE. Incumbent reports are due at OGE immediately after agency certification.

Availability and Retention

Within 30 days of receipt, agencies must make reports publicly available upon request. Agencies must retain reports for 6 years.

2.1 OFFICIALS REQUIRED TO FILE

5 U.S.C. App. § 101
5 C.F.R. § 2634.202

Employees in statutorily-specified positions must file the SF 278. In general, these positions require the exercise of significant policy-making and command discretion. For example, the President, Vice President, candidates for the Presidency and Vice Presidency, the Director of OGE, certain commissioned White House appointees and senior postal service employees must file. Additionally, in each agency the following employees, including SPECIAL GOVERNMENT EMPLOYEES, serve in "covered" positions that require the filing of public financial disclosure reports:

Positions in Most Agencies
OGE 81x22

- Employees in senior positions under a pay system other than the General Schedule, such as the Senior Executive Service or an agency pay schedule, must file when their positions' rate of basic pay (not including locality pay) is equivalent to or greater than 120% of the minimum rate of basic pay for GS-15. A position's rate of basic pay is the amount authorized for the lowest step of the position's pay grade. As of January 2004, the triggering rate (120% of GS-15-01) is $104,927/year; for part-time employees, this converts to $50.28/hour [base ÷ 2087 hrs per year, under standard personnel practices]; or $402.24/day [$50.28/hr x 8 hrs].

- Employees who serve in positions classified above GS-15 under the General Schedule.

- Uniformed officers paid at or above pay grade O-7. This does not include "frocked" O-7's who wear the rank but do not receive the pay.

- SCHEDULE C and other civilian employees, regardless of pay grade, whose positions are excepted from the competitive service because of their confidential or policy-making character.

Ethics Officials

- Each agency's primary DESIGNATED AGENCY ETHICS OFFICIAL, regardless of pay grade. Other ethics officials need file only if they are in another specified category.

Presidential Nominees

- Presidential nominees requiring Senate confirmation (PAS) (regardless of pay grade). [Uniformed and Foreign Service nominees file only if they are in another specified category].

- All administrative law judges.

While the statute does specify most positions that require filing, it also provides Senate confirmation committees, OGE, and the agencies some discretion to expand or narrow the class of filers, as discussed in the following subsections.

Employees Serving 60 Days or Less

5 U.S.C. App. § 101(d) & (h)
5 C.F.R. § 2634.201(a) & § 2634.204

Employees who work in a position for 60 days or less in a calendar year, such as some SPECIAL GOVERNMENT EMPLOYEES (SGEs) and persons assigned in an acting capacity, need not file an incumbent SF 278 for that year. Also, a regular employee who enters a covered position with less than 60 days left in the calendar year need not file an annual report for that year, but does file a new entrant report. For example, a regular employee who enters a covered position on November 15, 2003, files a report by December 15, but does not have to file an annual report in May 2004.

Agencies should determine whether they reasonably expect employees assigned in an acting capacity and SGEs (except PAS SPECIAL GOVERNMENT EMPLOYEES, for whom OGE makes the determination) to work for more than 60 days in *any* calendar year when the individual assumes a covered position. If they are not expected to exceed the 60-day threshold, no new entrant report is required at that time. Agencies need not inform OGE of such decisions but must record them in their own files.

5 C.F.R. § 2634.905
OGE DAEOgram of February 15, 2000

SGEs exempted from the SF 278 requirement must file a new entrant OGE Form 450 confidential report, regardless of days served, unless they are exempted from filing by agency determination.

Employees Who Actually Work Over 60 Days

If an employee has initially been exempted from public filing but does work more than 60 days in a calendar year, the employee must file a new entrant report within 15 days after the 60th day. She should also file any subsequent incumbent and termination reports.

PAS Employee Filing Exemption

The Director of OGE will exempt a nominee to a PAS position from filing if the Director determines that the individual is not reasonably expected to perform the duties of the position for more than 60 days in any calendar year. The Director makes this determination based on information from the employee's agency. Some Senate committees, however, require a nonpublic SF 278 under their own statutory authority to require information as a condition of confirmation (see *Chapter 12: Processing Presidential Nominee Reports*).

Day-Counting Rules for the 60-day Threshold

For part-time employees and SGEs, agencies should count days on which they *actually worked.* If a part-time employee works a part of a day, or on a Saturday, a Sunday, or a holiday, then that day counts as one day in determining the number of days worked. For full-time employees, agencies should count *consecutive calendar days of assignment to the position,* including weekends and holidays.

Additional Designations by the Director of OGE

5 U.S.C. App. § 101(f)(3)
5 C.F.R. § 2634.202(c)

The Director of OGE may designate additional positions for filing SF 278s if OGE determines that those positions are equivalent to others that normally require filing. OGE uses this authority to account for employees with unusual status. While salary levels usually define the class of filers, the level of an employee's responsibility, not pay, actually determines who must file. Only the Director of OGE may determine whether a particular employee bears responsibilities equal to other filers. An agency that wishes the Director to designate a position for filing must submit a written request providing a basis for this determination.

Exclusions for Non-policy-making Schedule C Positions

5 U.S.C. App. § 101(f)(5)
5 C.F.R. § 2634.203

At the request of agencies, the Director of OGE routinely excludes politically-appointed administrative support positions from SF 278 filing. The authority extends to SCHEDULE C and other civilian positions that:

- are excepted from the competitive service because of its confidential character *and*
- are classified at or below GS-15 or whose rate of basic pay outside the General Schedule (lowest step) is below 120% of the rate of pay for GS-15-01.

Required Determination

OGE exempts a position if it determines that the exemption would not adversely affect the integrity of the Government or the public's confidence in the integrity of the Government *because the position has no policy-making or advising role of a programmatic nature.* OGE distinguishes between positions with programmatic policy aspects such as confidential assistants and those without policy aspects, such as secretaries. The exemption applies to all employees who fill that position unless and until the duties of that position change.

Exemptions Automatic Upon Request but Subject to OGE Review
5 C.F.R. § 2634.203(c)(l)

Agencies desiring exemptions must submit a written request to the Director of OGE that includes the position title and a copy of the position description. An exemption is effective upon the agency's written request to OGE; however, that request should be submitted before the due date for the report the employee would otherwise file. If OGE denies a request, it will set a due date for filing the SF 278, normally 30 days from the date of the denial. An agency may request reconsideration of a denial by submitting an amended position description or other additional materials.

Special Government Employees

OGE DAEOgram of February 15, 2000

SPECIAL GOVERNMENT EMPLOYEES (SGEs) fall under the same criteria for filing SF 278s as other regular Government employees. If they meet the pay conditions for public filing and work more than 60 days in a calendar year, then they must file new entrant, annual, or termination SF 278s, as appropriate. Additionally, any prospective SGE who is nominated by the President to a position requiring Senate confirmation, regardless of pay level or expected number of service days, may be required by the confirming committee to file an initial "nominee" report. (See *Chapter 11: Federal Ethics Laws and Regulations in Brief* for guidance on the reduced applicability of some ethics laws and regulations in the case of SGEs).

SGEs Not Filing SF 278s Usually File an OGE Form 450

5 C.F.R. Part 2634, Subpart I

Generally, any SGE who does not file an SF 278 must file a confidential financial disclosure report (OGE Form 450). For new entrant confidential reports, SGEs must file their reports no later than 30 days after assuming their position or office, or no later than the first committee meeting for advisory committee members. If an SGE in a public filer position who was not expected to work more than 60 days in a calendar year actually does work more than 60 days, then she must file a new entrant SF 278 within 15 days after the 60th day.

Special Procedure If the Number of Days to Be Worked Is Unclear

OGE DAEOgram of October 23, 2003

Agency ethics officials may use a special procedure if they do not expect an SGE to work more than 60 days but recognize that it is a possibility. To avoid having the SGE complete both an OGE Form 450 and an SF 278 as a new entrant if she in fact works more than 60 days, the ethics official may wish to offer the SGE the option of completing a modified SF 278 in lieu of the OGE Form 450. The modified SF 278 would only list on Schedule A the assets that meet either the income or asset value reporting requirements, but would not report the values. Also, the filer would only report the general description of any liabilities held on Schedule C, Part I. The modified SF 278 would be treated as confidential and marked "not for public release" unless and until the SGE works more than 60 days in that calendar year. This procedure is acceptable because the SF 278 requires all of the information the OGE Form 450 requires. Within 15 days after the 60th day worked, employees must then update their reports to reflect any change in their finances and add asset, income and liability values and terms. Officials may not compel anyone to use this procedure.

Who is a Special Government Employee?

18 U.S.C. § 202

A special Government employee (SGE) is defined as an officer or employee of the executive branch, of any independent agency of the U.S., or of the District of Columbia, who is retained, designated, appointed or employed by the Government to perform, with or without compensation, for not more than one hundred and thirty days, during any period of three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis. The term also includes a Reserve officer of the Armed forces or an officer of the National Guard while on active duty solely for training, or if serving involuntarily.

Administrative Determination

The definition of SGE focuses on whether the employee was appointed to serve no more than 130 days of any consecutive 365-day period. At the time of appointment, the appointing official must determine whether the employee will be reasonably expected to work more than 130 days in the 365 days after the appointment date. Even if it is apparent, prior to the end of a 365-day period, that an employee was mistakenly classified as an SGE (that is, she actually *did* work more than 130 days in the 365-day period), she is still an SGE for the remainder of that 365-day period.

Filing Waivers for Special Government Employees

5 U.S.C. App. § 101(i)
5 C.F.R. § 2634.205
OGE 79 X 7

In unusual circumstances, the Director of OGE may grant certain SGE filers a waiver of the public availability requirement for their financial disclosure report. This waiver may be granted only if the SGE has neither performed, nor is expected to perform, official duties for more than 130 days in a calendar year. The waiver does not exempt a person from the requirement to file a financial disclosure report; rather, it merely exempts the report from release to the public. (Once a waiver has been granted under the Ethics in Government Act, it will also be exempt from release under the Freedom of Information Act.) The Director may grant the waiver if all of the following four factors exist:

1. the individual is a special Government employee;
2. the individual is able to provide services specially needed;
3. it is unlikely that the individual's outside employment or financial interests will create a conflict of interest; and
4. public disclosure is not necessary under the circumstances.

If an SGE desires a waiver, he must submit his written request to OGE via his agency within 10 days after he:

- learns that his position requires public disclosure and will involve more than 60 days of service or
- works more than 60 days in a covered position despite his plans to work 60 days or less,

whichever is earlier. The request must include a cover letter *as well as* a statement justifying the request and the filer's completed SF 278.

Each request for a waiver from filing an SF 278 must include the following:

Elements of a Filing Waiver Request

1. A cover letter that:
   - provides the employee's name and position;
   - states the approximate number of days in a calendar year which he expects to serve in that position; and
   - requests a waiver of SF 278 filing under 5 C.F.R. § 2634.205.

2. A separate statement that provides the reasons for an individual's belief that the four factors listed above are met.

3. The SF 278: which provides the factual basis for determining that no conflict of interest is likely. The form must bear the legend at the top of page one: "CONFIDENTIAL: WAIVER REQUEST PENDING PURSUANT TO 5 C.F.R. § 2634.205."

The agency should forward the request to OGE with their opinion as to whether OGE should grant a waiver. If OGE grants the request, the cover letter should be made publicly available in lieu of the SF 278. If OGE denies the waiver, the agency should remove the legend from the report and make it publicly available without the cover letter.

Detailees/Acting in a Position

5 C.F.R. § § 2634.201(a), 2634.602(a) & 2634.605(b)
OGE 81 X 3

The position, not the individual in the position, controls the SF 278 filing requirements. Accordingly, individuals detailed to or acting in a "covered" position for more than 60 days must file a report. The detailed employee files the report with the agency that detailed him, that is, the primary agency. The agency to which he is detailed should perform an intermediate review.

Agencies should make a prospective determination whether a person entering a position will work more than 60 days when deciding whether the person should file a new entrant report. If agencies are uncertain about this estimate, they may offer the option of filing a modified SF 278 in lieu of the OGE Form 450 (*see the discussion above on special Government employees*).

Federal Advisory Committees

Who Is a Government Employee?
OGE 82 X 22
OGE 00 X 1
OGE DAEOgram of July 19, 2004

Generally, only Government employees are subject to the Federal ethics requirements, including financial disclosure, the conflict of interest laws, and the standards of ethical conduct. Members of Federal advisory committees frequently are appointed as special Government employees (SGEs), and these SGEs are subject to the Federal ethics requirements, with certain exceptions and modifications. Sometimes, however, members are instead selected to serve as "representatives" of interest groups that have a stake in the work of the advisory committee. These representative members are not Government employees at all and, therefore, are not subject to the Federal ethics requirements. OGE has provided specific guidance to help agencies determine whether particular advisory committee members should be designated as SGEs or as representatives.

Master List of Filers

Elements of an SF 278 Tracking System

Agencies must compile and maintain a list or database of SF 278 filers. The ethics officials should coordinate this listing with the agency's personnel office and continuously update it to reflect significant actions taken with respect to each filer. In addition to a basic identification list of names, titles, addresses, and phone numbers, agencies may wish to include other information in their database to assist in program management. These other elements may include:

- dates of position entrance, filing, review, extensions, late filing fees, and certification;
- number of days worked in that calendar year (for SGEs);
- number and type of public requests; or
- ethics agreements and their status.

2.2 REPORTING FORMS

OGE DAEOgram of August 25, 2003

Filers must report the required information on OGE's standard form, the SF 278, except where the regulations explicitly allow alternative formats. The current edition of the SF 278 bears a revision date of March 2000. *Section 15.1: SF 278* contains a sample SF 278.

Procuring the Form

How to Get the Form
41 C.F.R. § 101-26.302

OGE makes available a printable copy of the form as well as electronically fillable versions of the form on its website http://www.usoge.gov./ Or, the agency procurement officer may order them from the General Services Administration (GSA) schedule. The GSA national stock number (NSN) is 7540-01-070-8444. Forms are available in packages of 25 through the Customer Supply Center Catalog. The Customer Supply Center telephone number is 1-800-525-8027. Forms may also be ordered at the GSA Advantage! web site.

Alternative Reporting Formats

5 U.S.C. App. § 103(g); 5 C.F.R.§ 2634.311(c)
OGE DAEOgram of February 22, 2000

All filers must complete the SF 278's cover page. Filers may, however, supply some or all of the information for the schedules by attaching to the SF 278 a statement from a financial institution, brokerage report, or other material. These attachments must:

- include **all** of the information the SF 278 requires,
- cover the appropriate time periods completely, and
- readily disclose the information in a clear and concise manner.

An SF 278 must be a complete document in itself. While the SF 278 can incorporate material from other sources, the material must be made part of the form by attaching it and referencing it on the relevant schedules.

2.3 TYPES OF REPORTS AND FILING DEADLINES

5 U.S.C. App. § 101
5 C.F.R. § 2634.201

The Ethics in Government Act requires three types of reports:

- **New Entrant/Nominee:** Due within 30 days after assuming a position covered by the SF 278 filing requirements or no later than 5 days after nomination to a PAS position,
- **Incumbent:** Due annually, no later than the May 15th following the covered calendar year, and
- **Termination:** Due on or before the 30th day after leaving a covered position.

These reports use the same form but require slightly different information and cover different time periods. See *Section 3.2: Applicable Schedules and Reporting Periods*, for periods covered.

New Entrant or Nominee Reports

An employee must file a new entrant report within 30 days after assuming a covered position. The filer may sign a report in advance of his first day in the covered position. PAS nominees must file the reports within 5 days after nomination (see *Chapter 12: Processing Presidential Nominee Reports*).

Employees who are expected to work 60 days or less in *any* calendar year need not file, except for certain nominees (see *Section 2.1: Officials Required to File*). An official also need not file a new entrant report upon transfer from one covered position to another unless more than 30 days pass before she assumes the second position. When that occurs, OGE recommends that the new agency request a copy of the last filing from any official who transfers from a covered position at one agency to a covered position at another agency. This allows the new agency to determine whether there would be any conflicts of interest involving the individual's new duties.

Incumbent Reports

Annual Reports

By May 15th of each year, an official serving in a covered position must file an SF 278 for the previous calendar year. As noted above, an official who served in a covered position for 60 days or less in the previous calendar year need not file a report. Thus, an employee who enters a position after November 1 files a new entrant report, but not an annual report the following May. Agencies should notify OGE if a PAS employee works 60 days or less in a calendar year.

Moving Between Covered Positions In Different Agencies

OGE advises that when an official moves from a covered position in one agency to a covered position in another agency, on or before the 30th day after leaving the first covered position, the current agency should collect and certify the incumbent report after coordinating an intermediate review with the former agency.

Termination Reports

Any official who served in a covered position must file a termination financial disclosure report within 30 days after leaving a covered position. *The filer must sign and date a termination report no earlier than the last day of service in the position.* An official need not file a termination report if he:

- is an SGE who worked 60 days or less in a calendar year,
- worked 60 days or less in the position, or
- transferred from one covered position to another, unless more than 30 days passed before assuming the second position.

Combined Reports

Officials who anticipate leaving a covered position on or within 90 days after the May 15 annual deadline may file a combined annual/ termination report if they request and receive an agency extension of the annual filing deadline (see *Section 2.4: Extensions*). An official leaving before May 15 who has not yet filed an annual SF 278, however, would file a termination SF 278, not a combined report. This termination report, it should be noted, will cover a period slightly longer than one year, including both the previous year and the current year up to the date of termination. A person could also file a combination new entrant/termination report. This situation would arise when a filer leaves a covered position within 120 days of entering it. With two 45-day extensions, the due date for the new entrant report could fall after the filer's termination, making a combined new entrant/termination report possible.

Collection of Delinquent Termination Reports

Agency ethics officials sometimes find it difficult to collect termination SF 278s from covered filers within 30 days of their departure. OGE suggests using the following steps in following up on delinquent termination report filers.

1. Mail an SF 278 to the former employee, requesting that it be completed and returned within a limited timeframe (15-30 days after receipt).
2. If the report is not received within the requested timeframe, the mailing should be repeated using certified mail, with return receipt requested.
3. If these efforts fail, the related correspondence should be forwarded to OGE for assistance in obtaining the delinquent report.
4. OGE will then attempt to obtain the report by writing to the former employee using certified mail, with return receipt requested.
5. If OGE is not successful in obtaining the report, they will advise the agency ethics official to refer the former employee to the Attorney General in accordance with the guidelines included in section 104 of the Ethics in Government Act, as amended.

Referring to Reports

OGE's System

OGE uses a standard system to refer to reports in its records, and recommends it for agency use. It combines the year in which the report is required to be filed with the type of report. The abbreviations are:

NE	New Entrant Report
A	Annual Report (Due May 15)
T	Termination Report
AT	Combined Annual and Termination Report

Examples: 04A An annual report due May 15, 2004. Even though an annual report covers the previous calendar year, it is labeled with the year in which it is required to be filed.

03AT A combined annual and termination report for 2002 and 2003 up to the termination date, occurring on or after May 15.

03NE A new entrant report for an individual hired December 15, 2003, who files on January 12, 2004. It is an 03NE because the employee entered duty in 2003.

04T A termination report for 2003 and 2004 up to a termination date of May 14.

2.4 EXTENSIONS

The statute sets the due dates for the SF 278. Individual filers, or classes of filers, can be granted extensions of a filing deadline up to 90 days for new entrant, annual, or termination reports, as described below. See the chart summarizing due dates in *Section 2.5: Late Filing Fee*, for a list of extended due dates for annual reports.

Agency Extension

5 U.S.C. App. § 101(g)
5 C.F.R. § .2634.201(f)

An agency may grant any official or class of officials an extension of the SF 278 deadline up to 45 days. The agency may grant an extension, usually in writing, for "good cause shown." Some examples of good cause include:

- long periods of official travel prior to the due date;
- significant illness just prior to the due date;
- extremely pressing duty assignments; and
- convenience of filing combined reports, as discussed in the preceding section.

Agencies have discretion in the ease with which they grant extensions. Although oral extensions are permissible, OGE recommends that all agencies require filers to request extensions in writing, to establish proper documentation. Filers should request an extension before the due date. Likewise, agencies should act on the request prior to the due date. To increase public confidence in the system and to ease administration, OGE recommends that agencies indicate all extensions by using the check-off box, noting the number of days granted, in the reviewer comments area on the SF 278's cover page.

Additional Agency Extension

5 U.S.C. App. § 101(g)
5 C.F.R. § 2634.201(f)

OGE DAEOgram of August 8, 2002

An agency may, for "good cause shown," grant an additional written extension of up to 45 days. This would give the filer a total of 90 days beyond the original due date to file the report. The filer must set forth in writing why additional time is necessary. The reviewing official must approve or deny the request in writing. The statute does not allow any "good cause" extensions of more than 90 days, regardless of circumstances.

Service in a Combat Zone

5 U.S.C. App. § 101(g)(2)(A)

An individual serving with or in support of the Armed Forces automatically qualifies for a 180-day extension if serving in a combat zone on the applicable due date. When applicable, this extension replaces all other extensions. This extension dates from the later of the last day of:

- the individual's service in the combat zone *or*
- the last day of the individual's hospitalization resulting from that service.

Notations on Report

Agencies should advise filers granted this extension to prominently mark their reports to indicate that they are filing under the 180-day combat zone extension. Filers should specify the date of their departure from the zone or the date the combat zone designation expired (whichever occurred earlier). Alternatively, the filer should list the dates of any resulting hospitalization.

2.5 LATE FILING FEE

5 U.S.C. App. § 104(d)
5 C.F.R. § 2634.704

OGE DAEOgram of August 8, 2002

An official who files any SF 278 more than 30 days after the due date or more than 30 days after the last day of an extension, whichever occurs later, must pay the United States a $200 late filing fee. OGE has determined that the filing date is the date that the agency receives the report. The fee becomes due only when the report is actually filed. (If the employee refuses to file, see *Section 2.6: Filing Penalties*.)

Examples: An employee files a new entrant report (due February 18, 2000) on March 10, 2000. This person does not owe a late fee.

A filer without an extension puts an annual report (due May 15, 2000) in the mail to her agency on June 12, 2000, the Monday before the administrative 30-day grace period expires. Her ethics office receives the report June 19, 2000. This person owes a late fee because the 30-day grace period is intended to account for such delays, not to extend the due date.

After receiving two 45-day extensions from an agency, an employee files an SF 278 115 days after the May 15th due date. This person does not owe a fee. If the individual waited another week and filed more than 120 days (30 + 45 + 45) after the due date, the employee would owe $200.

NOTE: Even though the employees in neither the first nor last of these examples owes a $200 fee, the reports were late. Thus, they could still be subject to administrative action (see *Section 2.6: Filing Penalties*).

Agencies Collect the Fee

OGE has delegated to agencies the responsibility to collect this fee. As part of this delegation, OGE requires that agencies first notify filers of the debt and of the procedures for paying it or requesting a waiver from the agency.

Notice of Late Filing Fee

Agency Must Provide Notice

For reports that are more than 30 days overdue, an agency must provide the delinquent filer with written notice that she:

- will owe the United States a $200 late filing fee upon filing that is subject to agency debt collection procedures if not paid;
- must remit the full fee to the agency, payable to the "United States Treasury;" *and*
- may submit a written request to the agency that the fee be waived due to "extraordinary circumstances."

Agencies may be required to advise OGE of late notices sent and other actions to collect late filing fees on reports forwarded to OGE.

Collection of the Late Filing Fee

Disposition of the Check
31 U.S.C. § 3302
Vol. I Treasury Financial Manual 6-8000 § 8030

If successful in collecting a late filing fee, the agency's finance office must forward it to the U.S. Treasury for deposit as miscellaneous receipts. The account coding used for the $200 late filing fee is xx1099 with the first two digits being the agency number. Ethics officials should defer to their agency finance office for appropriate handling of fees collected.

Taking Action If the Filer Refuses to Pay

If unsuccessful in collecting the $200 late filing fee, the agency should institute debt collection procedures, such as salary or administrative offset. In addition, an agency may take appropriate disciplinary action.

Waiver of the Late Filing Fee

OGE DAEOgram of August 8, 2002
5 CFR 2634.704

OGE has delegated its authority to waive the late filing fee to agencies. The fee may be waived if the delay in filing was caused by extraordinary circumstances.

Extraordinary Circumstances

Extraordinary circumstances may include the agency's failure to notify a new entrant, first-time annual filer or termination filer of the requirement to file the public financial disclosure report. Other circumstances that OGE views as extraordinary are:

- a family emergency, such as a fire, an illness or a death;
- transfer of position causing confusion over filing;
- agency errors (other than notification errors); and
- the duties of an employee's office (only agency emergencies)

Other Factors

In determining whether circumstances are extraordinary, other factors to consider include:

- the position of the filer (a filer might be held to a higher standard because she is an agency head or in a similar position);
- whether the filer requested any extensions, indicating a good- faith effort to file; and
- the timeliness of the employee's previous reports.

Factors Not Considered Extraordinary

Employees who have previously filed incumbent SF 278s should be aware of the next year's annual filing requirement. In the absence of other extraordinary circumstances, an agency should not waive the late filing fee based on failure of an ethics official to remind an experienced filer to submit the SF 278. Nor should the agency waive the late fee for any employee who was mistaken about the due date, unless the agency contributed to that misunderstanding.

The Grace Period

Since the statute allows a 30-day grace period after the filing due date before late filing fees apply, filers should ensure that the agency receives their reports by the end of that period. Accordingly, administrative or postal delays at the end of the grace period alone do not constitute an extraordinary circumstance.

Summary of Due Dates and Late Filing Fee Dates

	Report Late if Filed After	$200 Fee Due if Report Filed After
Annual Reports	May 15	June 14
45-Day Extension	June 29	July 29
90-Day Extension	August 13	September 12

Due Dates on Weekends and Holidays

If any of the above dates falls on a weekend or holiday, it is OGE's practice to consider the next normal workday to be the due date. The same rule applies for new entrant/termination reports.

2.6 FILING PENALTIES

5 U.S.C. App. § 104(b)
5 C.F.R. § 2634.701
Connett v. Department of Navy 31 M.S.P.R. 322 (1986), *aff'd,* 824 F.2d 978 (Fed. Cir. 1987)

In addition to the late filing fee discussed in *Section 2.5*, individuals who fail to file a report, file a false report, or fail to report required information risk serious consequences. Both the agency and the Department of Justice may take action against the employee. This possibility emphasizes the importance for ethics officials of carefully documenting all contact with troublesome filers. Ideally, all contact should be in writing. Ethics officials should also make notes about telephone and in-person conversations.

Disciplinary Action

An agency may take any appropriate action against employees who have not filed or who have filed a false, incomplete, or late report, in accordance with applicable personnel laws and regulations. Agency action does not, however, preclude action by the Department of Justice.

Actions the Department of Justice May Take

The Attorney General may bring a civil action against any person who does not file, files a false report, or fails to report required information. Employees who file a false report also risk criminal action.

5 U.S.C. App. § 104(a)

Civil Action: The Attorney General may bring a civil action against any individual who knowingly and willfully falsifies or who knowingly and willfully fails to file or report any required information. The court may assess a civil penalty in any amount, not to exceed $11,000.

18 U.S.C. § 1001
18 U.S.C. § 3571

Criminal Action: The Attorney General may bring a criminal action against any individual who knowingly and willfully falsifies information required to be reported. The court may assess a fine up to $250,000 and imprison the person for up to 5 years.

Referrals should be coordinated with the U.S. Attorney where the alleged violation occurred, or with the civil or criminal division of the Department of Justice (DOJ). The DOJ address is as follows:

Assistant Attorney General
Civil Division
Department of Justice
Tenth Street and Constitution Avenue, NW.
Washington, DC 20530
Attention: Federal Programs

3.0 REPORT CONTENTS

This chapter describes the reporting requirements of each part of the public financial disclosure statement. The SF 278 has a cover page and six additional pages known as Schedules A through D. Schedules B, C and D each have two parts, and both Schedule A and Schedule B, Part I, have a continuation page for filers who need more space.

Schedule A:	Assets and Income
Schedule B, Part I:	Transactions
Schedule B, Part II:	Gifts and Travel Reimbursements
Schedule C, Part I:	Liabilities
Schedule C, Part II:	Employment Agreements or Arrangements
Schedule D, Part I:	Positions Outside the U.S. Government
Schedule D, Part II:	Sources of Compensation in Excess of $5,000

While this chapter answers questions about the requirements of particular schedules, Part II of this manual provides detailed guidance on specific requirements for particular types of interests.

The SF 278 is not a net worth statement. Rather, it is designed solely to report information specified by statute for the purpose of conflict of interest counseling and public availability. Reviewers should consider all report contents as an interrelated whole that describe an employee's outside linkages.

Privacy Rights

A basic presumption in financial disclosure is that an employee has a right to privacy in her financial affairs. The public interest in disclosure of information overrides this privacy right only to the extent that Congress has explicitly deemed it necessary and that the Constitution allows. Reviewers must, therefore, be as sensitive as possible to the privacy rights of filers while fulfilling the statutory and regulatory requirements.

Interests May Be Reported on Multiple Schedules

The following is a summary of the information that filers must report on each section of the SF 278. Information required on one schedule may be required in a different form, and with additional detail, on another schedule. This redundancy is required by the financial disclosure law.

3.1 THE COVER PAGE

This section outlines the features of the SF 278's cover page.

1. Appointment or Nomination Date

All filers should list the date they entered a covered position or the President nominated them. Reviewers need not verify dates and may enter an appropriate date if it is available. If it is not readily available, the reviewer need not provide the date. However, reviewers should ensure that an employee filed her report within 30 days of entering a covered position.

2. Reporting Status

All filers must check the applicable block indicating whether the report is a new entrant/nominee, incumbent, or termination report.

3. Calendar Year Covered by Report

Only incumbents complete the calendar year block. For all other filers, the reporting period is not a calendar year, so the box should be blank. If a new entrant/nominee or termination filer does complete the box, the reviewer should make certain that his report covers the period appropriate to the type of report. New entrants and nominees, for example, must include information for the preceding two calendar years up to the date of filing, since this is the period applicable to Schedule D.

4. Termination Date

Only termination filers should complete this block. Alternatively, the agency personnel office may supply the date. Reviewers should ensure that the report was filed within 30 days of the termination date.

5. Reporting Individual's Name

Filers should print or type their last name, first name and middle initial. If the block is incomplete, a reviewing official may complete it based on the filer's signature or other available sources. If there has been a recent name change, the reviewer may wish to note it in the reviewer comments section.

SF 278 (Rev, 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved: OMB No. 3209 - 0001

Date of Appointment, Candidacy, Election, or Nomination *(Month, Day, Year)*	Reporting Status (Check Appropriate Boxes)	Incumbent	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate	Termination Filer	Termination Date *(If Applicable) (Month, Day, Year)*
1	2	☐	3	☐	☐	4

Reporting Individual's Name	Last Name 5	First Name and Middle Initial
Position for Which Filing	Title of Position 6	Department or Agency *(If Applicable)*
Location of Present Office (or forwarding address)	Address *(Number, Street, City, State , and ZIP Code)* 7	Telephone No. *(Include Area Code)*
Position(s) Held with the Federal Government During the Preceding 12 Months *(If Not Same as Above)*	Title of Position(s) and Date(s) Held 8	
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination 9	Do You Intend to Create a Qualified Diversified Trust? ☐ Yes 10 ☐ No
Certification I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	Signature of Reporting Individual 11	Date *(Month, Day, Year)*
Other Review (If desired by agency)	Signature of Other Reviewer 12	Date *(Month, Day,* year)
Agency Ethics Official's Opinion On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).	Signature of Designated Agency Ethics Official/Reviewing Official 13	Date *(Month, Day, Year)*
Office of Government Ethics Use Only	Signature 14	Date *(Month, Day, Year)*

Comments of Reviewing Officials *(if additional space is required, use the reverse side of this sheet)*

(Check box if filing extension granted &indicate number of days_____) ☐

15

(Check box if comments are continued on the reverse side) ☐

Fee for Late Filing
Any Individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a $200 fee.

Reporting Periods
Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

Nominees, New Entrants and Candidates for President and Vice President:

Schedule A—The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.

Schedule B—Not applicable.

Schedule C, Part I (Liabilities)—The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

Schedule C, Part II (Agreements or Arrangements) —Show any agreements or arrangements as of the date of filing.

Schedule D—The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Agency Use Only
16

OGE Use Only
17

Supersedes Prior Editions, Which Cannot Be Used. 278-112 NSN 7540-01-070-8444

6. Position for Which Filing

Filers should enter the complete title of the position for which they are filing and the name of their department or agency. The filer must list all covered positions held during the applicable reporting period. Reviewers may complete or correct this block based on their knowledge.

7. Location of Present Office

This information enables the reviewing official to contact the filer. Except for nominees and new entrants who file early, the filer should use a current Government office. Terminating employees should provide a forwarding address. A reviewing official may complete this block with the filer's Government office. Home addresses and phone numbers should not be disclosed on the report. They may choose to provide this information privately to the reviewing official.

8. Position(s) Held with the Federal Government During the Preceding 12 Months

Filers should list any positions (other than the one for which they are filing) that they held with the Federal Government during the twelve months prior to the date of filing. This includes positions in any branch of the Federal Government. A reviewing official may complete or correct this block based upon independent knowledge.

9. Name of Congressional Committee Considering Nomination

Only prospective appointees to PAS POSITIONS must complete this block. A reviewing official may complete or correct this block based on independent knowledge.

10. Qualified Diversified Trust

Only prospective appointees to PAS positions need to complete this block.

11. Signature of Reporting Individual and Date

Filers must sign their reports in ink. This signature is the filer's statement that the report is correct and complete. Without it, the report is not acceptable. The original signature should appear on the copy of the form that agency reviewers certify. Reviewers may certify photocopies, but OGE does not recommend this practice.

12. Signature of Other Reviewer and Date

The preliminary reviewing official should sign here if the agency requires an intermediate review. If there are more than two levels of review, the second highest reviewer should sign in this block. The reviewer(s) below the second level should initial and date the shaded area.

13. Signature of Designated Agency Ethics Official or Reviewing Official and Date

Only an ethics official may sign this block. The signer certifies "on the basis of the information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below)." Before signing, the official should be aware of certification requirements (see *Section 4.4: Certification Requirements*).

14. OGE Signature and Date

The Director of OGE signs here for reports forwarded to OGE.

15. Comments of Reviewing Officials

Reviewers should use this space for comments, or for annotations of the report. Reviewers should avoid making comments which disclose more information about a holding than is legally required, unless the filer approves the disclosure, or it is necessary to explain adequately a required entry.

16. Agency Use Only

The reviewing official assigned the first level of review must stamp or annotate this block with the date of agency receipt. This official should verify that the reporting employee filed the report in a timely manner.

17. OGE Use Only

OGE stamps this block with the date that OGE receives a report.

Pagination

The filer must number each page in the upper right-hand corner. OGE recommends that filers number pages as part of a total number of pages - for example, "Page 1 of 15." No authority, however, requires any particular style. Reviewers should check for completeness if they discover that pages are not numbered consecutively.

3.2 APPLICABLE SCHEDULES AND REPORTING PERIODS

As indicated below, a filer must complete different portions of the form for different time periods depending upon the type of report filed.

	NEW ENTRANT/ NOMINEE	ANNUAL	TERMINATION	COMBINED ANNUAL AND TERMINATION
SCHEDULE A ASSETS AND INCOME	PRECEDING CALENDAR YEAR TO FILING DATE[1]	PRECEDING CALENDAR YEAR	FROM END OF LAST REPORT'S PERIOD TO TERMINATION DATE	PRECEDING CALENDAR YEAR TO TERMINATION DATE
SCHEDULE B-I TRANSACTIONS[2]	NOT APPLICABLE	PRECEDING CALENDAR YEAR	FROM END OF LAST REPORT'S PERIOD TO TERMINATION DATE	PRECEDING CALENDAR YEAR TO TERMINATION DATE
SCHEDULE B-II GIFTS AND TRAVEL[2]	NOT APPLICABLE	PRECEDING CALENDAR YEAR	FROM END OF LAST REPORT'S PERIOD TO TERMINATION DATE	PRECEDING CALENDAR YEAR TO TERMINATION DATE
SCHEDULE C-I LIABILITIES	PRECEDING CALENDAR YEAR TO FILING DATE[1]	PRECEDING CALENDAR YEAR	FROM END OF LAST REPORT'S PERIOD TO TERMINATION DATE	PRECEDING CALENDAR YEAR TO TERMINATION DATE
SCHEDULE C-II AGREEMENTS AND ARRANGEMENTS	ARRANGEMENTS AS OF FILING DATE	PRECEDING CALENDAR YEAR TO FILING DATE	FROM END OF LAST REPORT'S PERIOD TO TERMINATION DATE	PRECEDING CALENDAR YEAR TO TERMINATION DATE
SCHEDULE D-I POSITIONS OUTSIDE THE GOVERNMENT	PRECEDING TWO CALENDAR YEARS TO FILING DATE	PRECEDING CALENDAR YEAR TO FILING DATE	FROM END OF LAST REPORT'S PERIOD TO TERMINATION DATE	PRECEDING CALENDAR YEAR TO TERMINATION DATE
SCHEDULE D-II COMPENSATION OVER $5,000	PRECEDING TWO CALENDAR YEARS TO FILING DATE	NOT APPLICABLE	NOT APPLICABLE	NOT APPLICABLE

[1] Filers may end the reporting period for assets and liabilities on any day that they choose within 31 days of the filing date.
[2] Filers need not include any periods when they were not in Government service.

3.3 SCHEDULE A: ASSETS AND INCOME

On Schedule A, the filer lists assets and income derived from them, as well as income earned for services.

Assets

5 U.S.C.App. § § 102(a)(l) & (a)(3)
5 C.F.R. § § 2634.301-302

Examples of reportable property interests or assets include stocks, bonds, and other securities, pension interests, tax shelters, interests in trusts, personal bank accounts, real estate, commercial crops, livestock, accounts or other funds receivable, and collectible items held for resale or investment. For each asset, the filer should provide a description sufficient for conflict of interest review, a category of asset value and the type and amount of income derived from the asset. The requirements for specific assets are discussed in *Part II: Reviewing Common Entries.* This section provides the general rules for Schedule A.

Imputed Interests

Whose Assets Are Reportable?

4 Op. O.L.C. 340 (1980) found constitutional the statutory requirement to disclose a spouse's financial interests. *DuPlantier v. U.S.,* 606 F.2d 654, 669 (5th Cir. 1979), *cert, denied,* 449 U.S. 1076 (1981), held that the financial disclosure law did not unconstitutionally invade personal privacy of filers, their spouses or dependent children.

In addition to the filer's own assets and income, he must list all reportable assets and investment income of:

- his spouse or DEPENDENT CHILD and
- indirect holdings through vehicles such as trusts, pensions, and businesses (discussed in *Part II: Reviewing Common Entries*).

For conflict of interest purposes, reviewers should treat these assets as if the filer held them personally. The criminal financial conflict of interest statute (18 U.S.C. § 208) imputes such interests to the filer (except § 208 refers to MINOR CHILDREN, not dependent children; see *Dependent Children Defined* later in this section). On a common sense level, the law identifies these interests with the filer to avoid creating loopholes. Without this rule, a filer could simply transfer any questionable interests to a spouse or close associate and avoid the law (see *Section 11.1: Criminal Conflict of Interest Statutes*).

The Basic Reporting Test

When in doubt whether filers need to disclose particular assets, the basic test is whether the assets are held for investment or the production of income, *and* if they meet the filing amount thresholds. Filers need not report assets held for reasons other than investment or the production of income, such as common household furnishings. On the other hand, an art collection held for resale would be reportable.

Reporting Thresholds

There are two distinct reporting thresholds for assets. If either condition is met, the filer must report the asset. Such instances are:

Two Distinct Thresholds

- assets with a fair market VALUE in excess of $1,000 at the close of the reporting period (or $5,000 for cash deposits at one financial institution) or
- assets that generated more than $200 in income during the reporting period.

Even if an asset had a fair market value less than $1,000 at the close of the reporting period, the filer must still report the asset if it generated more than $200 in income during the reporting period. For example, filers may sell assets during the reporting period, leaving those assets with a zero asset value. These assets must, however, be reported if they generated more than $200 in income during the year.

Aggregating Income

When determining whether an asset (or a group of assets) meets the threshold, filers must aggregate all income from a particular source for themselves, their spouse, and their dependent children. The fact that the filer may choose to separate the reporting of her interest from her spouse's does not affect the thresholds. Likewise, filers must aggregate all the types of income from a particular source (interest, dividends, capital gains) in determining whether the threshold is reached.

Example: A filer sells 20 shares of a particular stock and receives $100 in capital gains. The filer's spouse holds 20 other shares of the same stock and receives $205 in dividends. All of the stock is reportable with $305 in income. If the same filer had a $100 capital loss instead of a gain, there would be only $105 in aggregate income with no income reporting required.

Definition of Income

Investment Income

5 U.S.C. App. § 109(7)
5 C.F.R. § 2634.105(j)

INVESTMENT INCOME, as discussed above, includes INTEREST, rents, royalties, DIVIDENDS and CAPITAL GAINS of the filer, his spouse, and his dependent children. It includes income derived from all forms of property (such as securities, funds, accounts, and real estate); annuities; partnerships, joint ventures, and businesses; the investment portion of life insurance or endowment contracts; and income from interests in trusts (see discussion above on aggregating income). Generally, filers must report gross income exceeding $200 from any single source (category of amount). Filers may note their net income in addition to their gross income if they desire to show a loss. For partnerships, LLC's, S-Corps and sole proprietorships (in the case of the filer) the actual amount is required.

Example: Rent received on a house totals $9,600 during the year. The filer must report the $9,600 even if the property cost $12,000 in expenses. The filer may note a $2,400 net loss.

Accrued Income Is Reportable

The definition of investment income for purposes of financial disclosure is specifically *not* tied to the IRS' definition of income for tax purposes. Filers must report accrued income, even if deferred or exempt for tax purposes. For example, tax-deferred income in a retirement account is reportable. Where filers receive no report of the amount accruing, such as with U.S. Savings Bonds, they should make a good faith estimate. Financial institutions normally provide reports of accruing income on IRS Form 1099.

Example: A Certificate of Deposit held in an Individual Retirement Account (IRA) accrued $400 in interest during the covered period. The filer must report it, since the accrued interest exceeds the $200 threshold.

Earned Income

Filers must report the *actual amount* of their EARNED INCOME acquired during the reporting period from any one source in excess of $200. Earned income includes fees, salaries, commissions, HONORARIA, and any other compensation for personal services, but excludes Federal Government salary and other Federal benefits (including retirement, unemployment benefits and veterans' benefits).

Threshold for Spouses

For earned income of the filer's spouse, the reporting requirements are relaxed. The reporting threshold is *in excess of $1,000, not $200,* and only the source, *not the amount,* of the income is reportable. This threshold applies to fees a spouse may earn as a trustee of a trust. Honoraria, however, are an exception; the threshold remains $200 and the actual amount must be reported. *The filer need not disclose any earned income of dependent children, regardless of amount.*

Investment versus Earned Income

These different thresholds and certain other reporting requirements occasionally make it necessary to distinguish between investment and earned income. The crucial factor in this division is the filer's services. If the filer's services are a material factor in the production of income, it is earned income. For example, limited partners usually receive investment income from the partnership, since they normally do not perform services for the partnership.

Other Non-Investment Income

OGE considers scholarships, prizes, and awards, a filer receives to be neither earned nor investment income. Filers must report all such income over $200 in the "other" category and disclose its actual amount. A filer need not report income which is neither earned nor investment income for a spouse or dependent child.

Investment Income Types

Income types are relatively straightforward on the SF 278. The most common error is that persons do not include an actual amount of income when they use the "other" column for type of income, such as salary, partnership share, director's fees, or honoraria.

Interest and Dividends

Confusing Interest and Dividends

The type of income is normally determined by the nature of asset listed-debt instruments, such as bonds, produce interest, while equity instruments, such as stocks, produce dividends. Certain distributions that are commonly called dividends, however, are actually interest. Filers should report as "interest" the so-called dividends received on deposit or share accounts with credit unions and savings and loan associations.

Filers should be able to determine the proper characterization of income in most cases by examining statements provided by the deposit institution or fund manager.

Capital Gains

A CAPITAL GAIN is the difference between an item's basis (usually the cost) and its sale price. Filers must report capital gains on the SF 278 when gains are realized, even if they have not been recognized for tax purposes. For example, a person who sells an asset under CERTIFICATE OF DIVESTITURE (CD) must report those gains on the SF 278, even though the CD may delay capital gains tax until a subsequent sale of the permitted property.

Excepted Investment Fund Income

Income from funds that meet the definition of an EXCEPTED INVESTMENT FUND (EIF) may be reported by marking that single category, rather than separately listing interest, dividends, capital gains, or rents and royalties (see *Section 7.1: Excepted Investment Funds*).

Reporting Considerations

Filers should mark each type of investment income derived from a particular source. They may indicate a single category of amount as an aggregate of the various income types from an asset, or they may mark separate categories of amount with initials “I” for interest, “D” for dividends, “CG” for capital gains, and “R” for rents or royalties.

Valuing Assets

Methods Used to Value Assets
5 C.F.R. § 2634.301(e)

Filers of new entrant and nominee reports may determine the VALUE of an asset by choosing its value on any date that is within 31 days of the date of filing. Incumbent and termination filers should value assets as of the end of the reporting period. Filers may value assets by any method below, although the first is often the simplest:

- **A good faith estimate of fair market value;**
- The purchase price (if the filer indicates the purchase date);
- A recent appraisal;
- The market value of the property as assessed for tax purposes;
- The year-end book value of non-publicly traded stock, the year-end exchange value of corporate stock, or the face value of corporate bonds or comparable securities;
- The net worth of a business partnership;
- The equity value of an individually owned business; or
- Any other recognized indication of value (such as the last sale on a stock exchange).

Exceptions to Schedule A's Requirements

Non-Reportable Assets and Income

A filer need not report the following on Schedule A, whether held/received personally or by a spouse or dependent child:

- Any PERSONAL RESIDENCE of the filer or spouse (unless rented out), including vacation homes if used as second personal residences and timeshares used as vacation homes;
- Income from employment with the Federal Government, including military Reserve pay;
- Retirement benefits from the Federal Government, including the Thrift Savings Plan;
- Income from social security, unemployment, veterans benefits and other similar Federal Government benefits;
- Deposits in a single financial institution aggregating $5,000 or less in money market accounts, certificates of deposit, savings accounts, checking accounts or other deposits;
- Shares in a single money market fund aggregating $5,000 or less;
- Liabilities owed to the filer, the filer's spouse or the filer's dependent child by their parent, spouse, sibling or child; and
- Income arising from the dissolution of the filer's marriage or permanent separation, such as child support or alimony.

Additionally, filers need not report any insurance claims and reimbursements, unless they are subject to Federal income tax. Personal frequent flyer accounts also are not reportable. See below for exclusions of certain separate assets of a spouse or dependent child.

Spouses and Dependent Children

Test for Separateness of Assets of Spouses and Dependent Children
5 C.F.R. § 2634.309(a)(3)

Filers often question the need to report the assets of a spouse when he handles his own finances. An asset of the filer's spouse (or dependent child) may be exempt from reporting only if it meets *all four* of these tests:

1. the asset represents the spouse's or dependent child's sole financial interest or responsibility;

2. the filer has no specific knowledge regarding the asset (constructive or otherwise);

3. the asset is not in any way, past or present, derived from the filer's income, assets or activities; *and*

4. the asset is one from which the filer neither derives, nor expects to derive, any financial or economic benefit.

An asset which is reported on a joint tax return or held in a trust for a child's education is a benefit to the filer. Thus, the asset should be reported. A practical effect of this test is that filers who complete joint tax returns must disclose their spouse's assets.

Entries for the assets and income of spouses and dependent children may be marked “S” or “DC” (or “J” for joint) if the filer wishes to distinguish them from his own assets and income (it is not required).

Marriage During a Filing Period

When a filer gets married during the reporting period, her next report may reflect a substantial increase in her assets. She need only report the assets held by her spouse and the income received from them after they were married.

Divorce Rules
5 C.F.R. § 2634.309(c)

The filer need not report a spouse's assets in the case of a divorce or permanent separation. A separation is permanent if the spouse is living separate and apart from the filer, and there is an intention to end the marriage or to separate permanently. If that intent is not present, the spouse's assets must be listed, even if the couple is living separately. The filer need not disclose any income (or obligation on Schedule C) arising from the dissolution of a marriage. However, note that even in situations where there is no SF 278 reporting requirement, 18 U.S.C. § 208 will still apply to matters in which an employee knows her spouse has a financial interest.

Dependent Children

If a child that was dependent during the reporting period is no longer dependent as of the date of filing, the filer need not report the childs' assets. However, any reportable income produced by the childs' assets while the child was a dependent should be reported.

Dependency Rules
5 U.S.C. App. § 109(2)
26 U.S.C. § 152
5 C.F.R. § 2634.105(d)

Dependent Children Defined

Filers must consider a child a DEPENDENT CHILD if the child is:

1. a son, daughter, stepson or stepdaughter; **and**

2a. unmarried, under age 21 and living in the filer's house **or**
2b. considered dependent by tax code standards (which, according to the Internal Revenue Code, generally requires that a dependent child receive more than half of her financial support from the filer).

NOTE: While the term "dependent child" is used for financial disclosure, the conflict of interest statute attributes to a Government employee the financial interests of a MINOR CHILD, which is a narrower class of children defined by state law, usually as under age 18.

Definition of Spouse

"Spouse" is not defined in the financial disclosure law. Its ordinary meaning is a marriage partner joined through legal union (wedlock) as husband or wife. Each state's laws define spouse more specifically; some may include common law marriages, where a couple live together and hold themselves out as husband and wife.

Alternative Life-Styles
5 C.F.R. § 2635.502(a)

Filers living with another person in a relationship which their states do not recognize as a marriage need not report the assets and income of their companions. Filers may report such holdings if they so choose. While the assets of the companions would not trigger disqualification under the criminal statute (18 U.S.C. § 208), the Employee Standards of Ethical Conduct may reach the financial interests of a companion who is a member of the employee's household. Given this accountability, filers may find it to their benefit to receive conflict of interest counseling on these interests.

Joint Ownership

Subject to the thresholds and exclusions mentioned above, filers must disclose assets in which they have an ownership interest, whether held separately or jointly with others.

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name | **SCHEDULE A** | Page Number

Assets and Income BLOCK A	**Valuation of Assets** at close of reporting period BLOCK B															**Income:** type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. BLOCK C														
																Type				**Amount**										
For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income. For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse). None ☐	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,01 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date *(Mo., Day, Yr.)* Only if Honoraria
Examples: Central Airlines Common				X												X						X										
Examples: Doe Jones & Smith, Hometown, State			X																												Law Partnership Income $130,000	
Examples: Kempstone Equity Fund					X								X										X									
Examples: IRA: Heartland 500 Index fund							X						X											X								
1																																
2																																
3																																
4																																
5																																
6																																

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot Be Used

3.4 SCHEDULE B, PART I: TRANSACTIONS

5 U.S.C. App. § 102(a)(5)

5 C.F.R. § 2634.303

On Schedule B, filers must report the purchase, sale, or exchange of certain assets attributed to themselves, their spouse, or their DEPENDENT CHILD. This requirement *does not* apply to nominee and new entrant filers. All other filers must report transactions that involve more than $1,000 of either:

- real property or
- stocks, bonds, MUTUAL FUND shares and other securities (see *Chapter 8: Investments*).

There is no requirement to report transactions involving other types of assets *even if they are reportable on Schedule A.*

Filers need to report only a brief description, the appropriate category of value, type of transaction and date for Schedule B. Note that these categories are different than either the Schedule A asset or income ranges. Filers need not disclose actual amounts of transactions.

Periodic Transactions and Dividend Reinvestment

Filers may combine on the same line multiple purchases (or sales) for a single security. This includes dividends reinvested from a single security or mutual fund. Only those transactions that individually exceed $1,000 need to be included.

Example: A filer who purchases $1,100 per month of a particular mutual fund may report one transaction in the $1,001-15,000 range with the date as "monthly."

When aggregating intermittent (ones not occurring in accordance with a set schedule or on a regular basis) transactions of a single asset that occurred during the year, the date should be marked "throughout the year."

Certificates of Divestiture

The filer must indicate whether an asset was sold pursuant to a CERTIFICATE OF DIVESTITURE that OGE had issued. See *Section 5.5: Divestiture or Resignation*.

Transactions Can Cover Assets Not on Schedule A

The requirements for reporting transactions apply regardless of whether the asset or income is listed on Schedule A.

Example: A filer purchases $25,000 of a stock at the start of a reporting period. The stock loses $5,000 in 5 months and is sold for $20,000. The stock is not included on Schedule A because it did not generate more than $200 in income and was not held at the end of the period. Nevertheless, the filer must report the sale on Schedule B, Part I.

Exceptions

Non-Reportable Transactions
5 C.F.R. § 2634.303(b)

A filer need not report transactions concerning the following:

- A PERSONAL RESIDENCE of the filer or spouse, unless it is rented out anytime during the reporting period;
- Cash accounts such as money market, savings, or checking accounts and cash equivalents such as money market funds;
- Purchases, sales or exchanges solely between the filer, the filer's spouse or the filer's dependent children;
- Transactions that are not purchases, sales or exchanges, such as gifts given or received, stock splits, bond calls or maturity, OPTION expiration (see *Section 8.2: Corporate Securities*);
- A portfolio holding *within* a qualified blind trust, qualified diversified trust, excepted trust, or EXCEPTED INVESTMENT FUND;
- Treasury bills, bonds, and notes (see *Section 8.3: Government Securities*);
- Purchases, sales, or exchanges that occurred when the filer was not a Government employee;
- Any asset of the filer's spouse or dependent child that is separate from the filer (see *Section 3.3: Schedule A* for separateness test); and
- Assets that are solely incidental to the primary trade or business of an entity on Schedule A (see *Section 6.1: Business Ownership and Employment Relationships*).

Day Trading

"Day trading" occurs when a position is established and liquidated within one day's trading cycle. Day trading has the same reporting requirements as regular stock trading.

Exchanges

At Least Two Assets Are Involved in Any Exchange

An exchange generally occurs when one company acquires another. The shareholders of the acquired company are often given the option to sell their shares to the acquiring company or exchange their existing stock for stock of the acquiring company. When a filer exchanges her stock, she must specify both the stock tendered and the stock acquired in its place.

Example: ABC Corporation recently acquired XYZ Corporation. ABC gave its shares to the shareholders of XYZ in exchange for their XYZ shares. A filer would report this exchange on Schedule B as follows:

Reporting Individual's Name	SCHEDULE B	Page Number
Bruno Latour		**2**

Part I: Transactions

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

None ☐

	Identification of Assets	Transaction Type (x): Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	Amount of Transaction (x): $1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
	Example Central Airlines Common	x			2/1/99			x									
1	**ABC (Stock)**			√	**2/1/00**	√											
2	**XYZ (Stock)**			√	**2/1/00**	√											

Applicability

Not Applicable to New Entrants

Schedule B does not apply to new entrant and nominee filers. If new entrants or nominees have completed this schedule, reviewers should advise them of the over-disclosures and provide an opportunity to delete them. Reviewers should also counsel employees about any potential conflicts of interest arising from such disclosures.

SF 278 (Rev. 03/2000)
5C.F.R. Part 2634
U.S. Office of Government Ethics

Do not complete Schedule B if you are a new entrant, nominee, or Vice Presidential or Presidential Candidate

Reporting Individual's Name	SCHEDULE B	Page Number

Part I: Transactions

None ☐

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

	Identification of Assets	Transaction Type (x): Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	Amount of Transaction (x): $1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
Example	Central Airlines Common	x			2/1/99			x									
1																	
2																	
3																	
4																	
5																	

*This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260, and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. **Exclude** anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☐

	Source *(Name and Address)*	Brief Description	Value
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty)	$500
	Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$300
1			
2			
3			
4			
5			

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3.5 SCHEDULE B, PART II: GIFTS, REIMBURSEMENTS, TRAVEL

5 U.S.C. App. § § 102(a)(2) & (e)(1)(C)
5 C.F.R. § 2634.304

A filer must report gifts of food, lodging, transportation, entertainment, reimbursements or any gratuity, favor or other thing of value received by:

- the filer;
- his spouse; and
- his DEPENDENT CHILDREN

if the total VALUE of either gifts or reimbursements received from a single source exceeded $285 during the reporting period. New entrant and nominee filers need not complete this part.

Threshold Change
Pub. L. 102-90 & 102-378
OGE DAEOgram of September 27, 2002

The threshold for reportable gifts and travel reimbursements is now $285 (The thresholds are tied to the GSA definition of minimal value for foreign gifts). Reimbursements for travel are measured against a $285 threshold separate from the direct gifts threshold. The reporting thresholds will continue to change every three years as GSA redefines "minimal value" under the foreign gifts law at three-year intervals.

Aggregating Gifts

For the threshold, a filer may disregard gifts or reimbursements received with a fair market value of $114 or less. For any gifts worth more than $114, the filer must aggregate them from each source for the reporting period. Filers must also aggregate gifts received by their spouses and dependent children, subject to the exclusions listed later in this section.

Example: A friend gives a family the following gifts during a particular reporting period:

$ 75 -- Watch to filer
$150 -- Trip to filer and spouse
$140 -- Sculpture to filer's dependent child.

The filer would aggregate the $150 trip and the $140 sculpture, but could disregard the $75 watch. The filer would disclose the $290 total gift and specify its components despite the fact that part went to the filer and spouse and part went to the filer's child.

Reimbursements Are Aggregated Separately From Gifts

If the trip listed in this last example were a reimbursement, not a direct gift, it would be measured against a separate $285 threshold. In that case, there would be no reportable gift or reimbursement.

Valuation

5 C.F.R. § 2634.304(e)

Filers should value gifts at fair market value. If this amount is unclear, then the filer should determine the gift's retail price in the metropolitan area nearest his duty station. If the price is not readily ascertainable, the filer should make a good faith estimate.

Reporting Exclusions

Non-Reportable Gifts

5 U.S.C. App. § § 102(a)(2), 109(5) & 109(15)

5 C.F.R. § § 2634.105(h,k,n), & 2634.304(c)

Filers need not report or aggregate the following items:

- Anything for which the filer paid fair market value;
- Anything accepted by the Government under a statute or contract;
- Anything received when not a Government employee;
- Anything from the filer's RELATIVES (the statute broadly defines "relative" to include a detailed list of persons related by blood or law, and even includes a fiance);
- Bequests and other forms of inheritance;
- Gift items in the nature of communications to the filer's office, such as subscriptions to newspapers and periodicals;
- Nonbusiness gifts of PERSONAL HOSPITALITY (food, lodging, entertainment, but not transportation) on the donor's personal or family property;
- Food and beverages not consumed in connection with a gift of overnight lodging (Additional costs included in the price of a ticket, such as entertainment or fund-raising, must be reported);
- Food, lodging, transportation, entertainment or reimbursements provided by a foreign government within a foreign country or by the U.S., the District of Columbia, state or local governments; and

2 U.S.C. § 434

- Reimbursements received for political trips that must be reported under § 304 of the Federal Election Campaign Act of 1971.

Exclusion for Spousal Gifts Independent of the Filer

5 C.F.R. § 2634.309(a)(2)

Gifts given to the filer's spouse or dependent child totally independent of their relationship to the filer also need not be reported. Gifts given to a non-Governmental spouse because of the spouse's employment or other activities may sometimes benefit the Government employee. This might occur, for example, when the spouse's employer sponsors an event to which its employees may bring a spouse or other guest. These gifts do not have to be reported if the donor does not target the gift to the Government employee, such as by specifying that only the Government employee spouse may attend.

Exclusion for Gifts Memorializing an Honoring Function

5 C.F.R. § 2634.105(h)(2)

Another exclusion from the gift reporting requirement covers suitable mementos of a function honoring the filer. The gift reporting exclusion for "suitable mementos of a function honoring the reporting individual" covers items that serve to remind the recipient of an honoring event, whether a mere souvenir or something with utilitarian purpose. It is not limited to items of nominal intrinsic value, as the basic gift reporting threshold will have already excluded items worth no more than $114, or $285 in the aggregate from a single source. An "honoring function" might include a retirement party, personal achievement dinner, baby shower, or other similar event.

Despite its apparent broad scope, this reporting exclusion for mementos is, however, limited by the term "suitable." Whether a memento is "suitable" to a particular function must be determined from the circumstances surrounding the event, such as the types of gifts traditionally given or considered appropriate on such occasions, the recipient's position and relationship to the donors, the number of donors, and the gift's significance to the occasion. Ultimately, this is a matter for the filer and agency to examine in each instance.

Agency-Accepted Travel

41 C.F.R. part 304.1 (implementing 31 U.S.C. § 1353) describes the GSA travel regulation.

Filers should not report travel gifts and reimbursements that their *agencies* accepted under a gift statute, even if the filers primarily used the gift.

Example: An employee travels officially from Washington, DC to Toledo, Ohio, to attend a conference. The conference's corporate sponsor provides the airline tickets. If the agency accepted the ticket or reimbursement from a non-Federal source under GSA regulations, the agency, not the individual traveling, accepts the funds. The filer should not report the reimbursement.

5 U.S.C. § 4111

Note, however, that some official travel gifts and reimbursements may actually be accepted by the employee under the Government Employees Training Act. In that situation, the filer must report the source of travel payments (see *Section 9.2: Travel-Related Gifts and Reimbursements* for further discussion).

Applicability

Not Applicable to New Entrants

Schedule B does not apply to new entrant and nominee filers. If new entrants or nominees have completed this schedule, reviewers should advise them of the over-disclosures and provide an opportunity to delete them. Reviewers should also counsel employees about any potential conflicts of interest arising from such disclosures.

Waiver for Personal Gifts

5 U.S.C. App. § 102(a)(2)(D)
5 C.F.R. § 2634.304(f)

In unusual cases, the Director of OGE may waive the reporting of gifts on the SF 278 when two criteria are met:

- the filer's relationship to the donor and the donor's motivation for the gifts were personal **and**
- no separate public purpose requires disclosure of the nature, source, and value of the gift.

This authority is often used for a filer who receives a large number of personal gifts such as at an engagement and wedding.

Elements of Request

Requests for these waivers must be made in writing to OGE. The request should contain a cover letter and an enclosure. The **cover letter** must contain:

- the identity and position of the filer and
- a request for a waiver under 5 C.F.R. § 2634.304(f).

For each donor, the **enclosure** must contain:

- the identity and occupation of the donor;
- a brief description of the gift and the value of the gift;
- a statement that the relationship between the employee and donor is personal; and
- a statement that neither the donor nor any person or organization who employs the donor, or whom the donor represents:
    - conducts or seeks business with;
    - engages in activities regulated by; or
    - is directly affected by action taken by the agency employing the filer.

If the employee cannot make the above-described statement, she should explain why she cannot, and must be able to state that she has no role in official action directly affecting the donor or organizations served by it. If OGE grants the waiver, the employee's *cover letter,* but not the *enclosure,* will be available to the public as an attachment to the SF 278.

3.6 SCHEDULE C, PART I: LIABILITIES

5 U.S.C. App. § 102(a)(4)
5 C.F.R. § 2634.305

A filer must report any of his own, his spouse's, or his DEPENDENT CHILD'S liabilities to any one creditor *that exceeded $10,000 anytime during the reporting period.* Liabilities that dropped from more than $10,000 to $10,000 or less during the reporting period must be reported. The filer must also report the liabilities of any nonpublic business disclosed on Schedule A unless the liability is incidental to operation of the business.

Example: A filer who owns part of a farm co-operative takes out a $50,000 loan to buy seed and other materials for planting. That loan is not reportable. If, however, the co-op decides to buy into a local hamburger store as a side investment, the filer must report the loans to support that purchase.

Normally filers must report loans such as MORTGAGES on rental property, student loans, investment loans, and personal lines of credit. A filer need not report the following:

Non-Reportable Liabilities

- Any liability owed to a spouse or dependent child, or to a parent, sibling, or child of the filer, her spouse, or her dependent child;
- Any mortgage or home equity loan secured by a PERSONAL RESIDENCE of the filer or spouse, unless the personal residence is rented out or any loans of a townhouse, condominium, or cooperative association when the filer uses the townhouse, condominium or cooperative as a personal residence;
- Any loan secured by a personal motor vehicle, household furniture, or appliances, if the loan does not exceed the item's purchase price;
- Any revolving charge account, such as credit card balances, where the outstanding liability did not exceed $10,000 at the close of the reporting period. This method of calculating the threshold differs from the method for all other entries on Schedule C, part I;
- Any liability of the filer's spouse or dependent child which meets the four tests for separateness of assets (see *Section 3.3: Schedule A*);
- Obligations arising from a filer's divorce or permanent separation (see *Section 3.3: Schedule A*); or
- Liabilities that are solely incidental to the primary trade or business of an entity on Schedule A (see *Section 6.1: Business Ownership and Employment Relationships*).

OGE 90 X 2

Overdue tax liabilities are generally reportable. Even when a tax liability is enforced by placing a lien on the filer's personal residence, it remains reportable. A tax lien does not equate to a mortgage liability, so the exception to reporting mortgages does not apply.

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name	SCHEDULE C	Page Number

Part I: Liabilities

None ☐

Report liabilities over $10,000 owed to any one creditor at **any time** during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

Creditors *(Name and Address)*		Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x): $10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			x								
	John Jones, 123 J St., Washington, DC	Promissory note	1999	10%	on demand					x						
1																
2																
3																
4																
5																

*This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None ☐

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1			
2			
3			
4			
5			
6			

Prior Editions Cannot Be Used.

3.7 SCHEDULE C, PART II: AGREEMENTS OR ARRANGEMENTS

5 U.S.C. App. § 102(a)(7)
5 C.F.R. § 2634.306

This schedule records the filer's future employment agreements and arrangements and the filer's continuing past arrangements. The most common error is to omit continued participation in pension plans and other employee benefit plans. Termination filers must report arrangements for their next job. All filers must report any agreements or arrangements concerning:

- Future employment;
- Leaves of absence from a former employer;
- Continuing payments from a former employer, including severances and payments not yet received for previous work; and
- Continuing participation in a former employer's employee welfare, retirement, or other benefit plan, such as pensions.

This part has no value threshold, and unlike schedules discussed above, this part applies only to the filer and excludes the spouse and dependent children. Employment, leaves of absence, payments, and benefits from the United States Government are not reportable.

A complete disclosure for this part must include:

Required Information

- a general description of the type of agreement, such as “defined benefit pension;”
- a brief description of the terms of the agreement, such as “starting at age 65, will receive $45,000/year until death;”
- the current status of the agreement, such as “definite offer of employment but currently negotiating terms;”
- the parties to the agreement, other than the filer, including the city and state of the other party; and
- the date of the agreement.

3.8 SCHEDULE D, PART I: POSITIONS HELD OUTSIDE GOVERNMENT

5 U.S.C. App. § 102(a)(6)(A)
5 C.F.R. § 2634.307

A filer must report all compensated or uncompensated positions held currently or anytime during the reporting period. Positions include officer, director, trustee, general partner, proprietor, representative, employee or consultant of any for-profit or non-profit entity, including any labor organization or educational institution. Mere membership in any entity or organization does not trigger the reporting requirement (see also *Section 6.5: Outside Positions*).

Example: A Government attorney maintains a practice outside the Government. In addition to listing entries on other schedules, the attorney would report a position as a sole practitioner or law partner. The filer need not make an additional disclosure of membership in the bar.

Exceptions

Filers need not report the following:

Non-Reportable Positions

- positions that their spouses or DEPENDENT CHILDREN hold;
- compensated or uncompensated positions held in any religious, social, fraternal, or political entity;
- positions solely of an honorary nature; and
- positions the filer fills in an official capacity as a representative of the United States Government.

NOTE: If questions about an organization's nature arise, it may be helpful to consult the organization's charter for clues as to its stated purpose and activities. Positions such as those with a youth or scouting organization would not typically require reporting, since they are fraternal or social in nature. Excludable positions with political entities will generally be limited to political parties and campaign organizations, not special interest and lobbying groups.

Example: An FDA scientist is part of a project review panel at a state university. The scientist need not list this outside position if it is part of his officially-assigned duties. Likewise, he would not list membership in the American Scientific Association.

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name	SCHEDULE D	Page Number

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization *(Name and Address)*	Type of Organization	Position Held	From *(Mo., Yr.)*	To *(Mo., Yr.)*
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1					
2					
3					
4					
5					
6					

Part II: Compensation in Excess of $5,000 Paid by One Source

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

None ☐

	Source *(Name and Address)*	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1		
2		
3		
4		
5		
6		

Prior Editions Cannot Be Used.

3.9 SCHEDULE D, PART II: SOURCES OF COMPENSATION OVER $5,000

5 U.S.C. App. § 102(a)(6)(B)
5 C.F.R. § 2634.308(b)(6)

Only new entrant and nominee filers must complete this part. They must report any source of compensation over $5000 which was paid for their personal services during either of the preceding two calendar years or the current calendar year up to the date of filing. This disclosure requirement includes the names of clients or customers for whom the filer *personally* provided more than $5000 in services, even if the client directed payment to the filer's employer. Filers need not report payments to their employer or a firm for which they were not directly involved in providing the services.

Disclosure must include a brief description of the nature of the services rendered. Reporting such as “legal services” is acceptable.

Address of Source

Filers should include a name and address (city and state) of the source of the payment. Reviewers need not amend reports to reflect such information when the location of a business is available to the public in standard reference works.

Cross-referencing Schedule A

A common error for filers is to believe that disclosure on Schedule A satisfies the requirements of Schedule D. While the two schedules do overlap, the filer must complete each schedule with all of the required information. Filers (or reviewers) may cross-reference the other schedule only if it provides sufficient data.

Exceptions

Non-Reportable Sources

A filer need not disclose information in certain circumstances. If a filer and his client entered into a confidentiality agreement at the time the filers services were retained, then disclosure of the client will not be required. In addition, if the filer represents a client in a matter that is covered by a court order or is under seal; that involves a grand jury investigation; or that involves some other non-public investigation and there are no public filings or statements, disclosure of the client is not required. Finally, if disclosure is prohibited by a specific bar rule provision, disclosure of the client is not required. If certain clients are not disclosed because of the above reasons, a statement that “certain confidential clients are not reported” must be included on Schedule D, Part II.

This part does not apply to incumbent and termination filers or to spouses and dependent children. Reviewers may wish to notify filers of any over-disclosures so that filers can remove unnecessary information if they so desire. Reviewers should also counsel filers about potential conflicts arising from such disclosures.

4.0 REVIEW PROCEDURES

1978 U.S. Code Cong. & Admin. News 4216, 4237 (Senate Report No. 95-170)

When passing the Ethics in Government Act, a Senate report specified five purposes for the public financial disclosure system:

- to increase public confidence in the Government,
- to demonstrate the high level of integrity of the vast majority of Government officials,
- to deter conflicts of interest from arising,
- to deter some persons who should not be entering public service from doing so, and
- to better enable the public to judge the performance of public officials.

The Filer is not the Reviewer's Client

These objectives create two roles for the reviewing official—one as protector of the public and its Government from conflicts of interest, and the other as a counselor to employees. As a counselor, the financial disclosure reviewer works to protect the employee from invasions of privacy and undeserved scandal. As an ethics official, a reviewer must ensure that reports comply with legal requirements. When these two roles conflict, reviewers must remember that their most basic loyalty belongs to the public and its Government, not the filer.

The reviewer should seek to fulfill these purposes by using a systematic approach in reviewing financial disclosure reports. This *Reference* suggests the following procedures as a model. Reviewers should supplement these procedures with their own insights, while remaining within the legal authorities. *Section 14.7: Agency Procedures for Collection and Review of SF 278s* also provides a set of procedures for agencies to follow in outlining their financial disclosure systems.

Outline of Chapter

This chapter begins with an overview of the entire SF 278 review process and then discusses several procedural issues, such as the tools of review, how and when to obtain additional information, who certifies the forms, and public access to the forms. This section should orient new reviewers to the SF 278 review process. More experienced reviewers may be especially interested in this section's discussion of assumptions OGE uses in the review of the SF 278.

4.1 BASIC PROCEDURES

Steps to Follow When a Report Is Filed

- Stamp the date of receipt on the report. A report is considered filed when the agency receives it. This date is critical in determining timeliness of filing and review.
- Verify that the report was required against your master list and log the report into the list (see *Section 2.1: Officials Required to File*).
- Inform the filer of any late filing fees that she may have incurred (see *Section 2.5: Late Filing Fee*).
- Ensure that there are no missing pages or attachments and that all schedules and/or parts have been completed, if applicable.
- Gather the "tools of review" (see *Section 4.2: Tools of Review*).
- Review the first page (see *Section 3.1: The Cover Page*).
- Compare and reconcile the report against the previous report, if any. Make sure that the current report accounts for all the entries that carried over from the last report. Note any that do not. Reviewers must reconcile all reports forwarded to OGE for approval and should encourage filers to reconcile their own reports.
- Review each entry for disclosure of all required information (see *Chapter 3: Report Contents and Part II: Reviewing Common Entries*).
- Obtain additional information, if necessary, to make all disclosures complete (see *Section 4.3: Obtaining Additional Information*).
- Look again at each item, especially any additional information supplied by the filer, to identify possible conflicts of interest (see *Chapter 11: Federal Ethics Laws and Regulations in Brief*).
- Either forward the report to the next level of review or certify the report as appropriate (see *Section 4.4: Certification Requirements*), or explore conflict of interest solutions (see *Chapter 5: Resolving Conflicts of Interest*).
- Forward the report to OGE or retain in agency files, as appropriate (see *Section 4.6: Forwarding Reports to OGE*).

Review Timeframes

5 C.F.R. § 2634.605

The statutes and regulations state only that agencies must complete their review within 60 days. OGE has interpreted this requirement to mean that agencies should accomplish final certification of reports (intermediate certification for agencies with multiple review levels) within 60 days of their receipt when the reports do not require additional information or remedial action.

The reviewer should advise the filer of any questions, preferably in writing, within 60 days. Delays in the process can occur as filers try to gather information in response to these questions. Delays usually result from either filer reluctance to provide the information or lack of understanding about what specific information is needed (or both). Normally, reviewers should allow filers two weeks to respond to the questions. The letter to the filer should give an appropriate due date.

If the agency does not receive a response, the ethics official should call filers to remind them and to clarify the questions. Agencies should normally not take action against an employee who is making a good faith effort to comply with their requests. For some filers, however, stronger enforcement may be necessary. Although agencies need not use OGE's timetable, a description of it may offer useful guidance:

Days from Questions Sent to Filer	Action
15	Phone call reminder/clarification of questions.
45	Written reminder/clarification of questions.
90	Delinquency notice from the DAEO outlining future steps to be taken.
120	Delinquency notice from the head of the agency or large component stating the report is not acceptable as submitted.
150	Notice from the head of the agency or large component stating that the agency deems the report incomplete and will take action against the employee in 30 days.
180	Administrative action begun or case referred to the Department of Justice (see *Section 2.6: Filing Penalties*).

4.2 TOOLS OF REVIEW

Financial disclosure reviewers should not analyze reports by looking solely at the current report. A reviewing official should have the following resources available while reviewing a report:

- The filer's previous report, if any;
- The instructions accompanying the SF 278;
- A copy of the filer's position description or knowledge of the filer's duties;
- The Federal ethics laws and regulations; and
- Financial reference materials concerning financial institutions, corporate affiliations, mutual funds, etc. and/or access to the internet to conduct research.

Filing Systems

Agencies may wish to use a filing system that separates information available to the public under the Ethics in Government Act from information which must be requested under the Freedom of Information Act. It also provides ready access to the entire history of reports. Agencies may wish to file reports in a manner that allows easy identification of reports that have been held six years and are, therefore, due for destruction (see *Section 4.5: Public Availability and Retention*).

4.3 OBTAINING ADDITIONAL INFORMATION

5 C.F.R. § 2634.605(b)(2)

There is no requirement to audit a report to determine whether disclosures are accurate. Reviewers should take disclosures at "face value" as correct, except as indicated below. It is appropriate to assume that the filer has read and understood the instructions and has reported accurately and fully, unless the filer's history demonstrates otherwise. REVIEWING OFFICIALS should, nevertheless, seek additional information on a report and annotate the report appropriately when:

When to Obtain More Information

1. The form is incomplete (for example, when a filer fails to check an asset value);
2. The form reveals one entry (or the absence of one) that is inconsistent with another entry on the report or on the filer's previous report(s);
3. The form omits an entry of which the reviewing official has independent knowledge; or
4. The reviewing official requires more information to ensure the filer's compliance with Federal ethics laws and regulations or with other laws and regulations (see below, "Recording Additional Information," for privacy considerations).

Example: The reviewer should seek more information when the filer lists only the name of a private limited partnership. A conflict of interest analysis demands that the reviewing official know the nature of the partnership's business to determine whether its activities could conflict with the employee's duties.

Exercise Prudent Judgment

The decision whether to request additional information often involves the exercise of judgment on the part of the reviewer. This is especially true when two reports do not reconcile. Reviewers have the primary responsibility for conflict of interest counseling. Each reviewer should use more or less scrutiny, depending on the familiarity of the filer with the process, the technical accuracy of any previous report(s) and the possibility of conflicts of interest. With new filers, reviewers should approach the report as if it were the story of that person's finances. Look for obvious gaps in that story, such as long term employment with no pension reported or a new entrant with significant stock holdings and no employment. If gaps appear, reviewers should help filers to understand the disclosure requirements better.

Review Assumptions

Assumptions Do Not Hold When Patterns of Error Are Present

While the financial disclosure laws and regulations require that reviewers accept reports at face value, reviewers should use more stringent standards when a report exhibits a pattern of inconsistency that indicates the filer did not understand the reporting instructions. Absent such patterns of error, reviewers may wish to use the following review assumptions.

Given this context, OGE has found that in the following situations it is reasonable not to follow-up with the filer. These review assumptions and the need for them will probably not be readily apparent to new reviewers. New reviewers should go on to "How to Obtain Additional Information" and return as needed.

- If the filer failed to list the date of appointment on the cover, then the reviewer need not seek the date, except as needed for determining whether a new entrant report was filed late.

Assets That Do Not Require Reporting of Transactions

Schedule A

- If assets appear (or disappear) from one report to the next that normally would not require disclosure of transactions on Schedule B, such as money market funds, bank accounts, Treasury securities, or cash IRA's, reviewers may assume that a new entry (or the lack of an entry) is correct.

Asset Value Changes

- If the value of an asset changes from one category on a prior report to the next category, either higher or lower, on a current report without a reported transaction, reviewers may assume that market value fluctuated.

Income Type Changes

- If mutual funds or limited partnerships earn different types of income from one year to the next, reviewers may assume a non-reportable change in underlying portfolios. This would apply to an "EIF" designation appearing on the prior report but not on the current one. An "EIF" designation could be placed on the current report by verifying with appropriate reference materials. A conflicts analysis may still be needed.

S, J, and DC

- If an asset's identification as "spouse's," "dependent child's" or "joint" is inconsistent with its identification on a previous report, reviewers may assume a non-reportable intra-family transfer.

Brokerage Statements

- If a brokerage statement covers the appropriate periods and includes required transaction information, reviewers need not compare it to previous brokerage statements for consistency.
- Reviewers may assume that securities earn the type of income normally associated with them, such as dividends for stocks and interest for bonds and cash accounts. Reviewers may amend the report accordingly.

Schedule B. Part I

Different Purchase and Asset Values

- If the purchase price of an asset differs from the value of the asset as listed on Schedule A by one category, either higher or lower, reviewers may assume that the market value merely fluctuated.

Assets Sold on B But Not Shown on A

- If an asset is listed as sold on Schedule B and is not listed on Schedule A, reviewers may assume that it produced no reportable income during the period prior to its sale or capital gains upon its sale. If, however, a large number of assets is sold without any income being reported, the reviewer should inquire further to ensure understanding of the instructions.

Assume Complete Sales

- If an asset is listed as sold on last year's report and does not appear on the current year's report, reviewers may assume that the entire holding was sold. The assumption holds only when the sale amount is no more than one category of value below the previous asset value.

Schedule C. Part I

Small Liabilities Disappear

- If a liability previously listed at the lowest category of amount ($10,001-$15,000) does not appear on the current report, assume that the liability never exceeded $10,000 during the reporting period.

Schedule D. Part I

Non-profit Positions

- If a filer lists a Board position with a non-profit entity, but reports no income on Schedule A, reviewers may assume that no income was earned.

None Box Reporting

Filers should not leave any schedule or part blank, unless the instructions indicate it is not applicable. While there is no specific statutory or regulatory requirement that filers positively state that they have nothing to report in a particular part or schedule, reviewers should normally question patent omissions. In certain situations, however, reviewers may assume that a filer's lack of reporting on a particular section indicates "none." The criteria for these cases are:

Conditions on Assumption

- the filer has previously filed a report that indicated "none" in that section;
- there are no other entries that require the reviewer to seek additional information from the filer; **and**
- the reviewer believes that there is only a remote possibility that requesting the verification would disclose a conflict of interest.

If the reviewer believes that a particular report meets the criteria listed above, she may note in the review comment space on the front of the report her assumption that the filer should have marked the "None" box. This rule avoids unreasonably technical questions while still protecting the public's right to full disclosure.

When agencies distribute the SF 278 forms to the filers, they may wish to note, in written or oral form, that leaving an applicable schedule blank creates an uncertainty that may require additional questioning of the filer.

Termination Review Standards

Reviewers may find it useful to use less stringent review standards on reports of persons who no longer work for the Government. Since termination filers have left Government employment, reviewers may wish to expand the usual review assumptions by using the ones listed below. Reviewers must determine whether these review assumptions are appropriate, given the filer's financial disclosure history and nature of the filer's position. Reviewers may wish to document the reasons they judged such assumptions appropriate in their review notes. In the situations described below, it may be reasonable not to follow-up with the termination filer.

Errors Not Requiring Questioning

Schedule A

- For disclosed assets, failure to check the type or amount of income of an asset that does not pose any conflict of interest.
- Failure to mark a zero asset value for an asset listed as sold on Schedule B.
- Providing only a category of value when the actual amount of salary or “other” income is reportable.

Schedule B

- Failure to report a transaction of a publicly-traded security listed on Schedule A that does not pose any potential conflict of interest.
- Failure to include the date and/or amount of a transaction.
- Missing dates of travel on items that do not pose any apparent conflict of interest.
- Missing values for gifts that do not pose any apparent conflict of interest.

Schedule C

- Missing terms or dates on a liability.
- Missing category of value for a liability if the filer had disclosed a category of value on a prior report.
- Failure to report any future job agreements, unless the reviewer has independent knowledge.

How to Obtain Additional Information

When the reviewer has decided to seek additional information about a report, several sources of information are available. Depending on the circumstances, a reviewing official can seek additional information from sources including the following:

Sources of Information

- The filer;
- Prior reports;
- The filer's accountant, aide, or similar official (but only when the filer has authorized the person to discuss the report);
- Another reviewing official who previously reviewed the report;
- The filer's personnel office;
- Financial reference periodicals and other publications;
- Financial and investment institutions, (good for general information about products and services);
- Research over the internet;
- Other entries on the report; and
- Reviewing officials' independent knowledge.

When using some of these methods of obtaining information, a reviewing official must exercise judgment in determining whether to seek confirmation from the filer. When in doubt, a reviewer should verify the information with the filer.

Ensuring Clean Photocopies

Because photocopying of completed forms will be necessary when they are forwarded to OGE or made available to the public, reviewers should write legibly and use black or other dark ink when recording additional information.

Recording Additional Information

Amending Reports

A reviewing official should annotate the report itself when the entries require additional information, clarification, or correction. As in the example below, the reviewer must initial all annotations and indicate the source of the information. If annotations made by the reviewer are based on his own assumptions or on reference materials he should note this fact also. While no particular method is required, OGE makes notations by placing a footnote signal next to the information in the reporting block and indicating the source and date in the reviewer comments section of the cover page.

Annotation Limits
OGE 79 x 2

Filers are encouraged to, but need not, justify disclosed gifts or indicate details of other entries beyond the legally established reporting requirements. While reviewers may seek such justifications, these are not public, unless the filer consents to their inclusion or they are considered necessary to explain adequately a required entry. This is a matter of case-by-case judgment and balance of privacy against disclosure. Adding information to disclosures which exceeds these limits is an unwarranted invasion of privacy that the statute did not intend. Accordingly, the reviewer's note in the example below does not explain Mr. Mack's relationship to the filer; the entry merely satisfies the minimum disclosure requirements. Ethics officials who obtain confidential additional information should retain it to respond to official inquiries or to aid in the review of the filer's next report.

Entry on Cover Page:

Comments of Reviewing Officials *(If additional space is required, use the reverse side of this sheet)*	**Schedule D**--The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.
(Check box if filing extension granted & indicate number of days_____) ☐	Agency Use Only
1/ **Information received via a telephone discussion with the filer.** **Thomas F. Zorn, ADAEO, OGE, 7/19/03**	
(Check box if comments are continued on the reverse side) ☐	OGE Use Only

Entry on Schedule B, Part II:

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260, and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. **Exclude** anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☐

		Source *(Name and Address)*	Brief Description	Value
	Examples	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty)	$500
		Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$300
1		**Thomas Mack, Fairfax, VA**	**Personal Gifts** 1/ **Gifts were a leather briefcase ($225) and a fountain pen ($125). TFZ**	**$350**

4.4 CERTIFICATION REQUIREMENTS

5 C.F.R. Part 2638, Subpart B discusses agency ethics officials' appointment, qualifications and duties.

Financial disclosure rules require certification by the:

- DESIGNATED AGENCY ETHICS OFFICIAL (DAEO);
- alternate designated agency ethics official (ADAEO); or
- a delegate of the DAEO, such as a deputy ethics official (DEO), deputy ethics counselor (DEC), deputy standards of conduct counselor (DSCC), or the equivalent.

5 C.F.R. § 2634.602(c)(2)

They must certify each report in the block of the cover page reserved for "Agency Ethics Official's Opinion." (For the DAEO's own report, the agency head or his delegate should certify the report.) Certification involves signing and dating the report to indicate the reviewer's opinion that the filer is in compliance with conflict of interest laws and regulations.

DAEO Designations
5 C.F.R. § 2634.105(e)

Before beginning review work or certifying any reports, the DAEO and ADAEO should obtain a written delegation of authority to act as DAEO or ADAEO from the head of the agency. OGE requires that copies of these DAEO designations be forwarded to OGE. DAEOs may wish to delegate part of their authority to DEOs and other employees. OGE does not request or desire copies of these further delegations. Note that the certification of nominee PAS reports is not delegable. Only the DAEO (or ADAEO in the DAEO's absence) may certify reports of Presidential nominees.

What Is Not Required
5 C.F.R. § 2634.605(b)

There is no general requirement that a filer's supervisor or any intermediate official examine or review the report. However, large or geographically diverse agencies may find such a stepped process necessary. A supervisor may be asked to examine a report for a limited purpose of comparison to duty assignments, if desired, instead of a full review. Only ethics officials who certify the report must necessarily "review" it in terms of the procedures in this chapter. In determining the appropriate chain of review, each agency must ensure that all reviewers:

- are familiar with the technical reporting requirements;
- are familiar with the Federal conflict of interest laws; and
- can evaluate available conflict of interest remedies in light of the filer's duties.

4.5 PUBLIC AVAILABILITY AND RETENTION

5 U.S.C. App. § 105
5 C.F.R. § 2634.603

Almost all SF 278s are available to the public under the Ethics in Government Act of 1978, as amended. Within 30 days after receiving a report, an agency must permit its inspection and furnish a copy to any individual who presents a proper written request. The report must be made available for inspection and copying regardless of whether the agency has reviewed or certified the report. These reports are available under the Ethics in Government Act, not the Freedom of Information Act (FOIA), so their release does not involve the discretionary determinations required by FOIA.

Application to Inspect or Copy an SF 278

Any person or entity that wishes to inspect or obtain a copy of a report must submit a written request to the relevant agency stating:

- his name, occupation, and address,
- the name and address of any other person or organization on whose behalf the inspection or copy is requested and
- that he is aware of the prohibitions on obtaining or using the report (listed below).

OGE has developed a standardized application form, OGE Form 201, which agencies may reproduce. OGE recommends use of OGE Form 201 by all agencies (see *Section 15.2: OGE Form 201*).

5 C.F.R. § 2634.603(e)

SF 278s are normally retrievable by name only. Individuals requesting an SF 278 should specify each requested report by the filer's name. OGE currently charges fees for copies of SF 278s, at a rate of $.03 per page, but only if the total charge is more than $10.00. Agencies may establish fee systems to cover their costs but only through regulation issued in the Federal Register.

Records Systems
OGE/GOVT-1, 55 FR 6327 (February 22, 1990)

Individual agencies need not establish records systems for SF 278s because the SF 278 files are part of an executive branch-wide records system that OGE has developed under the Privacy Act. This records system publicly documents information about the SF 278 system including its location, who is included, categories of records, legal authorities, purposes, routine uses, certain legal notice and procedural provisions, access procedures and policies on storage, retrievability, security, retention, and disposal.

Exemptions

5 U.S.C. App. § 105(a)
5 C.F.R. § 2634.603(b)

Reports may not be made available to the public if filed by persons engaged in intelligence activities or by an Independent Counsel whose identity is under seal. Also, certain reports filed by SGEs may be exempt from release (see *Section 2.1: Officials Required to File*).

Restrictions on Use of the SF 278

Certain Uses of the SF 278 are Unlawful
5 U.S.C. App. § 105(c)
5 C.F.R. § 2634.603(f)

While these forms are available to the public, their uses are restricted. Agencies must require those who wish to examine or obtain a copy of a report to sign a statement that the agency has informed the requestor of these restrictions. No SF 278 may be used for:

- any unlawful purpose;
- any commercial purpose except by news and communications media for dissemination to the general public;
- determining or establishing a credit rating; or
- direct or indirect use in the solicitation of money for any purpose, including political and charitable purposes.

The Attorney General may bring a civil action against anyone who uses or obtains a report for these purposes, with penalties up to $11,000.

Where the Public May Obtain Reports

Interested persons should submit written applications to inspect or copy any SF 278s to the filer's agency's ethics office. In the case of a request for a PAS EMPLOYEE'S report, the agency may wish to ensure that the copy released reflects any changes that OGE made during its review. If the agency does not have a copy of the report with OGE changes, then the agency may refer the applicant to OGE. OGE responds to applications for the reports that it reviews.

Retention of Reports

Reports Available for Six Years Only
5 U.S.C. App. § 105(d)
5 C.F.R. § 2634.603(g)

Agencies must make reports publicly available for six years after receipt. Unless the reports are needed in an ongoing investigation, the agency must destroy the reports after that six-year period. Agencies should destroy nominee reports of individuals whom the Senate did not confirm one year after the individual is no longer under Senate consideration. OGE has no authority to maintain archived report files for agencies that cease to exist. These reports should remain with the agency's other records and remain publicly available for six years.

Releasable Documents

5 C.F.R. § 2634.1004

Upon proper request for an SF 278, by means of OGE Form 201 or other written application, an agency should also release any attachments that the filer submitted with the form, such as statements from banks and brokers or RECUSALS. Additionally, agencies must, upon written request, release copies of CERTIFICATES OF DIVESTITURE; 18 U.S.C. § 208(b)(l) & (b)(3) WAIVERS, subject to the limitations in § 208(d)(l); and OGE-certified blind and diversified trust instruments (see *Section 15.2: OGE Form 201*). Individuals must seek other information under FOIA.

Intra-Governmental Access to Reports

5 C.F.R. § 2634.603(c)
OGE 85 X 8

Certain Government officials may review reports in their official capacities without formal application. They are:

- Agency ethics officials and support staff who maintain the files (for reports within their own agency only);
- OGE staff; and
- Special Agents of the FBI and U.S. Attorneys conducting a criminal investigation into possible conflict of interest violations.

Notifying Filers of Requests for their Reports

5 U.S.C. App. § 105(b)(2)
5 C.F.R. § 2634.603(d)
OGE 79x2

No law or OGE regulation currently requires agencies to inform filers of requests for access to their SF 278s. Filers desiring to know whether a member of the public has requested their SF 278 may, the same as any member of the public, request a copy of all applications to inspect their SF 278s. OGE Form 201 may be used to request copies of applications to inspect the SF 278s (see *Section 15.2: OGE Form 201*). All applications to inspect the SF 278 are available to the public for the period when the SF 278 itself is available to the public.

4.6 FORWARDING REPORTS TO OGE

OGE Must Receive Reports of PAS and DAEO Filers
5 U.S.C. App. § 103
5 C.F.R. § 2634.602

After certification by the DESIGNATED AGENCY ETHICS OFFICIAL (DAEO), or ADAEO, agencies must forward reports (nominee/new entrant, annual, and termination) filed by certain officials to the Director of OGE for final certification. These officials include:

- the DAEO but not the ADAEO;
- PAS EMPLOYEES, excluding most military officers; and
- employees of the Executive Office of the President who are appointed under 3 U.S.C. § 105(a)(2)(A) or (B) or 3 U.S.C. § 107(a)(l)(A) or (b)(l)(A)(i) and employees of the Office of the Vice President appointed under 3 U.S.C. § 106(a)(l)(A) or (B).

Because of the added OGE review process for these reports, agencies should forward them to OGE as soon as they are certified by the agency.

Agencies Retain Copy

OGE will accept either the original or a copy of these reports but agencies must retain a copy for their records. OGE advises that agencies send reports either through certified mail or courier.

OGE has administratively determined that annual and termination reports of PAS employees should only be forwarded to OGE if the PAS filer meets certain criteria. These criteria are:

- the filer served in a PAS position(s) for more than 60 days during the reporting period and
- he remained in a PAS position at the end of the reporting period.

Status as a PAS employee on the report's due date is not sufficient to require forwarding to OGE, even though the employee may need to file an annual SF 278 report with his agency for an SES or other non-PAS position. In addition, agencies need not forward to OGE the reports of acting DAEOs or employees who serve in PAS positions in an acting capacity, because those filers do not go through Senate confirmation. The annual and termination reports of any recess appointees to PAS positions need not be forwarded to OGE. These practices will also help to avoid excessive forwarding of reports to OGE from agencies where employees move frequently between PAS and SES positions.

Example: An employee serves in an SES position for more than 60 days in 2003. She is nominated and confirmed in a PAS position in December. Her annual report covering calendar year 2003 need not be forwarded to OGE.

Senate Requests

Senate committees confirming Presidential nominees may request that OGE review the reports of nominees who would not normally be required to file during the confirmation process. For example, Presidential nominees to boards and commissions who are not expected to serve more than 60 days in any calendar year do not meet the statutory requirement for filing a nominee report. Nonetheless, the Senate confirmation committee has authority to seek additional information, such as an SF 278, from any nominee as part of the confirmation process and to ask that OGE review it. While OGE does review these reports at the time of confirmation, it does not review any annual and termination reports that may be filed by such persons.

5.0 RESOLVING CONFLICTS OF INTEREST

18 U.S.C. § 208
5 C.F.R. Part 2640
5 C.F.R. § 2635.402

The public financial disclosure system is designed to reveal actual and potential conflicts of interest. The basic criminal financial conflict of interest statute, 18 U.S.C. § 208, prohibits Government employees from participating personally and substantially in official matters where they have a financial interest. In addition to their own interests, those of their spouse, MINOR CHILD, general partner, and certain other persons and organizations are attributed to them (see *Section 11.1: Criminal Conflict of Interest Statutes*).

Real Possibility Test
United States v. Gorman 807 F.2d 1299,1303 (6th Cir. 1986)
5 C.F.R. § 2635.402
5 C.F.R. § 2640.103

An employee has a disqualifying financial interest in a particular matter **only** if there is a close causal link between a particular Government matter in which the employee participates and any effect on the asset or other interest (direct effect) **and if** there is a *real possibility of gain or loss* as a result of development in or resolution of that matter (predictable effect). Gain or loss need not be probable. The possibility of a benefit or detriment must be real, not speculative.

Financial Interest in a Particular Matter

One common point of confusion is distinguishing between an asset or other interest and a *financial interest in a particular matter* under 18 U.S.C. § 208. The financial interest is the possibility of gain or loss (of the value of an asset or other interest) resulting from a particular matter, not the asset or interest itself. Thus, a person could have a large holding but only a relatively small *financial interest in the particular matter,* because the potential for gain or loss is small.

No De Minimis
5 C.F.R. Part 2640

The criminal prohibition has no de minimis level. That is, it applies where any financial interest exists, no matter how small. However, certain interests that OGE has determined to be too remote or inconsequential to affect the integrity of the employees' services to the Government are exempt from the application of the prohibition. Other insubstantial interests that do not meet the requirements for a regulatory exemption might be waived under 18 U.S.C. § 208(b)(l).

The Standards of Conduct Also Apply
5 C.F.R. § 2635.502

Assets and other interests may also be disqualifying under the Employee Standards of Ethical Conduct, which apply to all executive branch employees. The Standards of Conduct attribute to an employee certain interests which are beyond the scope of the ban in 18 U.S.C. § 208, but which may require recusal because of the appearance of losing impartiality (see *Section 11.2: Standards of Conduct Regulations*).

Disclosure does not authorize the receipt of any income, gifts, or reimbursements or the holding of any interest or involvement in any transactions otherwise prohibited by law, executive order, or regulation. Reporting an interest does not resolve a conflict of interest, nor does it eliminate the possibility of criminal, civil, or administrative action based on a filer's official actions that affect the interest.

5.1 ETHICS AGREEMENTS

OGE DAEOgram of March 28, 2001

If a conflict of interest exists under either a criminal statute or the Standards of Conduct (or an agency statute or any other statute discussed in *Chapter 11: Federal Ethics Laws and Regulations in Brief*), employees should enter into ETHICS AGREEMENTS with their agency ethics officials, OGE, or a Senate committee to resolve that conflict of interest. Ethics agreements include any oral or written promise by a filer to undertake an action to alleviate an actual or apparent conflict of interest. For PAS employees, the ethics agreement must be in writing. (See *Section 14.3: Model Ethics Agreement*) This chapter discusses the actions that a filer may take.

Choosing the Correct Ethics Agreement

Filers may be advised to consider several different types of action for inclusion in ethics agreements, which are tailor-made to suit the circumstances. For example, a filer with a substantial stock holding may wish to divest of the stock. If divestiture is not possible, then she might be permitted to recuse from participating in matters affecting the company that issued the stock. The resolution of a conflict should be appropriate to the particular interest, depending on its size or type.

In some cases, one or more types of ethics agreements may not be workable. For example, if a filer's financial interest would force him to recuse from duties central to his Government position, he may agree to seek a WAIVER of the criminal financial conflict of interest statute (18 U.S.C. § 208), unless ethics officials determine that the statutory test cannot be met. Alternatively, he may agree to divest the asset, or to be reassigned to new duties that do not involve the conflicting interest. In certain situations where the filer's duties and assets are wide-ranging, he may wish to consider establishing a QUALIFIED TRUST or to use another specially-tailored solution. Ethics officials will need to assist filers in fashioning appropriate remedies.

Ethics Agreement Timeframes

5 U.S.C.App. § 110(a)
5 C.F.R. § 2634.802(b)

Once an employee makes an ethics agreement, he must comply with it not more than three months after the date of the agreement. OGE has determined that the day a PAS EMPLOYEE is confirmed is the day that she makes the agreement, even if she had reached the agreement previously. OGE considers any agreements that the employee has not complied with after 90 days to be delinquent.

This deadline may be extended only if the employee demonstrates "unusual hardship." The agency ethics officials make this determination for all employees except for those employees who are required to submit evidence of ethics agreements to OGE. In those cases, the agency should offer its opinion to OGE, but only OGE may determine whether the deadline will be extended. OGE will consult with Senate confirmation committees where appropriate.

Ethics Agreement Notice and Evidence

5 C.F.R. §§ 2634.803-804

OGE DAEOgram of March 8, 2002

For reports that OGE reviews (such as for PAS employees), the DESIGNATED AGENCY ETHICS OFFICIAL must submit the following to OGE:

- notice of all ethics agreements made, including those made as a result of confirmation hearings;
- and evidence that these agreements have been satisfied.

Required Evidence of Ethics Agreements Fulfillment

Employees must submit the following evidence to their DAEO to demonstrate fulfillment of any ethics agreement. Agencies should retain this evidence along with the filer's financial disclosure reports. The type of evidence varies according to the type of agreement:

Agreement Evidence Required

Divestiture Written notification, including the date of divestiture, from the employee. A broker order or statement of the account is acceptable.

Qualified Trust All information required by Subpart D of 5 C.F.R. Part 2634. If OGE does not approve the trust, the employee should inform the DAEO and, as appropriate, the Senate confirmation committee.

5 U.S.C. App. § 110(b)
OGE DAEOgram of June 1, 2004

Recusal A signed copy of a recusal agreement with details as to matters covered and method of enforcement, including who is responsible for screening matters, and to whom these matters will be referred. A recusal will be documented in both an ethics agreement and screening arrangement.

Resignation Written notification, including the date of resignation, from the employee. A letter of resignation is acceptable.

Reassignment Written notification, possibly including transfer of duties/station orders.

Waiver of 18 U.S.C. § 208 A copy of the waiver, signed by the appropriate appointing official or that official's delegate.

5.2 DISQUALIFICATION

5 U.S.C. App. § 110(b)
5 U.S.C. § 2634.804(b)(l)
OGE 92 X 12
OGE DAEOgram of April 26, 1999

A written disqualification, or RECUSAL from participation in specified Government matters, is by far the most common ETHICS AGREEMENT. In past years, filers have entered into recusal agreements several times more often than any other form of ethics agreement. OGE encourages agencies to accommodate employees by allowing recusal when possible. A recusal is the preferred instrument for dealing with potential conflicts because it protects the Government from a conflict of interest without forcing employees to change their private interests.

Elements of a Recusal

A recusal must contain the following elements for OGE to consider it complete (see *Section 14.4: Recusal Letter* for a model recusal integrating these elements):

- a specification of the matters to which the recusal applies;
- a statement of the process or method by which the employee will ensure the implementation of the recusal within the agency, including the position of the employee delegated to work on matters subject to the recusal; and
- the positions of those involved in its execution (for example, the individual's immediate subordinates and supervisors).

Screening Mechanisms
OGE DAEOgram of June 1, 2004

The preferred method of enforcing a recusal is by having a specific, named party screen matters that would come before the recused official. The party must be aware of the specific nature of the employee's disqualifying financial interest and should know the extent of the recusal. The screening party need not, however, be an ethics official. (See *Section 14.5: Screening Arrangement*)

General Recusals

Some agencies require that even general recusals be reduced to writing. These recusals contain a pledge to recuse from any particular matter that might arise in which the employee has a financial interest that results from present or future assets or other interests. OGE does not consider this type of general recusal to constitute an ethics agreement because it is simply a promise to obey the law. Accordingly, employees need not put a general recusal in writing, and agencies need not track its completion. Agencies are still free, however, to require these recusals to the extent they deem appropriate as a reminder to filers.

When Not to Allow Recusals
5 C.F.R. § 2635.403(b)

Recusals are not appropriate in certain circumstances. An agency should not allow a recusal if it determines the recusal would:

- disqualify the employee from matters so central or critical to the performance of assigned duties that the employee's ability to perform those duties would be materially impaired or
- adversely affect the efficient accomplishment of the agency's mission because of its frequency or difficulty in reassigning responsibilities.

OGE normally defers to the agency's determination that such situations exist that would bar recusal and require divestiture. Certain Senate confirmation committees require divestiture because they do not find recusal to eliminate sufficiently a conflict of interest.

Other Recusals
5 C.F.R. § 2635.502 & 503

The impartiality standard in the Employee Standards of Ethical Conduct also requires agencies to analyze whether employees should, in some situations, recuse from matters involving entities with which they have certain relationships not otherwise covered by 18 U.S.C. § 208.

5.3 WAIVERS AND EXEMPTIONS

18 U.S.C. § 208(b)
5 C.F.R. Part 2640

The criminal financial conflict of interest statute has four separate WAIVER/exemption provisions. An employee who has been granted a waiver or qualifies for an exemption can participate in official matters without violating 18 U.S.C. § 208, even though he has what would otherwise be a disqualifying financial interest in the matters. Ethics officials often use waivers for broad particular matters, such as general policy matters, in conjunction with a RECUSAL from particular matters involving specific parties for a specific financial interest. The four types of waiver/exemption are:

208(b)(l): A waiver issued by the employee's agency that covers certain financial interests that are not so substantial as to affect the integrity of the employee's services.

208(b)(2): Blanket exemptions issued by OGE for financial interests considered too remote or too inconsequential to affect the integrity of the employee's services.

208(b)(3): A waiver for special government employees on Federal Advisory Committee Act committees when the need for services outweighs the potential for conflicts.

208(b)(4): An exception for employees that have certain Native American or Alaska Native birthrights.

Waivers under 18 U.S.C. §§ 208(b)(l) & (b)(3)

Ethics officials are directly involved in issuing waivers under the (b)(l) and (b)(3) provisions. Once an employee properly seeks and obtains either waiver in writing for the specified matters, the employee is not subject to prosecution under § 208 for acting within the terms of the waiver. An employee must not act when a conflict of interest exists unless and until such a waiver is issued. Such waivers are not retroactive and only serve to cover future conduct.

OGE 91 X 30

Agencies may not use these waivers in relation to any conflict of interest prohibitions in their own organic statutes. Those statutes may, however, authorize other exemptions.

The Waiver Process

Employee Request

To begin the waiver process under § 208(b)(l) or (b)(3), the employee must submit a written waiver request to the appointing official or her authorized delegate. That request must:

- make full disclosure of the conflicting interest; and
- describe the particular matters from which the employee would be disqualified without the waiver.

The appointing official, or her delegate, should ascertain whether the request is complete, and then go through the process of consultation and analysis described below.

Consultation with OGE
E.O. 12674 § 301(d)

While the statute specifies that the appointing official decides whether a particular holding meets the specified test, an Executive order directs agencies to consult with the Office of Government Ethics prior to granting the waiver (where practicable). (Agencies normally consult with their OGE Desk Officers to fulfill this requirement.) In addition, they must issue waivers in writing and provide OGE a copy of all waivers they have issued. In most cases, OGE does not issue any written response to verify agency consultations.

Granting Official
E.O.12674 §§ 401-402

Agency heads are the appointing officials authorized to grant waivers to employees within their agencies, except for Presidential appointees. They often, however, delegate this authority to the DAEO. The President has delegated his waiver authority for PAS EMPLOYEES to agency heads. For Presidential boards and commissions and for appointees within the White House, the President has delegated his waiver authority to the Counsel to the President. President Bush has delegated his authority to grant waivers for agency heads to the Counsel to the President.

OGE DAEOgram of
April 26, 2002

Requirements for Waivers

The written § 208(b)(l) waiver should describe:

- the disqualifying financial interest;
- the particular matters to which it applies;
- the employee's role in the matter and any limitations on his participation; and
- the basis for granting the waiver.

The written § 208(b)(3) waiver should describe:

- the nature of the financial interest;
- the particular matters to which it applies;
- any limitations on the employee's ability to act in the matter; and
- the basis for granting the waiver.

The waivers should not focus on subjective elements, such as the employee's reputation for personal integrity.

Effect on Appearance Determination
5 C.F.R. § 2635.501 note

Officials granting waivers should be aware that a decision to waive the effect of the criminal statute also waives the consideration of appearances under Subpart E of the Employee Standards of Conduct. This rule modifies OGE's earlier opinions on granting waivers, which had expressed concerns about residual appearances of conflict.

No Reconsideration Process
OGE 92 X 10

The authority to grant a waiver is within the sole discretion of the Government employee's appointing official or delegate. The employee has no statutory right to receive such a waiver. The statute does not provide for a review of the employing agency's discretion in the matter. When their agencies decline to issue waivers, employees must resolve conflicts through other remedies, such as recusal, reassignment, or divestiture, or they risk criminal prosecution. OGE has no authority to serve as an appellate body in matters of individual employee disputes with the appointing official about denial of waiver requests.

Waiver Analysis

A waiver analysis should focus on the nature and amount of an employee's financial interest in the outcome of a particular matter in which he is participating. If a disqualifying financial interest exists and the ethics official is considering a waiver, then the specific analysis necessary for the waiver determination depends on the language of the statute:

Waiver Type	Waiver Standard
208(b)(l)	the "interest [in the matter] is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect" from the employee.
208(b)(3)	"the need for the individual's services outweighs the potential for a conflict of interest created by the financial interest involved."

An important difference between these two standards is that (b)(l) focuses on the substantiality of the financial interest in the matter, while (b)(3) balances the need for services against the potential for conflict.

5 C.F.R. § 2640.301

OGE has published regulatory guidance that agency ethics officials may use when determining whether the waiver standard has been met. Among the listed factors to consider for (b)(l) waivers are the type and value of the interest, the identity of the person whose financial interest is involved, the dollar value of the disqualifying financial interest and the nature and importance of the employee's role in the matter.

5 C.F.R. § 2640.302

For (b)(3) waivers, an agency ethics official should consider the type and value of the interest, the identity of the person whose interest is involved, the dollar value of the disqualifying financial interest, the uniqueness of the individual's qualifications, the difficulty of locating a similarly qualified individual and the extent to which the disqualifying financial interest will be affected by the action of the committee.

Obtaining Additional Information

In addition to the written waiver request, a granting official may wish to examine the employee's position description and financial disclosure statement. The granting official may also need to seek, on a confidential basis, more precise information about the nature of the interest that is causing the disqualification.

18 U.S.C. § 208(d)(l)
5 C.F.R. § 2640.304

Public Availability

Waiver determinations are available to the public for inspection or copying at the agency that issues the waiver. Agencies may withhold information that the Freedom of Information Act exempts from disclosure. Additionally, an agency must withhold any information in a waiver granted under § 208(b)(3) that is more extensive than that required to be disclosed by an SGE in his financial disclosure statement.

Exemptions under 18 U.S.C. § 208(b)(2)

5 C.F.R. Part 2640

Exemptions issued by OGE pursuant to 18 U.S.C. § 208(b)(2) allow an employee to participate in a matter, notwithstanding the prohibition under § 208(a). A written document describing the applicability of an exemption to the employee is not required; however, an employee may need to seek the advice of her ethics official about the availability of the exemption.

Mutual Funds, UITs, & Employee Benefit Plans
5 C.F.R. § 2640.201

The regulations at 5 C.F.R. Part 2640 contain three categories of exemptions. The first category contains exemptions for interests in mutual funds, unit investment trusts, and employee benefit plans. Under the exemption for mutual funds, an employee may participate in a matter which affects the holdings of a diversified mutual fund that she, her spouse, or her minor child holds. In order to be diversified, the mutual fund should not have a stated policy of concentrating its investments in any industry, business or single country other than the United States, or in bonds of a single state within the United States. An employee may also participate in a matter which affects the holdings of a sector mutual fund if the aggregate market value of interests in the fund or funds does not exceed $50,000. Likewise, an employee may participate in particular matters affecting the holdings of her Thrift Savings Plan, a pension plan established or maintained by a state government or a diversified employee benefit plan. A diversified employee benefit plan means that the plan's trustee has a written policy of varying plan assets. The exemptions under this category are available for any amount of interest held by the employee.

OGE DAEOgram
of 3/19/02

Securities
5 C.F.R. § 2640.202

The second category of exemptions covers interest in SECURITIES. This category permits an employee to act in matters affecting his interest in publicly traded securities. Two of the exemptions are based on the value of the securities. One of these two exemptions allows the employee to act in particular matters involving specific parties that affect his financial interest in publicly traded securities, where the securities are valued at no more than $15,000 in the aggregate. The other exemption allows the employee to participate in particular matters of general applicability where his interest in publicly traded securities does not exceed $25,000 in a single issuer, and $50,000 in all affected securities. There are also exemptions in this category for matters affecting nonparties, for certain federal Government securities, for securities held by a tax-exempt organization when the employee serves the organization in a certain capacity, and for securities or interests of the employee's general partner.

OGE DAEOgram
of 3/19/02

Miscellaneous Exemptions
5 C.F.R. § 2640.203

The third category of exemptions covers miscellaneous exemptions. This category contains exemptions for special kinds of financial interests, as well as exemptions which address specific agency concerns.

5.4 REASSIGNMENT

While a waiver accommodates employees' financial interests to their work, reassignment accommodates filers' work to their financial interests. Reassignment of duties often ranges from avoiding particular cases to transferring employees to different sections or subject areas. Because this solution often involves transferring a particular case or contract, it requires relatively little documentation. The actual process of changing an employee's duties is more of a personnel matter than an ethics matter. Ethics officials interested in using this solution should consult with their agency's personnel officers.

5.5 DIVESTITURE OR RESIGNATION

5 C.F.R.§ 2635.403

Divesting (or selling) an asset or resigning from a position outside the Government is a common method of resolving a conflict of interest, but it may not be the employee's first choice because of its severity. This method has a distinct advantage in that it permanently resolves a conflict without the exercise of discretion inherent in a waiver or the ongoing screening necessary for a RECUSAL. While employees often voluntarily break outside connections, ethics officials have clear authority to require divestiture or resignation in appropriate cases. Specifically, divestiture or resignation may be ordered when maintaining the financial interest or position would:

- disqualify the employee from matters so central or critical to the performance of assigned duties that the employee's ability to perform those duties would be materially impaired; or
- adversely affect the efficient accomplishment of the agency's mission because of its frequency or difficulty in reassigning responsibilities.

Additionally, some agency statutes and supplemental Standards of Conduct regulations prohibit the holding of certain interests and may require divestiture.

Senior Noncareer Employees
5 U.S.C. App. §§ 501-502
5 C.F.R. § 2636.301

Resignation is also appropriate to comply with special limits on outside employment. By statute, certain noncareer SF-278 filers whom the President appoints or who serve in SES (or SES-type) positions or SCHEDULE C (or similar political-type) positions may not in any calendar year have outside earned income that exceeds 15% of the annual rate of basic pay for Executive Level II. In addition, these employees may not have certain compensated outside employment positions or allow use of their name in connection with professional service involving a fiduciary relationship (see *Section 11.4: Special Limitations of Senior Noncareer Employees*).

E.O. 12674 § 102

Furthermore, an Executive order currently bans all outside earned income for full-time, non-career Presidential appointees, except for certain White House employees paid below the GS-9 level. For persons whom the President appoints and the Senate confirms, the White House has also traditionally forbidden any outside positions with for-profit entities. It has allowed positions with non-profit entities to continue only after a case-by-case review.

Certificates of Divestiture

5 U.S.C. § 1043
5 C.F.R. Part 2634, Subpart J
OGE 92 x 11
OGE DAEOgram of April 26,1999
IRS Form 8824

To ease the tax burden from selling conflicting financial interests, Congress has authorized the Office of Government Ethics to establish a CERTIFICATE OF DIVESTITURE (CD) program. A CD allows an eligible person (as defined below) to defer recognition (for income tax purposes) of capital gains from the sale of an interest that presented a conflict. OGE will not issue a CD for the sale of an asset that will not result in the realization of capital gains.

Only OGE may issue a CD, and it may do so only when an employee must sell an interest to comply with an ethics agreement. The Director of OGE can issue a CD only when the divestiture is reasonably necessary for the employee to comply with ethics restrictions.

Procedure for CD Requests

The CD process may involve a fair amount of time and must follow a specific order. It should be started immediately after the divestiture agreement is made to ensure that the sale occurs within the three month ethics agreement compliance period. The proper sequence of events is vital because OGE cannot issue the CD retrospectively; the filer must obtain a CD before divesting an asset in order to secure the tax deferral. In a nutshell, the process is:

1. An agency ethics official or Senate confirmation committee informs the employee of a conflicting interest and orders divestiture.
2. The employee must submit a written request for a CD submitted to the DAEO.
3. The DAEO forwards the request and the other documents specified below, including an opinion, (or evidence that the Senate Committee requires divestiture) to OGE.
4. For those who qualify as an eligible person, the Director of OGE will issue a CD if she concurs with the DAEO's opinion.
5. The eligible person may then sell the interest.
6. Within 60 days of the divestiture, the eligible person must reinvest the proceeds of the sale in “permitted property” (see below).
7. The eligible person reports on IRS Form 8824 a reduction in the tax basis of the newly-acquired permitted property, to the extent of unrecognized gain allowed by the CD. This reduction has the effect of deferring tax until a future sale or transfer. (Capital gains will, however, be immediately recognized for tax purposes if and to the extent that the employee does not roll over the entire amount realized from the sale into permitted property.)

SF 278 Reporting Requirements

Financial Disclosure Requirements

Filers should report any capital gains realized from the sale of the conflicting property on Schedule A when they sell the interest (if the gains are over $200). As with other forms of tax-deferred income, this income must be reported on the SF 278 when the filer realizes it, regardless of when it is taxed. A filer should also report sales under a CD on Schedule B, part I of the SF 278 and should check the Certificate of Divestiture box.

Requirements for a Certificate of Divestiture

Before issuing a CD, the Director of OGE must concur with the DAEO's determination that a divestiture is reasonably necessary to comply with conflict of interest restrictions. To aid in the Director's determination, the agencies must submit the following materials:

Information OGE Needs to Issue a CD
5 C.F.R. § 2634.1005

- a copy of the written request to the DAEO for a CD (signed by the employee, but stating that the eligible person has agreed to divest;
- a copy of the latest financial disclosure report filed by the employee;
- a detailed description of the property involved, including the name of the security's issuer, the number of shares or face amount of the debt instrument, the names of those holding a beneficial interest, and the nature of their legal title to the property (individual or joint, for example);
- a complete description of the facts and circumstances relevant to the determination of “reasonable necessity” of divestiture, which includes a description of and any statutory citations regarding the employee's duties;
- the DAEO's written analysis of the relevant conflict of interest restriction, and his opinion justifying the “reasonable necessity” of divestiture, or for Senate ordered divestitures, evidence that the Committee requires the divestiture; and
- any other information necessary for the Director of OGE to verify the DAEO's submitted analysis and opinion.

Property to Replace Conflicting Assets
26 U.S.C. § 1042(a)
5 C.F.R. § 2634.1003

Permitted Property

After obtaining a CD and selling the conflicting interest, the employee must buy permitted property within 60 days in order to obtain the tax rollover relief that the CD can provide. Permitted properties include:

- any obligations of the Unites States (bonds and notes as well as U.S. Savings Bonds) and
- any "diversified investment fund."

Reviewers should note that a "diversified investment fund" is not necessarily the same as an "EXCEPTED INVESTMENT FUND" or a "widely diversified investment fund." A "diversified investment fund" is a diversified mutual fund or diversified unit investment trust. In order to be diversified, the fund must not have a stated policy of concentrating investments in an industry, business, single country other than the United States, or bonds of a single state within the United States. Eligible persons may wish to seek professional guidance before buying a replacement property.

A CD authorizes only one protected "rollover" for each asset or interest. Thus, a filer who divests under a CD and acquires U.S. Government obligations as permitted replacement property will be subject to tax on any gain upon the obligation's maturity. Likewise, the subsequent sale of a permitted diversified investment fund will give rise to taxable gain.

Eligible Persons

Reviewers should note that only "eligible persons" may receive a CD. These persons are:

Special Government Employees Are Not Eligible for CDs
26 U.S.C. § 1043(b)

- Any officer or employee of the executive branch *except* a SPECIAL GOVERNMENT EMPLOYEE;
- the spouse or MINOR or DEPENDENT CHILD of such an employee whose financial interests are imputed to the employee under Federal conflict of interest rules. Adult, non-dependent children are not eligible persons; and
- certain trustees, as discussed below.

Issues Concerning Trusts

26 U.S.C. § 1043(b)(5)
5 C.F.R. § 2634.1005(d)
OGE 90 x 14 & 92 x 14

A divestiture may be required for an asset held in a trust if the asset itself poses a conflict of interest or if the asset's value exceeds the maximum percentage of the full trust's value that is permitted to be held in a qualified diversified trust.

Eligible Trustees

When a conflicting interest is held in a trust, OGE may issue a CD to an eligible trustee. Generally, a trustee may qualify as an eligible person if the only people with a beneficial interest in the trust are the Government official, her spouse, or her minor or dependent child. When a conflicting asset is in a trust with multiple beneficiaries, including non-eligible persons, the CD may not be proper.

The trust should take steps to eliminate these unintended beneficiaries of CD coverage. Such steps may include: division of the trust into separate portfolios, limited distributions, dissolution of the trust, or any other method that the Director of OGE, in her sole discretion, deems feasible under the facts and circumstances to exclude unintended parties from benefiting from the CD. These steps are, however, subject to applicable state trust and estate laws.

CD Requests for Trusts

In addition to the documents regularly required for a CD, an eligible person seeking a CD for an asset in a trust should submit:

- a copy of the trust instrument; and
- a list of the trusts current holdings unless the holdings are listed on the employee's most recent financial disclosure reports.

5.6. QUALIFIED TRUSTS

5 C.F.R. Part 2634, Subpart D

Before the Ethics in Government Act, a great variety of blind trust arrangements existed. In that Act, Congress created a uniform system of qualifying trusts that emphasizes independent trustees and limited communication with the employee involved. With a qualified trust, the interests will cease to be disqualifying to the filer for purposes of 18 U.S.C. § 208 when the conditions described below are met. For employees who have large portfolios and who wish to consider establishing a qualified trust, the reviewer should assist them in contacting OGE for assistance as early as possible.

Qualified Blind Trusts

5 U.S.C. App. § 102(f)(3)

The most universally adaptable type of qualified trust is a blind trust. In this trust, an employee places assets in the care of an independent trustee (and other designated fiduciaries). The trustee has the full responsibility to administer and manage the trust without participation by or knowledge of any interested party. For trust purposes, an interested party is, generally, the Government employee, his spouse, and his dependent children. The qualified blind trust insulates those assets which have been acquired without the filer's knowledge or which have been reduced to a value under $1,000.

Qualified Diversified Trusts

5 U.S.C. App. § 102(f)(4)(B)

The other type of qualified trust is a qualified diversified trust. This type of trust resolves conflicts by having a portfolio so diversified that the Government employee involved would not be able to take specific actions that materially enhance the overall value of the portfolio. Upon certification, the assets of this trust no longer cause disqualification under 18 U.S.C. § 208. The holdings must be a well-diversified portfolio of securities with several specific requirements, including:

- no more than 20% of its total value may be concentrated in any particular geographic, industrial or economic sector; *and*
- no more than 5% of its total value may be in securities from any one issuer (other than the United States Government).

Previously Established Trusts

Filers with trusts that were previously established may seek to have their trust arrangements qualified as blind or diversified.

The Process of Qualifying a Trust

5 U.S.C. App. § 102(f)
5 C.F.R. §§ 2634.405-408

General guidance is not well-suited to the variety and complexity of scenarios in this area. Accordingly, interested parties should contact OGE to coordinate efforts to create an appropriate type of trust. OGE has several model qualified trusts available on its website.

5.7 OTHER FINANCIAL ARRANGEMENTS

Third Party Guarantors

OGE 99 X 6

OGE DAEOgram of 4/14/99

Certain interests, such as in DEFINED BENEFIT pension plans, may not be readily divested and for practical purposes must be retained. If the employee's responsibilities include participation in matters that will directly and predictably affect the company's willingness or ability to pay that pension, the employee's financial interest in those matters may not be appropriate for a waiver under 18 U.S.C. § 208(b)(l). However, in such cases it may be possible to obtain a third party guaranty to insure the obligation's full payment regardless of the financial health of the former employer.

5.8 PROCESSING ETHICS VIOLATIONS

28 U.S.C. § 535(b)
5 C.F.R. § 2638.603

Ethics officials should be alert for possible criminal or Standards of Conduct violations. In general, whenever ethics officials have information concerning a possible violation of a criminal statute, the agency should coordinate with its office of Inspector General, or similar investigative unit, to ensure the matter is referred to the Department of Justice (DOJ). Only DOJ may decide whether to pursue the violation with criminal charges. Agencies must report such referrals to OGE. They may use OGE Form 202, a "Notice of Conflict of Interest Referral Form" (see *Chapter 15.3: OGE Form 202* for a sample Form).

Where To Refer Violations

Matters involving the criminal conflict of interest statutes should be referred to the United States Attorney where the alleged violation occurred, or:

Director, Conflict of Interest Crimes Branch
Public Integrity Section, Criminal Division
Department of Justice
Washington, DC 20038

If DOJ declines prosecution, the agency should then determine whether any violations of the Standards of Conduct regulation have occurred that should be pursued with disciplinary action. The agency must notify OGE in writing of any subsequent actions taken.

See *Sections 11.3: Other Conflict of Interest Provisions* and *11.4: Special Limitations on Senior Noncareer Employees* for information on referring violations of non-criminal statutes.

PART II:

REVIEWING COMMON ENTRIES

REVIEWING COMMON ENTRIES

Part I provided guidance on what is reportable on the SF 278, as well as procedural aspects of review and conflict analysis. The three basic reporting questions it covered were:

- What particular types of interests does the disclosure statute require to be reported?
- When are these interests attributable to the filer for reporting purposes?
- Do these interests meet the value thresholds and fall within reporting periods?

Part II describes the next steps in the overall disclosure and review process:

- ensuring full disclosure and
- analyzing interests for conflicts with official responsibilities or statutory and regulatory prohibitions.

Each Section Has Three Elements

Each section of the chapters in Part II covers three basic aspects of the financial interests being discussed:

1. **Description of Entries**
   The first part of each section provides a brief description of an interest that could be listed on the SF 278.

2. **Disclosure Requirements**
   Next, each section discusses the financial disclosure requirements, including what information to report and on which schedules to report them.

3. **Conflicts of Interest**
   Finally, each section discusses conflicts, beginning with 18 U.S.C. § 208, the basic conflict of interest statute. This part also addresses other statutory restrictions, such as 18 U.S.C. §§ 203, 205, & 209. In addition, the discussion will include considerations of restrictions under the Employee Standards of Ethical Conduct. (For more information on conflicts of interest, see *Chapter 5: Resolving Conflicts of Interest*, and *Chapter 11: Federal Ethics Laws and Regulations in Brief*.)

General Guidance Only

This text and its examples do not cover all unique aspects of financial disclosure and cannot serve as a substitute for experience. This manual provides only general information, disclosure guidance, and conflict of interest analysis considerations about various types of interests. Specific cases, however, require individual analysis and on-the-job experience.

Aid to Filers

Reviewers may wish to provide particular sections of this Part to filers with complex holdings as a supplement to the SF 278 instructions and examples.

6.0 EMPLOYMENT, OWNERSHIP, AND OUTSIDE ACTIVITIES

One of the most important concerns in conflict of interest analysis is a filer's employment with and other linkages to outside organizations. While these concerns are especially relevant when reviewing new entrant or nominee reports, they are also relevant to all filers.

Government employees functioning in their private capacities become involved with organizations outside the Government in several different ways, such as:

- an employee;
- an active owner;
- a contractor;
- a member or volunteer; or
- an investor.

Outline

This chapter discusses how to disclose and analyze the relationships listed above. *Chapter 8: Investments* will cover investments in more detail. In addition to dealing with employment, ownership, contractual, and volunteer relationships, this chapter also addresses honoraria, leaves of absence, and severance payments that may result from these linkages.

6.1 BUSINESS OWNERSHIP AND EMPLOYMENT RELATIONSHIPS

Business Ownership

General Discussion
5 U.S.C. App. § 102(a)(3)
5 C.F.R. § 2634.301

Reviewers may see various business ownership arrangements disclosed, such as sole proprietorships, joint ventures, general partnerships, limited partnerships, "S" corporations, or regular corporations. The details of the structures of these arrangements are generally not important for purposes of financial disclosure and conflict analysis. More relevant is the relationship that filers have to the entity and how filers can affect their interest in the entity. These concerns dictate the level of disclosure required.

The major structural differences among these entities provide different ownership options. These options include: the amount of investment and risk, the extent of liability, the expectation of profit, the tax treatment, and the degree of time commitment. For example, limited partnerships and corporations usually provide more limited liability and risk than the other types of arrangements. Likewise, while a sole proprietorship or joint venture may be relatively easy to organize, it will often require greater financial capital than does investing in a more complex entity, such as a corporation.

Private Versus Public Interests

What controls the degree of disclosure on an SF 278 is whether shares of a business are publicly traded, as are some limited partnerships and many corporations. A filer's interest in a publicly-traded entity requires less descriptive information on Schedule A than does a private business arrangement, because publicly-traded entities are described in standard reference materials.

The type of ownership usually dictates both the nature and the extent of information that a filer should include on the SF 278. For example, it normally determines how to characterize income from the business, whether gross receipts, net distributive share, dividends, etc. The type of business relationship may also suggest which additional schedules will require information, such as Schedule C for past and future employment arrangements or Schedule D for outside positions and clients. These matters are discussed more fully below.

Employment Relationships

General Discussion
5 U.S.C. App. § 102(a)
5 C.F.R. §§ 2634.302 & 306

Employment relationships are among the most important elements to report on the SF 278. Most reportable employment involves salary or other earned income from the filer's former positions or those of a spouse, but filers must also include any current outside employment for themselves or their spouse. For themselves, filers must also make certain disclosures about any future employment agreement.

Ties to a Former Employer

Filers may retain ties to a former employer in a number of ways, each of which they must list on the SF 278. One common linkage is a leave of absence, which many people take to retain a highly competitive position, such as a tenured faculty slot at a university. In addition, an employee may have other benefits from a former employer, such as deferred compensation, profit-sharing, stock options, employee pension, medical and insurance plans. Most of these linkages to former employers represent a continuing financial interest in those employers, which makes them potential conflicts of interest.

Severance Payments

A severance payment, which firms sometimes pay departing employees for their past service, is another type of linkage. It may represent a continuing interest in the employer, if paid over a period of time, and could violate the criminal statute on supplementation of Government salary. It may also pose appearance problems, even if occurring prior to Government employment.

Future Employment

Filers may also have future employment agreements. Often before leaving the Government, filers negotiate for or accept employment with an outside entity. Any such negotiation or agreement to take another position upon leaving Government represents a financial interest in the future employer.

Financial Disclosure Requirements

Schedule A Requirements
OGE 87 X 9

Business Ownership Interests

Filers must report on Schedule A their business ownership interests, and those of their spouse or DEPENDENT CHILD, that exceed $1,000 or earn more than $200. Reporting of shares in publicly-traded entities is relatively straightforward because information on their activities and holdings is publicly available. Accordingly, filers need not supply information about publicly-traded corporations or limited partnerships; disclosing the name of the entity in Block A is sufficient.

Non-Public Businesses

Interests that are not publicly-traded, on the other hand, require more detailed information. An identification of a non-public entity in **Block A of Schedule A** is incomplete unless the description reveals:

Elements of a Complete Description

- the full name of the entity;
- its address (city and state is sufficient);
- the nature of any trade or business that is actively conducted by or through the entity; and
- any portfolio investments or other attributions from the entity that are not solely incidental to the trade or business disclosed.

Business-related Assets & Liabilities

Businesses sometimes have non-incidental assets and liabilities that a filer should disclose. When they do, the filer should disclose the value of her share, as appropriate to the type of asset.

Example: The activity of a law firm constitutes the conduct of a trade or business. To report an interest in a law firm, a filer merely identifies the firm and notes that it is engaged in the practice of law. He need not separately disclose assets (and liabilities) that are incidental to the legal practice, such as its law library books, furniture, supplies, accounts receivable, and so on.

Asset Values

In **Block B** of Schedule A, filers must mark the category of the fair market value of their interest in a business. Filers need not show the business' overall value. They must merely disclose the value of their investment, capital account, or shares in the business. Filers who cannot determine the actual value may make a good faith estimate (see *Section 3.3: Schedule A, "Valuing Assets"*).

Income Type and Amount

Block C of Schedule A applies if the business interest produced more than $200 of income during the reporting period. Filers must mark the type of income from shares held in a corporation, such as interest or dividends, and show a category of value. For income from most other business ownership arrangements, filers will need to show the actual amount of their income. They should describe the type of income, such as S-Corp income, joint venture income, or partnership income, in the "Other Income" column. Filers should normally list the gross, not net, income, except where a partnership or "S" corporation distributes a net share. In addition to disclosing gross income, filers may note the net amount if they wish.

Sole Proprietorships

For sole proprietorships, filers should describe the type of income as "Business Income" and list the gross income in the "Other Income" column. If the sole proprietorship belongs to the spouse, the gross income is not required to be reported. If the sole proprietorship is an entity through which the filer arranges speaking engagements for herself, gross income of the business is not required to be reported. Instead, each speaking engagement should be reported as honoraria (See *Section 6.4: Honoraria*).

Employment Relationships

In addition to ownership, filers must disclose on Schedule A any employment relationships and income. These disclosures include salaries, commissions, fees and any other outside EARNED INCOME of the filer from full or part-time employment or consulting (other than from the United States). Filers must also report the source, but not the amount, of their spouse's compensation. Filers need not report any information about their dependent children's outside earned income.

Schedule A Disclosure

Filers must report employment that generates more than $200 in income from a single source (more than $1,000 for a spouse) on **Schedule A**. In Block A, they must list the source of the payment, including the name of the company. Block B, the asset value, is often blank if the employee's only interest in the company is salary. An asset value listed could indicate deferred compensation owed to the employee or perhaps an equity or ownership interest in the business. In Block C, the type of income should be noted in the "Other Income" column as salary, commissions, bonuses, or fees, as appropriate. Filers must list the actual amount of earned income, as opposed to marking a category of amount (for a spouse, no amount is required).

Severance Payments

Filers must also report any anticipated or received severance payment from a previous employer as an asset or as income. If the payment is anticipated, the filer should list the source of the payment in Block A, the category of value for the anticipated payment in Block B, and the type of income (if any) in Block C. If the payment has been received, the filer should list the source of payment in Block A, and the type of income as "Severance Payment" in the "Other Income" column, as well as the exact amount in Block C.

Pensions

In addition, filers should also report in Block A any retirement arrangement that they may have in connection with their employment (see *Section 7.2: Defined Benefit and Defined Contribution Plans* and *Section 7.3: Other Types of Retirement Arrangements* for more information on employee benefit reporting.)

Both Business and Employment Disclosures

Disclosure On Additional Schedules

Interests in businesses and employers often require significant amounts of information on the same holding. Considering the thresholds and exclusions (see *Chapter 3: Report Contents*), reviewers may wish to remind filers that they must report the following outside linkages beyond the requirements of Schedule A:

- **On Schedule B, part I**, transactions by businesses involving securities/real estate, but only to the extent that they are not solely incidental to the business (also transactions of shares by the filer).

- **On Schedule B, part II**, reimbursements and gifts received in connection with their outside employment. This requirement includes spouses and dependent children, but with some exclusions (see *Section 3.5: Schedule B, Part II*).

- **On Schedule C, part I,** business loans or other liabilities which are not solely incidental to the business.

The following schedules apply to the filer but not his spouse or dependent child:

- **On Schedule C, part II**, continuing participation in employee benefit plans and other arrangements, including:

Employee Benefits

- pension plans
- payments from employers
- travel and other employee discounts, such as reduced tuition rights.
- health plans
- return of capital accounts
- leaves of absence
- deferred compensation
- stock options
- profit sharing
- restricted stock
- phantom stock

- Also on **Schedule C, part II,** the filer must report any future employment agreements, negotiations or re-employment rights. A complete reporting of an employment arrangement includes:

Employment Agreements

  - parties to the agreement;
  - dates of the agreement;
  - a specific description of the position involved,
  - terms of the agreement; and
  - at the filer's option, information about steps taken to eliminate any potential conflict of interest in regards to these arrangements.

Severance Payments

- Finally on **Schedule C, part II,** filers should detail arrangements for any continuing severance payments. This description should include:

  - the name of the employer,
  - the amount and timing of all payments,
  - the basis of the payments, that is, the method used to calculate the payment including whether it was pursuant to an established company plan and
  - the date of the agreement.

- **On Schedule D, part I**, positions with the company, such as employee, consultant, sole proprietor, general partner, board member, or corporate officer.

- **On Schedule D, part II,** a list of certain income sources (if applicable). For example, attorneys and other professionals with specific clients must list sources for which they personally provided services worth more than $5,000.

Examples

The following samples from the SF 278 demonstrate a normal listing of business ownership and employment on the form. The examples cannot cover all possibilities for such entries, but they do reflect several common scenarios.

Reporting Individual's Name	SCHEDULE A	Page Number
Diana Troi		**1**

Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)															Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)														
																Type				Amount										
For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income. For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse). None ☐	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,01 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples: Central Airlines Common				x												x						x										
Examples: Doe Jones & Smith, Hometown, State			x																												Law Partnership Income $130,000	
Examples: Kempstone Equity Fund					x								x										x									
Examples: IRA: Heartland 500 Index fund							x						x											x								
1 **Tsunami, Inc. (S Corp--Makes surf boards), San Diego, CA**			√																												**S-Corp Income $3000**	
2 **Sunshine Grocery (natural foods store partnership), Nashville, TN**			√																												**Partnership Income $4000**	
3 S **Spice of Life (Sole Owner, Health Foods Store), Nashville, TN**				√																											**Business Income**	
4 **Johns Hopkins University**																															**Salary $140,000**	
5 **Johns Hopkins Pension (Defined Contribution Plan–Fidelity Magellan)**					√								√											√								

Reporting Individual's Name	SCHEDULE C	Page Number
Diana Troi		**3**

Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None ☐

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1	**I have taken an unpaid two year leave of absence from Johns Hopkins. Pursuant to University policy, I can apply for additional leaves of absence in one year intervals. During my absence, I will maintain my interest in my**	**Johns Hopkins University**	**7/99**
2	**defined contribution plan, but neither Johns Hopkins nor I will make any further contributions until I return. I will also continue to participate in my health plan with Johns Hopkins.**		

Reporting Individual's Name	SCHEDULE D	Page Number
Diana Troi		**4**

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization *(Name and Address)*	Type of Organization	Position Held	From *(Mo., Yr.)*	To *(Mo., Yr.)*
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1	**Johns Hopkins University; Baltimore, MD**	**Private University**	**Professor**	**8/90**	**Present**
2	**Sunshine Grocery**	**Natural Food Store**	**General Partner**	**10/95**	**Present**
3					
4					
5					
6					

Part II: Compensation in Excess of $5,000 Paid by One Source

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

None ☐

	Source *(Name and Address)*	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	**Johns Hopkins University**	**Teaching and Research**

Conflict of Interest Analysis

General Outline

When examining disclosures related to business ownership or employment interests, reviewers will encounter a variety of potential conflicts. Below is a quick outline of the relevant conflicts issues, followed by a more detailed discussion that addresses each restriction.

18 U.S.C. §208

- Could the financial interests of the filer, her spouse, her MINOR CHILD, or certain others (see below) which exist through a reported business or employment tie be affected "directly and predictably" by the outcome of an official Government matter in which the filer will be participating? When that connection exists, conflicts may occur under 18 U.S.C. § 208. Resolutions to conflicts of interest are discussed in *Chapter 5: Resolving Conflicts of Interest.*

5 C.F.R. § 2635.502

- Did the filer report business or employment interests which do not pose a conflict under 18 U.S.C. § 208 but which create "covered relationships" that may cause **appearances** of conflict? Covered relationships could include a previous employer that the filer left within the past year; someone with whom the filer has a joint business venture or a contract or consultancy; or her spouse's employer or general partner. The filer may need to recuse in cases where a covered entity is or represents a party before the Government, and the filer will be participating in that matter.

Representations
18 U.S.C. §§ 203 & 205

- If the filer reports a past or present outside business arrangement, has he been counseled that generally he may not represent that entity nor can he receive compensation resulting from anyone else's representation of it before the executive branch or any court (if the U.S. is a party or has an interest)? This restriction includes any matter, whether or not it is related to his Government duties.

Severance Payments
18 U.S.C. § 209

- Has the filer reported that, during Government service, he received or expects to receive a severance payment or similar allowance from an entity where he had a business or employment interest? If such payments vary from established company plans or the plans permit discretion in determining the nature or amount of payments in a way that could favor those entering Government service, 18 U.S.C. § 209 may prohibit them as an improper supplementation of Government salary.

18 U.S.C. § 208
5 C.F.R. § 2635.503

- An anticipated severance payment may also present a conflict under 18 U.S.C. § 208, because it represents a continuing interest in a former employer. Even where violations of §§ 208 and 209 are avoided because the payment is made before Government service, the Standards of Conduct may require recusal from matters affecting the source of "extraordinary" severance payments.

Financial Conflicts Under 18 U.S.C. § 208

Chapter 5 discusses the various means of resolving conflicts, such as RECUSAL, divestiture, written WAIVER, EXEMPTION, or reassignment.

Interests of Spouse and Minor Child

A business interest may present § 208 conflicts with official duties where the filer, spouse, or MINOR CHILD is an owner or employee.

NOTE: Section 208 attributes to a Government employee the interests of his minor child, a narrower class than DEPENDENT CHILD, whose interests the financial disclosure law requires to be reported. Minor child is defined in most states as a child under 18.

Real Possibility Test
5 C.F.R. § 2635.402

A § 208 conflict will occur only if there is a **real possibility** that the particular matter will affect the financial interest.

Example: A filer serves on her agency's evaluation panel to review proposals for a furniture acquisition. Her minor child owns stock in Bud's Furniture, Inc., and her husband is one of three employees of Sitbetter, Inc. If either company plans to bid on the contract, the filer would be disqualified from serving on the evaluation panel.

Interests of Other Entities

Section 208 also attributes the financial interests of certain entities (in addition to the spouse or minor child) to the filer, if she has knowledge of those interests. As a result, she should not participate in official matters where the financial interests of those entities could be affected, even if she does not personally stand to gain or lose by the outcome of the matter. These entities include:

- her outside employer;
- general partners;
- any organization that she serves as an officer, director or trustee; and
- any organization with which she is negotiating or has an arrangement for future employment.

For example, if Joe, the filer's general partner in a restaurant business, were to submit a proposal (on behalf of Joe's own furniture business) in the furniture acquisition example above, this could present a § 208 conflict, even though that proposal is entirely separate from Joe's business relationship to the filer. Section 208 only addresses these relationships with other entities for the Government employee herself; however, the Standards of Conduct cover similar ties of the filer's spouse.

Employee Benefit Plans

In addition, other disclosed ties to a business can create potential conflicts under § 208, even if ownership and employment ties are severed or otherwise insulated from the conflict statute through appropriate ethics agreements. These other ties include:

- company pension plans, health plans, insurance, and similar continuing benefits and
- deferred compensation, stock options, severance payments, and leaves of absence.

If these ties create a financial interest that would be directly and predictably affected by the outcome of an official matter in which the filer will participate (for example, by affecting the company's ability or willingness to pay a benefit), a § 208 conflict exists. Thus, even if the filer's spouse has severed his employment with Sitbetter, Inc., in the above example, a conflicting financial interest under § 208 may continue to exist if he has a pension plan or deferred compensation arrangement with one of these companies.

Pensions

Section 7.2: Defined Benefit and Defined Contribution Plans offers additional guidance on the various types of pension interests, when they represent a continuing tie to a former employer, and how to resolve resulting conflicts.

Financial Conflicts Under the Standards of Conduct

Appearance Standard
5 C.F.R. § 2635.502

The Standard of Conduct principle at 5 C.F.R. § 2635.502 is an extension of the provisions of 18 U.S.C. § 208. Under the Standards of Conduct, a business entity to which § 208 does not apply may still present **appearances** of conflict because of a "covered relationship," where the entity is or represents a party on a matter before the Government in which the filer will participate.

Covered Relationship
5 C.F.R. § 2635.502

Even after § 208 is no longer of concern because a filer has severed ties with a business entity, he will have a covered relationship under the Standards of Conduct with entities that he served during the past year as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee. He will also have a covered relationship with:

- anyone with whom he currently has a joint business venture, a contract, or a consultancy, and
- his spouse's present or prospective employer, general partner or other business tie.

Example: A filer who left employment with a contractor six months ago might not be permitted to participate in an official matter which involves testing products provided by that contractor.

The key inquiry is whether the circumstances would cause a reasonable person with knowledge of the relevant facts to question the filer's impartiality if he were to participate in the official matter. If the filer or his agency determines under the Standards that such an appearance of conflict would result, then he should not participate in the matter where the entity with whom he has the covered relationship is or represents a party. Alternatively, the regulation outlines criteria under which an agency designee may authorize participation after weighing the circumstances in terms of certain specified factors.

Representational Prohibitions

18 U.S.C. §§ 203 & 205

With some exceptions, 18 U.S.C. § 205 bars Government employees from representing anyone other than themselves on any matter before the executive branch or any court (if the U.S. is a party or has an interest). In addition, 18 U.S.C. § 203 bars them from sharing in compensation for someone else's representational activities before these bodies. Therefore, employees need to terminate any such arrangements with past or present business associates. They also cannot accept residual payments from a former business or employment tie which are calculated in a manner to include any such prohibited receipts (see *Section 6.2: Law Firms* for additional information).

Severance Payments

18 U.S.C. § 208

Severance payments that a Government employee will receive during her Federal service represent a continuing financial tie to a former employer and may require disqualification under 18 U.S.C. § 208. Pending payments can create conflicts similar to other employee benefit plans.

18 U.S.C. § 209
Crandon v. United States, 494 U.S. 152 (1990), which modifies *United States v. Boeing Co.,* 845 F.2d 476 (4th Cir. 1988)

Even if the § 208 concern can be remedied by recusal or waiver, a severance or other employee benefit that will be received by the filer during Government service must still be examined for potential violation of 18 U.S.C. § 209. That statute prohibits supplementation of the filer's Government salary for performance of official duties.

Basis for Payment

OGE DAEOgram of July 1, 2002

Company severance arrangements and other benefit programs will not normally violate § 209 if they are paid for past service to the company. The reviewer should examine the specific basis for the benefit and discuss with the filer any indication that the benefit has a different basis. Often a company has a written plan or past practice which clearly determines eligibility for and amount of severance or other benefit, based on past service to the company. In those cases, § 209 does not apply, because it specifically permits acceptance of such bona fide employee benefits.

However, if the filer's particular benefit varies from the established company plan (which might suggest that his Government position is considered beneficial to the firm) or if it is determined in a manner that is contingent on Government service, then it could violate 18 U.S.C. § 209. Filers should not accept such payments or benefits. For example, a filer who was a university faculty member and is offered special tuition benefits for his children should not accept them if eligibility or amount will be based in whole or in part on his departure for Government service.

Factors to be considered in determining the intent of the parties to a severance or other arrangement are:

- the employee's official position,
- who the payment is coming from,
- whether similar payments are being made to non-government employees,
- whether the payment is motivated by sympathy or a desire other than to compensate the employee for his Government service,
- whether the payment is a bona fide award for public service,
- the express intent of the payor,
- whether the employee is in a position to influence the Government on behalf of the payor, and
- the relationship or pattern of dealings between the employee's agency and the payor.

Some severance payments do not pose either a § 208 or § 209 problem because they were received prior to entering Government. In these cases, filers may still be required to recuse from participating in certain official matters if the severance is considered an "extraordinary payment" under the Standards of Conduct.

Extraordinary Payments
5 C.F.R. § 2635.503

An extraordinary payment is:

- any item, including cash or an investment interest, with a value of more than $10,000,
- which is paid on the basis of a determination made by the former employer after it becomes known that the filer will serve in Government, **and**
- which is not made pursuant to the employer's established compensation or benefit plan.

For a period of two years following the receipt of such payments, filers are required to recuse from participation in official matters in which the former employer is or represents a party. The regulation does provide criteria to allow the agency to waive this disqualification where the amount of the payment was not so substantial as to cause a reasonable person to question the employee's ability to act impartially.

Outside Employment Should Not Conflict With Official Duties

Continuing Outside Employment

Agency rules vary as to when a Government employee may continue outside business and employment ties. Some agencies have prohibitions based on statute or policy, but the Standards of Conduct provides guidance for all agencies at subparts G and H (see *Section 11.2: Standards of Conduct Regulations*). Agency officials must determine whether the outside employment will conflict with official duties. In making the determination, they should consider whether the outside employment would require recusal from critical matters that would materially impair the filer's effective performance of her Government duties. If permitted to continue outside employment, she should be counseled particularly about avoiding misuse of Government time, assets, information, and position.

For Presidential appointees and other senior noncareer employees, there are additional considerations (see *Section 11.4: Special Limitations on Senior Noncareer Employees*).

6.2 LAW FIRMS

While attorneys sometimes practice alone, they more commonly associate with a law firm. These firms create special issues for financial disclosure review because they are often general partnerships or professional corporations and have a wide variety of clients. Various statutory and regulatory restrictions affect an attorney's transition from a private law firm into Government service. Normally, resignation and severing of all financial linkages is the preferable solution. However, apart from income and other restrictions on certain noncareer employees, no general prohibition exists on a Federal employee's outside practice of law (see *Section 11.4: Special Limitations on Senior Noncareer Employees* and *Section 5.5: Divestiture or Resignation*). Some agencies do, however, require prior approval, or they simply bar such practice.

Just like any other outside activity, an employee may not practice law during Government office hours unless he takes annual leave for that purpose. An employee may have to discontinue such practice if it is incompatible with his Government responsibilities under the Employee Standards of Ethical Conduct (see *Subparts G & H of 5 C.F.R. Part 2635*).

Financial Disclosure Requirements

Section 6.1: Business Ownership and Employment Relationships fully covers the disclosure requirements relevant to typical law firm ties, such as positions as general partners, sole practitioners, and salaried employees. The following sample SF 278 entries illustrate typical disclosures for an attorney who has left practice with a general partnership. Entries will be virtually the same for an attorney who practiced with a firm which was organized as a professional corporation (to limit individual attorney liability), except that some descriptive terms may vary. For example, on Schedule D, Part I, the position would be described as “member of a professional corporation.”

For reporting a spouse's law practice, Schedule A will contain the primary entries, since Schedule C, Part II and Schedule D are not applicable to a spouse.

Examples

The following entries illustrate the reporting of employment with a law firm. The employee in this case is a partner in the firm. Reviewers should note how extensive the entries can become.

Reporting Individual's Name: **Sven Hoek** | SCHEDULE A | Page Number: **1**

Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)															Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)														
For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income. For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse). None ☐	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	Amount: $201 - $1,000	Amount: $1,001 - $2,500	Amount: $2,501 - $5,000	Amount: $5,001 - $15,000	Amount: $15,001 - $50,000	Amount: $50,001 - $100,000	Amount: $100,001 - $1,000,000	Amount: Over $1,000,000*	Amount: $1,000,001 - $5,000,000	Amount: Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples: Central Airlines Common				x												x						x										
Examples: Doe Jones & Smith, Hometown, State			x																											Law Partnership Income $130000	
Examples: Kempstone Equity Fund					x								x										x								
Examples: IRA: Heartland 500 Index fund							x						x											x							
1 **Williams, Smith & Hoek (law firm) New York, NY--Capital Account**				√																√										**Partnership Income $150,000**	
2 **Williams, Smith & Hoek (law firm) New York, NY--Severance Payment**				√																√											
3 **Williams, Smith & Hoek (law firm) New York, NY--401(k) Plan:**																															
4 **1. Fidelity Magellan Fund**				√									√											√							
5 **2. U.S. T-Bills**			√															√				√									

Reporting Individual's Name: **Sven Hoek** | SCHEDULE B | Page Number: **2**

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260, and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. Exclude anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☐

	Source (Name and Address)	Brief Description	Value
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty)	$500
Examples	Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$300
1	**Williams, Smith & Hoek, New York, NY**	**Retirement Gifts: Statue of the scale of Justice and a golf bag**	**$300**

Reporting Individual's Name: **Sven Hoek**

SCHEDULE C

Page Number: **3**

Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at **any time** during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None ☐

	Creditors *(Name and Address)*	Type of Liability	Date Incurred	Interest Rate	Term if applicable	$10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			x								
	John Jones, 123 J St., Washington, DC	Promissory note	1999	10%	on demand					x						
1	**First Manhattan Bank, New York, NY**	**Loan for Law Firm Capital Account**	**8/80**	**8%**	**20 yrs.**		√									
2																
3																
4																
5																

Category of Amount or Value (x)

*This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None ☐

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1	**Upon Resignation, I will receive the balance of my capital account, have my name removed from the title of the partnership, and receive a $60,000 severance payment (standard practice under the**	**Williams, Smith, & Hoek**	**7/99**
2	**partnership agreement). I had no contingency fee cases. I will keep my 401(k) plan, but neither the firm nor I will make any further contributions. I will not retain my interest in the health**		
3	**plan.**		

Reporting Individual's Name	SCHEDULE D	Page Number
Sven Hoek		**4**

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization *(Name and Address)*	Type of Organization	Position Held	From *(Mo., Yr.)*	To *(Mo., Yr.)*
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1	**Williams, Smith, & Hoek**	**Law Firm**	**General Partner**	**8/90**	**Present**
2					
3					
4					
5					
6					

Part II: Compensation in Excess of $5,000 Paid by One Source

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

None ☐

	Source *(Name and Address)*	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	**Williams, Smith & Hoek**	**Legal Services**
2	**IBM (Client of Williams, Smith & Hoek)**	**Legal Services**
3	**GM (Client of Williams, Smith & Hoek)**	**Legal Services**
4	**Proctor & Gamble (Client of Williams, Smith & Hoek)**	**Legal Services**

Conflict of Interest Analysis

Special Issues for Attorneys

18 U.S.C. §§ 208 & 209
5 U.S.C. App. § 502
5 C.F.R. §§ 2635.502 & 2636.305

The discussion in *Section 6.1* provides basic guidance on conflicts with respect to business and employment ties. The law firm is a specialized example, with some unique concerns. Some law firms are organized as general partnerships. As with any general partnership, 18 U.S.C. § 208 imputes the financial interests of the other general partners to filers, whether or not those financial interests arise within the partnership. This may require recusal or one of the other mechanisms outlined in *Chapter 5*, in order to avoid conflicts.

18 U.S.C. §§ 203 & 205

With some exceptions, Federal employees may not receive any legal fees, partnership share, bonuses, or any other form of compensation derived from representational services of others in matters before the executive branch or the courts (when the United States is a party or has a direct and substantial interest). This bar in 18 U.S.C. § 203 applies to representations while the person is a Government employee regardless of whether he receives the funds during or after Government service. The bar also extends under § 205 to the Government employee's own representations of others before the Government, and even to *pro bono* (uncompensated) representations, unless they are within exceptions specified in the law (see *Sections 6.1: Business Ownership and Employment Relationships* and *11.1: Criminal Conflict of Interest Statutes*).

Segregating Certain Legal Fees

A practical effect of 18 U.S.C. § 203 is that the Federal employee may need to ask her former law firm to maintain a bookkeeping arrangement that segregates funds received for representations before the Government from those in which she lawfully may share under a continuing compensation arrangement (such as deferred compensation, contingency fee arrangements, and bonuses). The bar on supplementation of salary in 18 U.S.C. § 209 has the effect of prohibiting firms from circumventing the § 203 bar by making up the difference with special benefits based on Government service.

Contingency Fee Cases

Attorneys who are Government employees are barred by § 203 from keeping a financial interest in a contingency fee case *in which the United States is a party or has a substantial interest,* regardless of the partnership agreement. In addition, the § 209 ban on outside supplementation of a Government salary may prevent a Government employee who is an attorney from having a continuing interest in *any other* contingency fee case unless the maximum fee or percentage is set when he enters Government.

Using a Partner's Name

5 U.S.C. App. §502(a)(2)
5 C.F.R. 2636.305(a)(2)

The Standards of Conduct rule on appearances also requires the reviewer to focus on whether a filer should recuse because a former client or law partner is or represents a party in a matter before the agency (see *Section 6.1: Business Ownership and Employment Relationships*). Finally, a covered noncareer employee may not permit her name to be used by any firm, partnership, association, corporation or other entity which provides professional services involving a fiduciary relationship. In addition, there may be applicable state bar rules that an attorney should consider (see *Section 11.4: Special Limitations on Senior Noncareer Employees*).

A Checklist for Counseling Persons Leaving Law Firms to Enter Public Service

Given the complexity of these issues, OGE has developed the following checklist concerning arrangements individuals should make when coming from a law firm into the Government to a full-time position. The citations in the margin beside each question suggest which statutes and regulations are relevant. Ethics counselors should ascertain such information to ensure not only that the disclosures are complete but also to resolve conflict of interest issues beyond the disclosure limitations. In regard to PAS filers, agencies need not formally address each and every one of these questions in their opinion letter to OGE. Rather, they should work informally with OGE to resolve these issues before preparing the final letter.

1. Is the individual a sole practitioner, or a general partner or an associate/employee (or "of counsel") with the firm?

Severance Arrangements From Firms
18 U.S.C. §§ 203, 208, & 209
5 C.F.R. § 2635.503

2. If the attorney is not a sole practitioner, what are the severance arrangements contemplated?

- Does the firm have a standard severance arrangement in the partnership agreement? If so, what is it, and is the firm going to follow it in this case?
- If the firm does not have a standard severance arrangement, what severance arrangements are contemplated?
- Does the severance arrangement entail any discretionary payments by the firm? Could those discretionary payments be calculated based upon the profitability of the firm after the individual becomes a Government employee? What is the basis for those discretionary payments?

18 U.S.C. §§ 203 & 209

- Is there any contemplation of a continued interest in any contingency fee case? If so, is the United States a party, or does it have an interest? Will the case involve any representations to any Federal agency or court (including state courts) after the individual becomes a Government employee? When she leaves the firm, will it set the maximum amount of money she may receive from such a case if a fee is generated or will it set her maximum percentage of the firm's fee from the case?
- Over what period of time will the firm pay any severance?
- Is the individual's name in the firm's letterhead? Has the agency counseled the employee about 5 U.S.C. App. § 502(a), if applicable?

18 U.S.C. § 208
5 C.F.R. § 2635.502

- Is the individual involved as a general partner in any side investments with other partners of the firm? Does the individual intend to remain involved in those investments? Will any recusals that are necessary under 18 U.S.C. § 208 in relation to the other interests of the employee's partners, including the law firm, cause a problem in performing Government duties?
- Are the clients listed in Schedule D, part II apt to result in any recusal under 5 C.F.R. § 2635.502? Are there other clients that may cause § 2635.502 recusals, even though below the $5,000 threshold for disclosure?

Separation From Sole Practice

3. If the attorney is a sole practitioner, how will she separate from the practice?

18 U.S.C. §§ 203, 208, & 209

- Will she retain any interest in any ongoing cases? Is the United States a party or does it have an interest in the cases? Will representations be made to a Federal agency or court (includes state courts) in the case after she becomes an employee? Will any payment for the practice be based on its future profitability?

5 U.S.C. App. § 502

- Will those taking over the practice use her name in any way?

18 U.S.C. § 208
5 C.F.R. § 2635.502

- What will be the time period for any payments due from the practice?
- Will the “purchaser” of the firm cause any substantial recusal under 18 U.S.C. § 208 or 5 C.F.R. § 2635.502, which is of concern to her agency?

18 U.S.C. § 208

- Will the buy-out arrangement leave her in the position of a general partner under applicable state law? If so, will the interests of other general partners cause any substantial recusal?

5 C.F.R. § 2635.502

- Will former clients or cases transferred to another attorney cause substantial recusal? (See relevant state bar rules)

6.3 FARM ASSETS AND INCOME

Interests in farms may involve ties as owners, employees, or investors. Farm employment does not usually present unique disclosure issues unless it also entails ownership or investment interests. Therefore, this section examines issues of financial disclosure and conflicts only with respect to farm ownership and investment.

Financial Disclosure Requirements

Reporting of Farms Is Similar to Other Forms of Business and Employment Interests

Whether farms are held through individual ownership, cooperative ownership, general or limited partnerships, or corporations, the interest is normally reported in the same manner. Required disclosures include Schedule A for the assets and income, Schedule B for transactions, Schedule C for any liabilities not solely incidental to the business of the farm, and Schedule D for any positions with the farming interest.

Schedule A

In **Block A** of **Schedule** A, the filer must describe the asset clearly and with enough detail so that the reviewer (and the public) can understand what the asset is. The listing must include:

- the type of interest in the farm, such as limited partner, general partner, sole owner, or corporate shareholder;
- the name under which the farm does business;
- the business of the farm, such as corn or livestock; and
- the location of the farm (city and state).

The filer need not disclose the exact number of acres or bushels of a particular crop or the number (head) of livestock.

In **Block B,** filers should list the aggregate market value of the assets listed in Block A. For a limited partner or investor, this will be the value of all shares held. For a sole owner or general partner, this will include land, crops (standing or in storage), livestock, farm equipment, buildings, and so on.

In **Block C,** filers should list the type and amount of income from the farm and related assets. The disclosure will vary with the type of interest in the farm. For example, sole proprietors should disclose the exact amount of any crop sales as “Business Income”, and partners might list the amount of “partnership income.” On the other hand, corporate shareholders might simply mark the type of income as dividends, and check a category of amount of income. Any farm rents or royalties should also be indicated.

On **Schedule B, Part I,** the filer must disclose transactions involving real estate or investment shares not solely incidental to the business.

In addition, the filer must list all other connections with the farm, such as any benefit and pension plans (**Schedule C, Part II),** as well as positions on **Schedule D, part I.**

Examples

The following sample 278 entries demonstrate the reporting of common farm interests.

Reporting Individual's Name: **Tom Pynchon** | SCHEDULE A | Page Number: **1**

Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)															Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)														
																Type				Amount										
For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income. For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse). None ☐	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,01 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples: Central Airlines Common				X												X						X										
Examples: Doe Jones & Smith, Hometown, State			X																												Law Partnership Income $130,000	
Examples: Kempstone Equity Fund					X								X										X									
Examples: IRA: Heartland 500 Index fund							X						X											X								
1 **Sole Owner, Clancy Corn Farm, Wichita, KS**					√																										**Business Income $15,000**	
2 **ABC Farms, Limited Partnership; Dairy Farms, Lancaster, PA**			√																												**Partnership Income $1,000**	

Reporting Individual's Name: **Tom Pynchon** | SCHEDULE D | Page Number: **4**

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization *(Name and Address)*	Type of Organization	Position Held	From *(Mo., Yr.)*	To *(Mo., Yr.)*
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
Examples	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1	**Clancy Corn Farm**	**Corn Farm/Sole Proprietorship**	**Proprietor**	**7/88**	**Present**

Conflict of Interest Analysis

When a filer reports a farm, the reviewer needs to be especially sensitive to the farm's participation in Federal programs, its geographic location in relation to Government activities, and its contracts. If the filer's agency administers any subsidy programs, the reviewer should inquire whether the farm participates in these programs to ensure that no conflict exists. In addition, some agencies may have specific prohibitions against operating farms, and other restrictions also apply:

18 U.S.C. §§ 203 & 205

- If the farm is anything other than a sole proprietorship, a Federal employee may violate criminal restrictions on representation of others before the Government if the employee applied for any USDA or other Federal benefits on behalf of the farm.

- Senior employees subject to restrictions on outside earned income must avoid active management of the farm (see *Section 11.4: Special Limitations on Senior Noncareer Employees*).

Filers in agriculture-related agencies may have a potential conflict when they rent land to sharecroppers. A conflict could arise if the filer, through an agency program, could influence the value or quantity of a crop that the sharecropper raised. The sharecropping agreement would make the success of the crop a financial interest of the filer. To remedy this potential conflict, filers could change the land use agreement to simple land rent, payable regardless of the success or failure of a crop.

Agency Operations Near the Farm

Reviewers should also inquire whether the filer's agency has operations near the farm or whether it might potentially contract with the farm. If the agency does have such connections, the reviewer must determine if Government actions in which the filer participates could create a real possibility of gain or loss to the filer's interest.

6.4 HONORARIA

National Treasury Employees Union v. United States, 115 S.Ct. 1003 (1995)
OGE 96x5

An HONORARIUM is defined as a payment of money or anything of value for an appearance, speech, or article, less any necessary travel expenses. The general ban on receipt of honoraria by Government employees, which Congress enacted in 1989, was overturned by the Supreme Court in February 1995. That decision initially created uncertainty as to whether the ban might still apply to certain senior employees and those outside the General Schedule. That uncertainty was finally eliminated in February 1996, when the Office of Legal Counsel at the Department of Justice determined that the ban was no longer enforceable against any Federal employee. Therefore, the statutory ban on receipt of honoraria is no longer applicable.

5 C.F.R. § 2635.807

The Standards of Conduct, however, continue to prohibit most compensated teaching, speaking, or writing that "relates to official duties." Ethics officials with specific questions should consult appropriate OGE regulations, opinions, and memoranda.

Financial Disclosure Requirements

Information Reported on Schedule A

Filers must report each honorarium as earned income on **Schedule A**, listing each one as an individual line-item for themselves and their spouses. A dependent child's honoraria need not be reported.

- In **Block A**, filers must report the source of each honorarium over $200. This includes honoraria that their spouses receive, if over $200 (instead of the $1,000 threshold used for a spouse's other earned income).

- In **Block B,** filers report "none" as the asset value, unless there are sums of money that are due but which the filer has not yet received. Reviewers need not question filers about the lack of such an entry and may assume the lack of an entry indicates "none."

- In **Block C,** the filer should list "honorarium" as the type of income in the "Other Income" column and must report the **actual amount** received. The amount listed is the net honorarium after deducting amounts received for the reimbursement of necessary expenses and agent's fees. Filers must also report actual amounts for their spouses' honoraria, unlike other earned income of a spouse.

- Also in **Block C,** filers must list **the date** the services were provided.

On **Schedule B, part II,** filers must also report any reimbursements or travel benefits they received incident to receiving the honoraria, if greater than $285 from any source (see *Section 9.2: Travel-Related Gifts and Reimbursements*).

Charitable Donations
5 U.S.C. App. § 102(a)(l)

OGE DAEOgram of March 15, 2001

Filers must include honoraria received and subsequently donated to charity. They must also report payments directed to charities in lieu of honoraria. In addition to public reporting, the statute requires confidential reporting of certain information about payment in lieu of honoraria, including the name of the charity and the source, date, and actual amount of payment.

Speaking Arrangements

If a filer has an arrangement to receive honoraria, such as on a speaking tour, he should list the date, parties, and terms of the agreement on **Schedule C, part II.** This requirement does not cover the filer's spouse or dependent children.

Example

The following sample SF 278 entry demonstrates reporting of honoraria received both by the filer and her spouse.

Reporting Individual's Name **Bunny Johns**	SCHEDULE A	Page Number **1**

Assets and Income BLOCK A	**Valuation of Assets** at close of reporting period BLOCK B															**Income:** type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. BLOCK C														
																Type				**Amount**										
For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income. For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse). None ☐	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,01 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (*Mo., Day, Yr.*) Only if Honoraria
Examples: Central Airlines Common				X												X						X										
Examples: Doe Jones & Smith, Hometown, State			X																												Law Partnership Income $130,000	
Examples: Kempstone Equity Fund					X								X										X									
Examples: IRA: Heartland 500 Index fund							X						X											X								
1 **Wilkesboro Light, Inc.**																															**Director's Fees $5600**	
2 **Trustee, Johns Family Trust**																															**Trustee Fees $300**	

Conflict of Interest Analysis

Conflict of interest analysis for honoraria focuses on the person or group giving the honoraria. Reviewers should focus on whether:

- the employee can affect the ability or willingness of the entity providing the honoraria to make any anticipated future honoraria payments;
- the group providing the honoraria is supplementing the employee's salary through the honoraria for performance of Government responsibilities; and
- the subject of the speech, article or appearance relates to the employee's official duties.

18 U.S.C. §§ 208 & 209

Criminal Sanctions

The primary concern for review of honoraria is the applicability of the two main criminal conflict of interest statutes. The criminal prohibition on supplementation of Government salary bars the employee's receipt of honoraria for performing official duties. Likewise, the employee might be barred from taking an action in a particular matter that involved an entity with which he has a contract to receive honoraria if the matter could affect future payments under the contract.

5 C.F.R. § 2635.502

Standards of Conduct

If the employee received an honorarium under a contract, then she would have a covered relationship under the appearance standard with the entity that paid the honorarium, which may require recusal from matters involving that paying entity.

The Employee Standards of Ethical Conduct provides specific guidance at 5 C.F.R. § 2635.807.

Generally, an employee should not receive compensation for teaching, speaking or writing that is related to the employee's official duties. The Standards of Conduct define what is “related to duty.”

Certain Compensated Teaching Is Permissible
5 C.F.R. § 2635.807(a)(3)

An employee may, however, receive compensation for teaching certain courses, even if the subject matter relates to the employee's official duties. These courses must involve multiple presentations and be part of a regularly established curriculum at an institution of elementary, secondary, or higher learning or part of a Government-sponsored course.

Certain noncareer employees are subject to additional restrictions and SPECIAL GOVERNMENT EMPLOYEES are subject to less restrictive standards (see *Chapter 11: Federal Ethics Laws and Regulations in Brief*).

6.5 OUTSIDE POSITIONS

5 U.S.C. App. § 102(a)(6)
5 C.F.R. § 2634.307
OGE 86 X 19 & 91 X 5

While employees may fully express their political, religious, and moral views, employees who engage in activities outside of their Government duties may encounter conflicts of interest with these seemingly harmless activities. This section describes how to disclose and analyze positions outside the Government that do not create a typical employment relationship, including those with non-profits.

Financial Disclosure Requirements

While Schedule A should show the actual amount of any fee or other income over $200 associated with positions outside the Government, such positions must also appear on Schedule D. For a spouse, the filer need report only the source of fees over $1,000, and no amount; also, Schedule D is not applicable. Positions include service or status as an officer, director, trustee, general partner, sole proprietor, representative, employee, or consultant of any business, organization, or institution. Mere membership in an organization is not reportable. **Schedule D requirements exclude positions held in any religious, social, fraternal or political entity, regardless of compensation.** A filer should also exclude any solely honorary positions and any positions filled in the employee's official capacity, including official service in outside board positions.

NOTE: If questions about an organization's nature arise, it may be helpful to consult the organization's charter for clues as to its stated purpose and activities. Positions such as those with a youth or scouting organization would not typically require reporting, since they are fraternal or social in nature. Excludable positions with political entities will generally be limited to political parties and campaign organizations, not special interest and lobbying groups.

Schedule D, Part I

A reported position should indicate:

- **The name and address of the organization** with whom the filer holds the position. The city and state will suffice for an address. For large or well-known organizations, such as the American Bar Association, reviewers may assume an address is available to the public in general reference works. If the reviewer determines that the activity clearly raises no conflict of interest concerns, the reviewer need not question the lack of a disclosure of an address.

- **The type of organization** block should briefly describe it and note if it is for-profit or non-profit.

- A description of the **position held** is adequate if it clearly indicates the employee's role in the organization.

- Filers must also list the **"from" and "to" dates** of their position with the reported entities. They may use terms such as "present."

Other Schedules

On **Schedule B, Part II,** filers must provide a description, source, date, and value for any reportable reimbursements from the outside positions (see *Section 3.5: Schedule B, Part II* for applicable thresholds and exclusions). **Schedule D, Part II** must disclose additional information about positions that are the sources of more than $5,000 in income, but this applies only to new entrant and nominee filers.

Trustees and Executors

Special Trust Concerns

OGE DAEOgram of December 19, 2001

A common outside position is that of trustee. The trustee of a trust assumes a FIDUCIARY responsibility for managing its portfolio. Trustees have an imputed financial interest in the assets of the trust under criminal statute 18 U.S.C. § 208 even if they receive no compensation for their services. A trustee does not, however, necessarily have a personal financial interest in the assets of the trust.

The position itself may pose a conflict that a WAIVER, RECUSAL, or reassignment could resolve. Reporting requirements for trustees and executors include:

OGE DAEOgram of April 24, 2002

- **Schedule A:** reporting of the actual amount of fees or other income if over $200, using the "Other Income" column (for a spouse, only the source and not the amount, for fees over $1,000).

- **Schedule D, Part I:** reporting of the position (only for the filer) regardless of compensation.

- **Schedule D, Part II:** (for new entrants and nominees only), reporting of the position as a source of compensation (only for the filer) if the trustee or executor earns over $5,000.

Examples

The following sample SF 278 entries demonstrate the reporting of outside positions. Reviewers should note the various schedules that can cover outside positions. Note that the trustee, her spouse, or dependent child do not have a beneficial interest in the trust for which she is serving as a trustee.

Reporting Individual's Name	SCHEDULE A	Page Number
Bunny Johns		**1**

Assets and Income BLOCK A	**Valuation of Assets** at close of reporting period BLOCK B															**Income:** type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. BLOCK C														
For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income. For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse). None ☐	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,01 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	**Type** Dividends	Rent and Royalties	Interest	Capital Gains	**Amount** None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (*Mo., Day, Yr.*) Only if Honoraria
Examples: Central Airlines Common				X												X						X										
Examples: Doe Jones & Smith, Hometown, State			X																												Law Partnership Income $130,000	
Examples: Kempstone Equity Fund					X								X										X									
Examples: IRA: Heartland 500 Index fund							X						X											X								
1 **Wilkesboro Light, Inc.**																															**Director's Fees $5600**	
2 **Trustee, Johns Family Trust**																															**Trustee Fees $300**	

Reporting Individual's Name	SCHEDULE B	Page Number
Bunny Johns		**2**

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260, and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. **Exclude** anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☐

	Source *(Name and Address)*	Brief Description	Value
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty)	$500
	Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$300
1	**Wilkesboro Light, Inc.**	**Received gift of air fare from Nashville to Wilkesboro and lodging in Wilkesboro for two board meetings. 3/8/03-3/10/03 and 8/20/03-8/22/03**	**$1000**

Reporting Individual's Name	SCHEDULE D	Page Number
Bunny Johns		**4**

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization *(Name and Address)*	Type of Organization	Position Held	From *(Mo., Yr.)*	To *(Mo., Yr.)*
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1	**Citizens of Tellico for the Environment (Tellico, TN)**	**Community Environmental Org.**	**President**	**6/96**	**Present**
2	**Save Our Cumberland Mountains (Harriman, TN)**	**Community Environmental Org.**	**Vice-President**	**5/98**	**Present**
3	**Wilkesboro Light, Inc. (Wilkesboro, NC)**	**Antique Lamp Company**	**Director**	**8/90**	**Present**
4	**Tennessee Scenic Rivers Association (Nashville, TN; Uncompensated)**	**Non-Profit Environmental Org.**	**Director**	**4/97**	**Present**
5	**Johns Family Trust (Nashville, TN)**	**Family Trust**	**Trustee**	**8/92**	**Present**
6					

Part II: Compensation in Excess of $5,000 Paid by One Source

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

None ☐

	Source *(Name and Address)*	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	**Wilkesboro Light, Inc.**	**Served as Member of the Board of Directors**

Conflict of Interest Analysis

Any conflict of interest determination for an outside position must focus on understanding the interests and activities of the organization and the employee's role in that organization. While the second element of this inquiry—the employee's role in the organization—should be fairly clear from the description of the position held, the first element may prove more difficult. Often, such information about an organization will be apparent from its name or the reviewer's general knowledge. For smaller organizations, however, the reviewer may need to request information from the filer about the organization or may wish to research the organization. Information about non-profit organizations is available in many libraries or through internet research.

18 U.S.C. § 208

The next step in the conflict analysis is to determine whether the position that the filer holds with the outside organization causes the financial interests of the organization to be imputed to the employee. The criminal financial conflict of interest statute specifically includes serving as an officer, director, trustee, general partner, or employee; like the disclosure statute, however, it does not refer to mere membership in an organization. The distinction does *not* rest on whether the person was compensated by the organization. An individual may be an employee of an organization within the meaning of the statute even though his service is uncompensated. In line with this reasoning, any filer who serves on a Board of Trustees, Executive Committee or otherwise as an officer must generally recuse from participation in *any particular Government matter* in which the organization has a financial interest.

OGE DAEOgram of April 2,1997

Although service in an official capacity on an outside board is not required to be reported, employees serving in such positions are also subject to section 208. This section prevents an employee from serving on the outside board in the absence of a waiver, explicit statutory authority, or a release of fiduciary obligations by the outside organization.

Employee Standards of Ethical Conduct
5 C.F.R. § 2635.502

Situations also exist, however, in which the statute would not bar an employee from taking action, but the Employee Standards of Ethical Conduct, especially the appearance standard, would. The reason is that an employee has a "covered relationship" with any organization, other than political parties, in which she **actively** participates. Active participation includes not only service as an officer but extends to such activities as:

- serving as a committee or subcommittee chair or spokesperson;
- participating in directing organizational activities;
- devoting significant time to specific organizational programs; *and*
- coordination of fundraising.

Activities such as merely paying dues or soliciting donations, however, do not create a covered relationship.

7.0 INVESTMENT VEHICLES

5 U.S.C. App. §§ 102(a)(l)(B) & 102(a)(3)
5 C.F.R. §§ 2634.301-302

Investment vehicles are arrangements through which a filer may hold other investments, such as those described in *Chapter 8: Investments*. Investment vehicles offer convenience, tax advantage, risk protection, and other benefits to investors. Full disclosure often requires going behind the investment vehicle and listing its underlying holdings.

This chapter discusses common investment vehicles:

- personal retirement accounts (such as IRAs),
- pensions,
- annuities,
- insurance,
- investment clubs,
- trusts,
- estates and
- prepaid tuition plans.

This chapter also examines the statutory reporting concept of the EXCEPTED INVESTMENT FUND, or EIF. Investment vehicles must be reported for filers, as well as for their spouses and DEPENDENT CHILDREN.

7.1 EXCEPTED INVESTMENT FUNDS

5 U.S.C. App. § 102(f)(8)
5 C.F.R. § 2634.310(c)

This chapter on investment vehicles focuses on types of plans or arrangements that are not in themselves EXCEPTED INVESTMENT FUNDS (EIFs), but which contain assets that are often EIFs. An EIF is a basic concept that reduces the degree of public disclosure of certain investments. The concept of the EIF was created by statute and is solely a characterization for financial disclosure purposes. An EIF may include pooled investments such as MUTUAL FUNDS, common trust funds of a bank or other financial institution, unit investment trusts, and limited partnerships *if* they meet all of the following tests. An EIF is an investment vehicle which is:

EIF Test

1. widely held,
2. (a) publicly-traded (or available) **or** (b) widely diversified, *and,*
3. independently managed, that is, arranged so that the filer neither exercises control nor has the ability to exercise control over the financial interests held by the fund.

An investment must meet *either* 2(a) or 2(b), as well as 1 and 3, to qualify as an EIF. Many investment funds that focus on particular economic sectors are thus EIFs, but they may still present conflicts.

Meaning of Widely Held
Meaning of Publicly Available

OGE generally views funds that have more than 100 participants, such as private pension plans of medium and large employers, as "widely held." Funds which are open to any investor are considered publicly available. Net worth or income requirements do not disqualify a fund from being publicly available. Widely diversified means that the fund:

Diversification Criteria

- holds no more than 5% of the value of its portfolio in the securities of any issuer (other than the U.S. Government) and

- holds no more than 20% of the value of its portfolio in any particular economic or geographic sector.

Asset Management Accounts

Some filers mistakenly assume that ASSET MANAGEMENT ACCOUNTS with a brokerage firm qualify as EIFs. These accounts conveniently combine a number of features, such as checking accounts, money market funds, brokerage services, credit and debit card accounts and MARGIN ACCOUNTS (for borrowing to purchase securities). Though these accounts may contain EIFs, they do not themselves qualify as EIFs because they are individual, rather than widely held, accounts.

Chapter 8: Investments discusses funds and other investments that may qualify as EIFs and which are held directly by the filer or through the types of arrangements that are discussed in this chapter.

Financial Disclosure Requirements

Relaxed Reporting Requirements

For investments that qualify as EIFs, the filer must disclose the name of the specific fund, along with the value of his (or his spouse's or DEPENDENT CHILD's) share and any income. However, he may **omit** reporting:

- the investment's underlying holdings on Schedule A;
- separate types of income (interest, dividends, capital gains) on Schedule A (simply characterizing it all as EIF); and
- the transactions of underlying securities on Schedule B, part I. The filer should, however, report his own purchases and sales of shares of the investment fund. For example, filers would report buying shares in "The Japan Dividend Fund," but not what the fund's managers buy.

The EIF box should be checked whenever the corresponding asset qualifies. Otherwise, each of the underlying holdings of the asset must be reported.

Example

The following sample 278 entry demonstrates the reporting of several different publicly traded EIFs.

Reporting Individual's Name	SCHEDULE A	Page Number
Alisdair McIntyre		**1**

Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)															Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)														
																Type				Amount										
For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income. For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse). None ☐	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,01 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples: Central Airlines Common				x												x						x										
Examples: Doe Jones & Smith, Hometown, State			x																												Law Partnership Income $130,000	
Examples: Kempstone Equity Fund					x								x										x									
Examples: IRA: Heartland 500 Index fund							x						x											x								
1 **Merrill Lynch Equity Dividend Fund**			√										√										√									
2 **Agrifuture LP (Agricultural Commodities)**				√									√											√								
3 **Fidelity Select Defense Fund**					√								√												√							

Conflict of Interest Analysis

18 U.S.C. § 208
5 C.F.R. § 2640.201(a)
OGE 86x12

The EIF category frees filers from reporting overly detailed information and frees reviewers from wading through pages of holdings to look for obscure conflicts. In many cases, EIFs are diversified mutual funds, which are exempt from the prohibition at 18 U.S.C. § 208 (see *Section 5.3: Waivers and Exemptions*). Reviewers should be cautioned, however, that not all EIFs are diversified mutual funds, and therefore may not be conflict-free. Those EIFs that may not be diversified mutual funds are excepted only from detailed reporting, not from conflict of interest analysis.

Sector Funds

A common type of EIF is a mutual fund that invests in particular economic or geographic sectors, known as a SECTOR FUND. Government actions often directly and predictably affect such funds. Since sector funds normally do not qualify as diversified funds, agency ethics officials should examine whether their sector holdings pose either criminal or appearance problems for particular filers in light of the filers' areas of responsibility.

There are two exemptions under § 208 that may be applied when an employee has an interest in a sector mutual fund:

5 C.F.R. § 2640.201(b)

- an employee may participate in a particular matter that affects holdings of a sector mutual fund as long as the holdings are not in the sector in which the fund concentrates; and

OGE DAEOgram of 3/19/02

- an employee may participate in a particular matter that affects holdings of a sector mutual fund where the aggregate value of interests in any sector fund or funds does not exceed $50,000.

7.2 DEFINED BENEFIT AND DEFINED CONTRIBUTION PLANS

5 U.S.C. App. §§ 102(a)(7) & 102(f)(8)
5 C.F.R. §§ 2634.301(a), 301(b)(8), 302(a)(ii), 306, & 310(c)
83 OGE 1
OGE 88 X 11

Pension plans exist in great variety and may on occasion be tailor-made. This section deals with the disclosure requirements and conflict of interest concerns that arise from most company-sponsored pension plans. In general, pension plans fall into two categories: defined contribution plans and defined benefit plans. The chart below summarizes the key differences between the two plans. Note, however, that this distinction is not perfect because some employers offer both types of plans or use a defined benefit plan to provide a base level of benefits with a supplemental defined contribution plan providing additional benefits.

Type of Pension Plan	Employers Guarantee Benefits?	Funding Mechanism
Defined Contribution	NO	Contributions directed by employee, often through a third-party. Retired employee receives whatever the investments earn.
Defined Benefit	YES	Retired employee receives payments from an amount that the employer guarantees.

Both Vested and Non-vested Pensions Are Reportable

Vested Pensions

Filers need to disclose pensions plans, whether they have vested interests in them or not.

5 C.F.R. § 2634.301(c)(4)

Government Pensions

Filers need not report any interest in the Thrift Savings Plan or other retirement system of the United States Government. They must, however, report any interest in state or local government pension plans.

Defined Contribution Plans

Each Employee Has an Account

In a defined contribution plan, the employer or its agent maintains a separate account for each participant. The benefits upon retirement depend on the amount contributed and the investment performance of the plan's assets, which are directed by the employee.

In defined contribution plans, the company has no obligation to ensure any amount of retirement income. Reviewers must, therefore, look to the employee's financial interest in the plans' underlying holdings that the employee chooses from among several investment options, such as mutual funds, insurance products or other pooled investments. The employee must look to these investments for any future retirement benefits. The employer has no continuing financial obligation. The reviewer should analyze each investment as if it were the filer's direct holding.

Types of Defined Contribution Plans

Simplified Employee Pensions (SEPs)

Some small employers (with 25 or fewer employees) offer employees the opportunity to participate in a tax-deferred Simplified Employee Pension (SEP) plan. SEPs, in essence, allow both employers and employees to make contributions to accounts similar to IRAs.

While the employer's contributions are discretionary, once a company contributes to the SEP, its responsibilities end. Employees select the investments for their own accounts. Accordingly, SEPs should be treated like IRAs, because they are self-directed. SEPs are not a continuing obligation of the company that established them, once its contributions are made. Filers must disclose the assets in which the SEP is invested, and these assets should be the reviewer's focus.

Keogh Plans

A Keogh plan (HR-10 plan) is a tax-deferred pension account for self-employed persons and employees of unincorporated businesses. These plans have essentially the same financial disclosure and conflict of interest analysis as IRAs because employers have no continuing connection with the Keogh after their contributions have been made. Like IRAs, an employee may put almost any available investment into a Keogh, and the investment earnings grow on a tax-deferred basis. Filers must, therefore, report how they invested their Keogh funds. Reviewers, likewise, must focus on the underlying investments.

401(k)s

401(k) and Similar Plans

A Cash or Deferred Arrangement (CODA), also known as a 401(k) plan or a Salary Reduction Plan, is an arrangement in which employees place pre-tax earnings, and sometimes matching employer contributions, into a tax-deferred retirement account that the employer creates and maintains. The employer holds these funds in trust until the employee reaches a specified age or leaves the company and rolls the account into another tax-deferred plan. The 401(k) plan with an employer is similar to the SEP plan held with smaller employers. The company fulfills its obligation by making contributions into a fund for the employee.

403(b) Plans and the Thrift Savings Plan

While private industry offers 401(k) plans, state and local governments and non-profit organizations offer a very similar type of plan, known as a 403(b) plan. The numbers refer to sections of the Internal Revenue Code that describe the plans. The Federal Government offers an analogous arrangement through the Thrift Savings Plan (TSP). (However, filers need not list TSP contributions or accounts on their SF 278s because of a special provision of the financial disclosure law.) As in the TSP, employees contributing to 403(b) plans normally have some limited choices of funds in which to invest. Examples of options that such plans may offer are:

- company stock;
- diversified mutual funds (EIFs);
- bond funds (EIFs); and
- stable value funds (often EIFs).

Profit Sharing and Stock Bonus Plans

A profit sharing plan is an agreement between a corporation and its employees that allows the employees to share in company profits. Contributions to the plan are made by the employer, usually when it has profits, to a profit-sharing account for each employee. The plan may be invested in stocks, bonds, or cash equivalents.

A stock bonus plan is similar to a profit sharing plan, except that the benefits are paid in shares of stock of the company. A type of stock bonus plan is the Employee Stock Ownership Plan (ESOP). An ESOP invests primarily in the stock of the employer.

TIAA-CREF

TIAA-CREF, the Teachers Insurance and Annuity Association—College Retirement Equities Fund is one of the largest private pension funds in the United States. This fund provides retirement, life insurance, and disability plans for employees of colleges, universities, private schools, and educational associations. It currently has over 12,000 participating institutions.

Plan participants may allocate their funds among three options:

- TIAA (which consists of a real estate account and a traditional annuity), or
- CREF (which consists of mutual funds)

Defined Contribution Disclosure Requirements

Retirement accounts often have significant underlying holdings. This section describes how filers should explain these holdings for themselves, their spouse, and their DEPENDENT CHILD on the SF 278. Two basic rules are:

Basic Requirements

- filers must report assets held in a defined contribution plan to the same extent as if the assets were held in a taxable account not related to retirement, and
- filers must describe underlying holdings until they have reached the specific investments or excepted investment funds (EIF) (see *Section 7.1.-Excepted Investment Funds*).

Schedule A

Employees with defined contribution plans that exceed $1,000 in value or earn more than $200 in a reporting period must report on **Schedule A:**

- the **name of the employer** and type of plan *(e.g.* 401(k));
- **each asset in the plan,** if it meets the reporting thresholds, as a separate line item:
  - for mutual funds, report the identity of each fund by specific name (each may be an EXCEPTED INVESTMENT FUND);
  - for a separate portfolio managed for the individual, report its holdings; or
  - for insurance products, such as annuities, report the type of product and the company.

NOTE: Individual assets that are below the reporting thresholds are not required to be reported even if the filer's entire interest in the plan exceeds the thresholds.

- the **category of asset value** for each asset listed, and
- the **category of amount** and the **type of income** (unless the EIF box is checked) accrued for each asset. Income earned by the assets in the employee's account is attributed to her.

Report Tax-Deferred Income

Filers must disclose the income accruing to each asset despite the deferral of taxes.

Some Plans May Qualify as EIFs

In some situations the plan is pooled for a large number of employees (widely held) and is also widely diversified. The filer may then identify the pool and its independent managers and report the entire plan as an EIF.

Withdrawals Not Reportable

Any pension benefit payments withdrawn from the plan are not reportable; they are merely a distribution from previously reported investment income.

Brokerage Statements
5 C.F.R. § 2634.311(c)
OGE DAEOgram of February 22, 2000

For large portfolios managed by a broker, the filer may attach a brokerage statement, so long as it clearly, concisely, and readily discloses all relevant information in accordance with statutory and regulatory reporting requirements.

Schedule B

On **Schedule B, Part I,** filers must report transactions of assets in defined contribution plans to the same extent as they would report those transactions if the assets were not in a retirement account (see *Section 3.4: Schedule B, part I* for guidance on reporting transactions and *Chapter 8* for information on many common investments).

Schedule C

On **Schedule C, Part II,** the filer should report (for himself but not his spouse):

- the name of the employer,
- a statement that it is a defined contribution plan (if not clear from the Schedule A entry) and
- the dates and parties to the agreement.

Defined Benefit Plans

The Employer Holds a Pooled Account
OGE 91 X 34

In a **defined benefit plan,** the employer makes contributions to a pool which it holds and invests for all participating employees together, and each employee receives a fixed amount of benefits when she retires. Employees know in advance either the amount of their future benefits or a certain formula that determines their amount.

These benefits are the employer's liability, regardless of how it funds its obligation, so a defined benefit plan will not be reported as an excepted investment fund. The plan's assets, that is, how the employer invests the funds, are irrelevant to a conflict of interest determination. The financial interest involved is the company's obligation to guarantee a certain level of benefits. In OGE's experience, even so-called "fully funded" pensions depend on the company's continued ability or willingness to provide the funds required. Likewise, the existence of a guarantee under the Employee Retirement Income Security Act (ERISA), which is administered by the Government's Pension Benefit Guaranty Corporation (PBGC) is rarely sufficient to protect the employee completely. Accordingly, defined benefit plans might indicate a continuing financial interest in matters affecting the former employer if the employee's participation in a matter has a direct and predictable effect on the company's ability or willingness to make future or continued payments.

Defined Benefit Disclosure Requirements

Filers with defined benefit plans must report on **Schedule A:**

- the **name of the employer** providing the plan;
- a **category of asset value.** If filers cannot ascertain an asset value, they may report the amount of the benefit they will receive and the age at which the pension will begin; and
- the **actual amount** of any pension benefits received, using the "other" type of income column and specifying "pension payment." *Defined benefit plans are not viewed as EIFs,* because they represent an obligation of the employer, not an interest in a fund.

On **Schedule C, Part II,** the filer should report (for himself but not his spouse):

- the name of the employer providing the plan;
- a statement that the plan is a defined benefit plan; and
- the dates and parties to the agreement.

Spouse's Pensions

Filers also need to report pension interests for spouses. While Schedule C, part II does not apply to interests of spouses, the disclosure requirements of Schedule A *do* apply. Spouses are required to report the name of the employer providing the plan, the type of plan, and the value of the pension interest. If the value is unknown, then the amount the spouse is currently receiving in benefits may be reported. If the spouse is currently employed by the company sponsoring the defined benefit plan, only the name of the company and the name of the plan is required if the value is unknown. Because of this limited reporting for spouses, reviewers may need to seek additional information on the terms of such pensions in order to complete a conflict of interest analysis.

Examples

The following examples demonstrate reporting of both defined benefit and defined contribution plans.

Reporting Individual's Name	SCHEDULE A	Page Number
Joe Ramone		**1**

Assets and Income BLOCK A	**Valuation of Assets** at close of reporting period BLOCK B															**Income:** type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. BLOCK C														
																Type				**Amount**										
For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income. For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse). None ☐	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,01 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (*Mo., Day, Yr.*) Only if Honoraria
Examples: Central Airlines Common				X												X						X										
Examples: Doe Jones & Smith, Hometown, State			X																												Law Partnership Income $130,000	
Examples: Kempstone Equity Fund					X								X										X									
Examples: IRA: Heartland 500 Index fund							X						X											X								
1 **GM Pension (Defined Benefit Plan)**	**Value Not Readily Ascertainable**																														**Will Recieve $3000/month at age 65**	
2 **IBM Pension Defined Contribution Plan:**																																
3 **--IBM Common**		√														√					√											
4 **--Fidelity Balanced Fund**				√									√										√									
5 S **Proctor & Gamble 401(k) (Janus Worldwide Fund)**			√										√										√									
6 **CREF Variable Annuities: Global Equities**		√											√								√											
7 **Growth**			√										√									√										
8 **Social Choice**		√											√								√											

Reporting Individual's Name	SCHEDULE C	Page Number
Joe Ramone		**3**

Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None ☐

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1	**I retain my GM pension. It is a defined benefit plan, and I will receive $3,000 per month, starting at age 65.**	**General Motors, Inc**	**7/91**
2	**I will keep my defined contribution plan with IBM, the assets of which are listed on Schedule A.**	**IBM**	**9/00**

Conflict of Interest Analysis

18 U.S.C. § 208
OGE DAEOgram
of April 14, 1999

Individuals who participate in defined benefit plans are guaranteed a targeted level of benefits by the sponsor of the plan. This type of pension poses a conflict of interest if the outcome of an official matter in which the employee participates could directly and predictably affect the sponsoring employer's ability or willingness to pay the pension benefit. Ethics officials should not presume that an employee has a conflict of interest in matters affecting the sponsor of his defined benefit plan. As a practical matter, most governmental matters in which an employee participates are unlikely to have a direct and predictable effect on the plan sponsors' ability or willingness to pay the pension.

The key fact to remember about a defined contribution plan is that it is an arrangement for holding other investments on a tax-deferred basis. The tax deferred status of assets or income in these accounts does not postpone reportability on the SF 278. The sponsoring organization has separated itself from the pension (once it ceases making contributions on behalf of the employee) because it does not guarantee payment. (One exception is when the plan's funds are invested or controlled by company representatives, rather than by independent managers or individual employees.) Therefore, it is the underlying investments in a defined contribution plan which must be analyzed for potential conflicts.

Note, however, that while defined contribution plans do not have the issuer's guarantee of a certain benefit level, some plans offer employees an option of investing in the company's stock through the plan, which would create a financial interest in the company. Nevertheless, the analysis of defined contribution plans is always the same--look to the underlying holdings.

Methods of Resolving Conflicts

RECUSAL is the preferred method of resolving conflicts involving such pension plans because it may be expensive and complicated to divest them. Other solutions include § 208(b) WAIVERS or the purchase of an independent guaranty for pensions. Reviewers may, of course, consider the variety of resolution mechanisms discussed in *Chapter 5*.

State and Local Government Pensions
5 C.F.R. § 2640.201(c)

State and municipal government-sponsored defined benefit plans are unique because of the ability of the sponsoring organizations to levy taxes. Nonetheless, official U.S. Government matters may directly and predictably affect the state or municipality' ability or willingness to fund its obligation. There are two exemptions available to employees who have an interest in a state pension plan. One of the exemptions permits employees to participate in matters affecting the holdings of a pension plan established or maintained by a state government. The second exemption permits an employee to participate in matters of general applicability affecting a state or local government sponsor of a pension plan in which she participates.

18 U.S.C. § 209

As discussed in *Section 6.1: Business Ownership and Employment Relationships*, bona fide pension plans are exempt from the criminal ban on supplementation of Federal salary.

Federal law generally requires employers to provide pension and profit-sharing plan participants with explanatory documents describing the plan's terms, investments, performance, and individual employee account. These documents usually provide sufficient information about a plan without reference to the plan itself, which is often a lengthy, technical document. The existence of these documents also suggests that filers do in fact have access to the information about the pensions necessary to fulfill the disclosure and conflict of interest process outlined in this section.

7.3 INDIVIDUAL RETIREMENT ACCOUNTS (IRAs)

IRAs are retirement accounts that also involve individual accounts for its participants. They are discussed separately from defined contribution plans because the reporting requirements are different.

All IRAs Are Self-Directed

An Individual Retirement Account (or Arrangement) (IRA) is typically a bank, brokerage, or mutual fund account that a person has designated as a tax-deferred retirement account. All IRAs are "self-directed" because investors choose where to invest their retirement funds. While investors may place these funds in relatively simple bank accounts, they may also buy stocks and other securities that might conflict with their duties. IRAs that hold such securities portfolios allow an investor to actively manage the account's investment holdings through a custodian who executes investment instructions.

NOTE: Sometimes filers indicate that their IRAs are "roll-overs." This phrase simply means that the IRA's holdings were originally in some other tax-deferred account, and the filer moved the funds to the present account while maintaining their tax-deferred status.

IRAs Are Not EIFs

IRAs do not qualify as EIFs, because they are self-directed and not widely held (they are individual accounts) (see *Section 7.1: Excepted Investment Funds*). Therefore, it is not enough to enter "T. Rowe Price IRA Account," without listing the assets held. The underlying funds held in an IRA may, however, be EIFs, requiring no further breakdown. Thus, "Fidelity Magellan Fund (IRA)" is a complete disclosure because this mutual fund is an EIF.

IRAs Held as Deposit Accounts

Of special note are IRAs held as deposit accounts in banks and other financial institutions (see *Section 8.1: Bank and other Cash Accounts* for details on cash-equivalent accounts). Even though these accounts are not EIFs, an entry such as "IRA, Riggs Bank Money Market Account" is sufficient. They represent a contractual obligation of the bank rather than an interest in underlying assets, so no further detail is required. Reviewers may assume that an IRA at a bank or other financial institution is a cash account if it is clear that the funds are in a deposit account, rather than an investment portfolio.

If any other type of entity, such as a broker, holds IRA assets for a filer, the filer must disclose the underlying holdings in the account. IRAs not associated with bank accounts may contain a variety of investments, such as mutual funds, stocks, and bonds. Reviewers and filers should look to these underlying holdings to determine proper disclosure and conflict of interest analysis. While specific mutual funds may be EIFs, an individual portfolio of stocks does not qualify for the reduced disclosure that EIFs allow.

Financial Disclosure Requirements

IRAs

Each of the underlying assets in an IRA must be reported on Schedule A, if the asset value meets the reporting threshold of $1,000 or it earned income over $200 during the reporting period. On Schedule B, Part I, filers must report transactions of assets held in an IRA. There is no reporting requirement for Schedule C, Part II.

Example

The following sample SF 278 demonstrates the reporting of some IRAs.

Reporting Individual's Name: **Franz Boas** | SCHEDULE A | Page Number: **1**

Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)															Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)														
																Type				Amount										
For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income. For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse). None ☐		None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,01 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (*Mo., Day, Yr.*) Only if Honoraria
Examples	Central Airlines Common				X											X						X										
	Doe Jones & Smith, Hometown, State			X																											Law Partnership Income $130,000	
	Kempstone Equity Fund					X								X										X								
	IRA: Heartland 500 Index fund							X						X											X							
1	**Riggs Bank CD, IRA**		√																√			√										
2	**Merrill Lynch IRA (Merrill Lynch Pacific Fund)**			√										√										√								

Conflict of Interest Analysis

Examine Underlying Assets

For IRAs, the reviewer should always perform a conflicts of interest analysis on each underlying asset of the account, even when reporting of individual assets in the account is not required. Ethics officials should advise their employees about conflict of interest concerns with respect to assets that do not meet the threshold in an IRA.

7.4 ANNUITIES

An annuity is a contract with a life insurance company, though sometimes marketed through banks and financial planners. The investor (annuitant) pays a premium to the insurance company in either a single payment or a series of payments. In return, the insurance company makes payments to the investor, beginning at some future time, such as retirement or at a specified age. Tax-deferred investment income accumulates in the annuity. The two basic types of annuities are:

Types of Annuities

- *fixed annuities:* These annuities offer a specified rate of return that the issuing company guarantees. Individual investors have no direct financial interest in how the insurance company invests the premiums. Investors do have an interest in the insurance company in that if it becomes insolvent, they can lose their money.
- *variable annuities:* These annuities offer investors a limited series of options in which they can invest, typically mutual funds. Investors choose how their money is invested and receive a return based on the performance of the investments they choose.

Deferred Annuities

Annuities that postpone payments to the recipient until a certain age or until retirement are called deferred annuities. Deferred annuities have two phases--accumulation and distribution. During the accumulation phase, the investor makes set contributions on a periodic basis (or in a lump sum payment) to the annuity. At this phase, a variable annuity will not have a guaranteed return, while a fixed annuity includes a guaranteed rate of interest on the funds accumulating. Annuities often have a death benefit or some other form of insurance during accumulation that will provide funds upon the death of the annuitant. During the distribution or payout phase, the insurance company makes periodic (or lump-sum) payments to the annuitant, or a named beneficiary, for a lifetime or a certain number of years.

Immediate Annuities

Some annuities begin paying out immediately. These annuities are often purchased by people who must withdraw funds from a 401(k) or other retirement fund. These annuities essentially have only a distribution phase. A Single Premium Immediate Annuity (SPIA) has a one-payment accumulation phase and then normally begins payment distribution immediately, or within a year.

Financial Disclosure Requirements

The distinctions between fixed and variable annuities create few differences in how filers should report them on the SF 278. Some simple guidelines adequately describe the proper disclosure of annuities. The filer should report on **Schedule A** for herself, her spouse, and her DEPENDENT CHILDREN:

- the name of the insurance company issuing the annuity in **Block A;**
- the type of annuity (fixed or variable) and any investment choices if in a variable account, such as Fidelity Magellan;
- a category of asset value in **Block B.** This may be the annuity's face value or company's estimate of current value, or the value of premiums paid plus accrued income; and
- the type of income or a check mark in the EIF box and category of amount in **Block C** for any accrued income reported to the filer by the insurance company, either from its general account or from the assets held in the annuitant's variable investment account. This may be interest or dividend income from mutual funds, or a pooled investment option in a variable annuity. In most cases, however, these interests will be EIFs, and the type of income will not be required. (The fixed annuity will not qualify as an EIF because it is an obligation of the company, not an interest in an asset fund.)

What Not to Report

NOTE: During the distribution phase, the amount of any payments received from the annuity need **not** be reported because such payments are merely a distribution from a previously-reported investment and its income. Filers must, however, report the actual amount of a payment received as a beneficiary of someone else's annuity, since it will not have been previously reported.

Schedules B & C

Filers need not report either type of annuity as an arrangement on Schedule C, Part II, unless it is part of a pension or other employee benefit plan. Filers also need not report transactions involving annuities on Schedule B, Part I, because they are contracts, not security transactions.

Example

The following sample SF 278 entry demonstrates the reporting of the two basic types of annuities.

Reporting Individual's Name	SCHEDULE A	Page Number
Arthur Dent		**1**

Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)															Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)															
																Type				Amount											
For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income. For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse). None ☐	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,01 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (*Mo., Day, Yr.*) Only if Honoraria
Examples: Central Airlines Common				X												X						X										
Examples: Doe Jones & Smith, Hometown, State			X																												Law Partnership Income $130,000	
Examples: Kempstone Equity Fund					X								X										X									
Examples: IRA: Heartland 500 Index fund							X						X											X								
1 **Mutual of Boston (Fixed Annuity)**			√															√				√										
2 **Long Life, Inc.--Variable Annuity invested in Fidelity Magellan Fund**				√									√											√								

Conflict of Interest Analysis

Annuities Do Not Normally Pose Concerns

As an insurance product, annuities require a fairly simple conflict of interest analysis. In a fixed-rate annuity, the life insurance company's guarantee of a specific rate of return creates a financial interest for the employee in matters affecting the insurance company. Unless the employee can affect the financial soundness of the insurance company involved or has access to non-public information concerning the company, an annuity should not pose conflict of interest problems.

For variable annuities, the conflict of interest situation is somewhat different. Their rate of return is tied to the performance of an underlying portfolio or investment vehicle. Accordingly, the underlying investments could create additional conflict of interest concerns. These underlying assets, however, are almost invariably diversified mutual funds, and the assets of these funds are not viewed as requiring disqualification under 18 U.S.C. § 208 (see *Section 5.3: Waivers and Exemptions*).

7.5 LIFE INSURANCE POLICIES

To the extent that an insurance policy is purely term life insurance, it does not require disclosure and does not create a conflict of interest problem. Insurance that has an investment portion, however, must be reported. An exception to this rule is term insurance that a former employer continues to provide. This benefit represents a continuing interest in the employer and should be reported.

Filers Need Not Disclose Term Insurance

Life insurance policies are issued in two basic varieties: term and cash value insurance. Term insurance is purely insurance, whereby beneficiaries receive a death benefit if the insured person dies during the term of the policy. When the policy expires, no value remains. *Filers need not ordinarily report term insurance on the SF 278.* It does not normally pose any conflict of interest problems in itself.

Filers Must Disclose Cash Value Policies

Cash value insurance is part insurance and part investment. Such policies require premiums during the life of the insured person in exchange for a fixed sum of money to a beneficiary when the insured person dies. While part of these premiums pay for expenses and the insurance part of the policy, the remainder goes into a tax-deferred cash reserve which is invested and builds the policy's cash value.

Brokers and agents sell several types of cash value life insurance under various names. These types differ by whether the premium is fixed or varies and how the investment portion is arranged. For **whole life** policies (also called ordinary or straight), the insured person pays fixed premiums and has no control over investments, which is left to the insuring company. With **universal life**, the insured person can vary her premiums by paying them with some of her accumulated cash value under the policy, and she normally receives a minimum guaranteed rate of return at money market rates. For **variable life,** the insured person chooses investments from among several company options, such as stock, bond, or money market portfolios, and their performance dictates its value.

Policy holders can normally tap into their savings in the investment portion of their insurance policies in several different ways, depending on the policy contract:

- Canceling or surrendering the policy to the company and receiving the value of this investment, called the cash surrender value;
- Using these funds to buy more insurance or reduce premiums; or
- Borrowing the money at a below-market interest rate (any loans not repaid before the insured's death reduce the death benefit).

Financial Disclosure Requirements

Filers must disclose cash value policies, including their choice of investments, if any. The requirements for the filer, spouse, and DEPENDENT CHILDREN on **Schedule A** are**:**

- the **name of the insurance company** issuing the policy in Block A;
- the **type of insurance policy,** such as "whole," and, for variable life, the investment option(s) chosen, such as Janus Mercury;
- a category of **asset value,** normally the cash surrender value of the policy, in Block B;
- the **type of income** accruing to the investment portion of the policy in Block C, as reported to the policy holder by the insurance company. The type is usually interest or dividends, but variable life policies may also pay capital gains. Whole and universal life insurance policies are not viewed as EIFs because they represent an obligation of the sponsoring company rather than an interest in an investment fund. Filers should, however, use the EIF category when the underlying assets in the investment portion of their variable life policy is invested in an EIF; and
- the category of **amount of income** accruing to the investment portion of the policy, also in Block C.

Beneficiary Reporting

NOTE: Filers who are beneficiaries under someone else's policy must report the actual amount of any death benefits received as a beneficiary.

Insurance From a Former Employer

Sometimes a former employer will allow filers to continue to participate in their group employee benefit program which provides life or health insurance. Filers should report such continuing ties to a former employer on **Schedule C, part II.**

Filers need not report any transactions involving life insurance contracts on Schedule B, Part I. Accordingly, reviewers need not inquire about policies that seem to disappear from one report to the next.

Filers also need not report any amount that they borrow against the cash value of their policies on Schedule C, Part I. These loans are not reportable because the filers are borrowing against the cash value of their policies. They are, in effect, borrowing from themselves.

Example

The following sample SF 278 demonstrates reporting of the three types of cash value insurance:

Reporting Individual's Name	SCHEDULE A	Page Number
Danny Miller		**1**

Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)															Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)															
For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income. For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse). None ☐	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,01 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	Amount: $201 - $1,000	Amount: $1,001 - $2,500	Amount: $2,501 - $5,000	Amount: $5,001 - $15,000	Amount: $15,001 - $50,000	Amount: $50,001 - $100,000	Amount: $100,001 - $1,000,000	Amount: Over $1,000,000*	Amount: $1,000,001 - $5,000,000	Amount: Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples: Central Airlines Common				x												x						x										
Examples: Doe Jones & Smith, Hometown, State			x																											Law Partnership Income $130,000	
Examples: Kempstone Equity Fund					x								x										x								
Examples: IRA: Heartland 500 Index fund							x						x											x							
1 **Mutual of Tlaxiaco (Whole Life)**		√																√			√										
2 **Home Life (Universal Life)**		√														√					√										
3 **Merchant Life--Variable Life invested in Janus Worldwide**			√										√										√								

Conflict of Interest Analysis

Except for variable life insurance, none of the varieties of cash value life insurance pose significant conflict of interest problems beyond those with the issuing insurance company. Actions in Government matters that affect the financial stability of the issuer or its willingness or ability to support the policy may create a conflict of interest.

The policy's structure dictates further concerns. When filers do not control how their money is invested, an interest exists only in the insurer. Filers who control their premiums' investment, however, also have an interest in that investment. Such funds are often diversified mutual funds, and the assets of these funds are not viewed as requiring disqualification under 18 U.S.C. § 208 (see *Section 5.3: Waivers and Exemptions*).

7.6 INVESTMENT CLUBS

OGE 86 X 3

Individual investors often join together, either formally or informally, to form investment clubs. They form clubs for a variety of reasons, including limiting each individual's risk, assisting each other with investment decisions and advice, or participating in larger investments at lower commissions. To form an investment club, a group of persons pool limited or stated amounts of funds to invest together. Each member of the club contributes a certain amount of capital, with additional money added each month or quarter. Investment decisions are usually made by majority vote.

These collaborations range from small, informal investment clubs to large groups with written agreements, charters, and bylaws. Despite this variety, disclosure of interests in clubs is simple. Each asset in the club's portfolio is attributable to the entire membership. The filer, however, need only report her proportionate share of these assets. That disclosure is also sufficient for conflict of interest review.

Financial Disclosure Requirements

Holdings Are Attributed to The Filer

Filers must list each of the club's holdings as a separate line item, as if they (or their spouse or DEPENDENT CHILD) held it directly as long as that item meets the reportable threshold. Under generally accepted principles, a private investment pool never constitutes the active conduct of a trade or business. Thus, the assets of the club cannot be excluded from disclosure, like incidental assets of businesses discussed in *Section 6.1: Business Ownership and Employment Relationships*.

Filers should report only their share in the club; that is, they need to disclose only the value that corresponds to their percentage share of each asset and its income. Alternatively, filers may simply report the full value of each of the club's holdings and income and indicate what overall percentage they own.

Use of Account Statements

Filers often use statements from the club to fulfill the reporting requirement. The statement is acceptable so long as it clearly, concisely, and readily discloses all relevant information in accordance with statutory and regulatory reporting requirements.

Regardless of the valuation method used, filers must disclose the entire list of the club's holdings on **Schedule A** *and* transactions of those assets on **Schedule B, Part I.** Because such clubs can hold virtually any investment, reviewers should refer to *Chapter 8* for details on how to report specific assets.

Not Normally EIFs

Investment clubs will rarely qualify as EIFs because the members of the club usually make the investment decisions for the club, and because the portfolio will not normally be considered "widely-held" if there are fewer than 100 club members.

Threshold Rules

The threshold for reporting the investment club itself applies to the overall amount that filers have invested in the club, not to the value of their shares in particular assets. The threshold for reporting the underlying assets of the club is based on the filer's interest in that asset.

Example: A club of five equal partners owns $50,000 worth of each of the following stocks: IBM, AT&T, GM, ITT, and GE. The filer reports a $10,000 holding in each of the five stocks and one fifth of the income the stocks generated.

Examples

The following sample Schedule A and Schedule B entries demonstrate how to report two possible investment clubs.

Reporting Individual's Name: **Jim Chee**

SCHEDULE A continued (Use only if needed)

Page Number: **2**

	Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)															Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)														
		None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,01 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	Amount: $201 - $1,000	Amount: $1,001 - $2,500	Amount: $2,501 - $5,000	Amount: $5,001 - $15,000	Amount: $15,001 - $50,000	Amount: $50,001 - $100,000	Amount: $100,001 - $1,000,000	Amount: Over $1,000,000*	Amount: $1,000,001 - $5,000,000	Amount: Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	**Odds n' Ends Investors:**																																
2	**--GM Common**		√														√					√											
3	**--IBM Common**	√															√			√				√									
4	**--AT&T Bonds**		√																√		√												
5	**Lynch Family Investment Club (20% of the following Stocks)**																																
6	**--Merck**					√											√									√							
7	**--Pfizer**				√												√									√							
8	**--Upjohn**	√															√			√					√								

Reporting Individual's Name: **Jim Chee**

SCHEDULE B

Page Number:

Part I: Transactions

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

None ☐

	Identification of Assets	Transaction Type (x): Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	Amount of Transaction (x): $1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
Example	Central Airlines Common	x			2/1/99			x									
1	**Upjohn Stock**		√		**7/16/03**		√										
2	**IBM Stock**		√		**8/23/03**		√										
3	**GM Common**	√			**10/17/03**	√											

Conflict of Interest Issues

Unlike mutual funds, which have independent managers and statutorily defined portfolio characteristics, investment clubs vary widely in organization and investment policy. There are no generally accepted or imposed standards for their investment decisions. In fact, the clubs often develop as social groups. Typically, investment clubs involve fewer than 100 participants, so their portfolio will not normally be considered "widely held." Thus, investment clubs will not generally qualify as EIFs, so all the assets held by the pool must be disclosed.

Filers involved in investment clubs have all of the pool's holdings imputed to them, despite the fact that many of these holdings may be small. Agency ethics officials, in consultation with OGE, may wish to grant a WAIVER under 18 U.S.C. § 208(b)(l) if certain specific conditions exist:

- the portion of the club's equity attributable to the employee is insignificant;
- the club's security portfolio is independently managed by a licensed broker; *and*
- the portfolio is diversified.

See *Section 5.3: Waivers and Exemptions* for detailed information on the waiver process. See *Chapter 5: Resolving Conflicts of Interest* in general for descriptions of alternative solutions.

7.7 TRUSTS AND ESTATES

5 C.F.R. §§ 2634.301 & 2634.310
OGE DAEOgrams of
December 19, 2001
June 11, 2002
April 12, 2002

Estates of deceased persons and private trusts form a relatively small part of financial disclosure. This section orients reviewers to simple estates and trusts. Reviewers analyzing a complex trust or estate may wish to seek specific guidance from OGE. The trust's holdings and the relevant financial disclosure and conflict of interest issues include a wide variety of investments and arrangements discussed in other sections of this chapter and in *Chapter 8*. Also see *Chapter 8* for treatment of publicly-traded unit investment trusts.

5 C.F.R. § 2634.302(a)

Generally, filers need to report holdings and income from any trust or estate in which they, their spouse or dependent children hold a *vested* beneficial interest in principal or income. Income received in the form of a distribution from a trust is required to be reported by the filer in actual amount if a filer does not have a beneficial interest and the trust holdings have not been individually reported. Distributions to spouses and dependent children are not required to be reported.

Vested Interests

The concept of a vested interest is extremely important--if an interest is not vested, a filer need not report it and will not have a financial interest under the conflict statute. For example, merely being named as an heir in a will by someone who is still living does not create a financial interest in the estate, because the will can be changed. Similarly, persons do not have a vested beneficial interest in a trust when their legal right is conditioned on some *uncertain* future event. A person has a vested interest in a trust or estate if he has a present legal right to its property or income (including the authority to dispose of the property or income), even if that right is defeasible (subject to being revoked or voided). It does not matter when he will actually receive the property or income, or whether it will be received only after someone else's interest, prior or intermediate, ceases (remainder interest).

Uncertainty as to *when* property will be received does not establish that it is non-vested. Rather, uncertainty as to *whether* the person is presently entitled to the property indicates that it is non-vested.

The chart below provides common examples of when beneficial interests are reportable.

Assets are **reportable** if the filer, or his spouse or dependent child:	Assets are **not reportable** if the filer, or his spouse or dependent child:
• has a vested beneficial interest in a trust.	• has a trust interest conditioned on an event that may not occur (no current legal title), and is not receiving any income; • could receive inheritance according to the current will of a living person; or • has an interest in a deceased person's estate that has not yet been distributed.

Estates

As the chart above notes, persons named in wills of living persons do not have legally recognized interests. They need not report any interest in the estate until the person who created the estate dies, and the estate's property and income has been distributed directly or in trust.

Heirs

Financial Disclosure Requirements

Once filers or their spouse or dependent children have received a distribution from an estate or acquired a vested interest in a trust, they must report the assets and income on **Schedule A** and transactions among those assets on **Schedule B, Part I.**

Executors

Filers or their spouses serving as executors or administrators for estates must report any fees they or their spouse receive on **Schedule A**, using the "other" type of income and reporting the actual amount of the fees (for the spouse, only the source). They must also list their position (but not their spouse's) on **Schedule D, Part I,** but only after the will becomes operative (that is, after the person who made the will dies).

Trusts

The Basic Organization of a Trust

A private trust is a formal, legal arrangement by which legal title and management responsibility for a person's property is given to a fiduciary, known as the trustee. The person who creates the trust is known as the grantor, settlor or donor. The property put into the trust is called the *corpus* (the body, literally), *trust res* (the thing in trust, literally), trust fund, or trust estate. Those who are designated to receive income from or ultimately the corpus of the trust are known as beneficiaries.

The structures of trusts are often specialized. Trusts are established and interpreted under state law. Although the controlling laws may vary from state to state, there are some common features among certain types of trusts. The following discussion describes, generally, the features of some trusts. If you require additional information, you may need to conduct additional research or contact OGE for assistance.

Generation-Skipping Trust

Generation skipping trusts are designed to transfer assets to persons who are two or more generations below the donor. Usually, the assets are placed in trust for the benefit of the first generation, the donor's children, then passed to the next generation at the children's deaths. These trusts are established to take advantage of the generation-skipping tax exemption.

Living Trust

A living trust is one that is created during the settlor's lifetime. The settlor may act as trustee of the trust. One of the reasons these trusts are established is to avoid probate.

Charitable Trusts

A charitable trust is a trust that is created to benefit an educational, scientific, religious or other similar purpose. In a charitable lead trust, the trust pays a sum to the charity for a specified period of time, then distributes the assets to non-charitable beneficiaries. A charitable remainder trust pays income first to non-charitable beneficiaries and the remaining assets to the charity.

Financial Disclosure Requirements

Because of the many types of trusts, this section provides general guidance only. The filer must disclose his own, his spouse's, or his dependent child's interest in any trust, if they are currently receiving income or have a vested beneficial interest). If however, the remainder interest is in or the distribution from a revocable living trust and the grantor of the trust is not the filer, filer's spouse or his dependent child, then no information on trust assets is required to be reported.

For reportable interests, a filer must ordinarily disclose all property held under the trust arrangement and its income on **Schedule A**, plus any transactions of the trust's assets on **Schedule B, Part I**. Filers need only report their own, their spouse's, or their dependent child's proportional share. Since a private trust's portfolio is not "widely held," it will not qualify as an EXCEPTED INVESTMENT FUND (EIF). Holdings within the trust's portfolio, however, could qualify as EIFs, such as shares of a MUTUAL FUND or a bank's common trust fund.

Filers must also report on Schedule A any fees they receive as trustee and must report their position on Schedule D, Part I. (However, a filer need not report the *amount* of fees earned by a spouse as trustee or the spouse's position as trustee.) A filer, spouse or dependent child that serves as a trustee but has no beneficial interest in the trust is not required to disclose the trust's assets and income unless they are receiving fees based on the performance or value of the portfolio, (see *Section 6.5: Outside Positions* for more information on trustees).

Threshold Rules

Individual Interests Below the Reporting Thresholds

The threshold for reporting applies to the overall amount of the filer's interest, not to the value of her shares of particular assets. Underlying assets of the trust must be reported if they individually meet the reporting thresholds.

Remainder Interests

A filer must report remainder interests in property as a beneficiary of a trust. Contingent or conditional interests need not be reported. A contingent or conditional interest is one for which the receipt of a benefit is contingent on future events or conditions that may never happen, such as a marriage or the birth of a child.

Example: A filer's parent establishes a trust which grants the parent a life estate in property, and upon the parent's death, the filer will receive the corpus. The filer has a reportable remainder interest, even before the parent's death.

Reduced Disclosure for Blind or Excepted Trusts

Blind Trusts
5 C.F.R. § 2634.310(b)(l)

Qualified blind trusts and excepted trusts reduce disclosure requirements and the need for conflict assessments, since filers will have little or no knowledge of the underlying holdings.

Filers with blind trusts for financial disclosure purposes, known as qualified blind and qualified diversified trusts, will have worked extensively with OGE and agency officials to establish their trusts (see *Section 5.6: Qualified Trusts* for more information). On their SF 278s, filers should not report any information about these holdings but merely check the category of value, "qualified trust" and aggregate income attributed to them and their spouse and dependent children.

Excepted Trusts
5 C.F.R. § 2634.310(b)(2)

The financial disclosure statute created the concept of an "excepted trust" to refer to certain trusts in which filers have a vested interest, but little or no knowledge of the holdings. A trust is an excepted trust if it has **both** of the following characteristics:

- the filer, the filer's spouse or dependent children did not create the trust **and**

- the filer, the filer's spouse or dependent children have no specific knowledge of the trust's holdings or sources of income through a report, disclosure, or constructive receipt, whether intended or inadvertent. Constructive receipt occurs when a person is considered to have received information, even though she may not have actual possession, such as when legal requirements for delivery have been satisfied. *Filers may never blind themselves from trusts by simply avoiding information that is made available to them.*

For these types of trusts, the filers must indicate the general type of holdings to the extent known, but need not report any further information about the holdings. The filer would only check the "excepted trust" and the appropriate category of amount of income from the trust. No reporting of transactions on Schedule B, part I, is possible because the filer does not know the trust's assets.

Examples

The following sample SF 278 entries demonstrate how to report several possible interests in trust and estates.

Reporting Individual's Name: **Mark Arm** | SCHEDULE A | Page Number: **1**

Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)															Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)														
																Type				Amount										
For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income. For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse). None ☐	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,01 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples: Central Airlines Common			X													X						X									
Examples: Doe Jones & Smith, Hometown, State			X																											Law Partnership Income $130,000	
Examples: Kempstone Equity Fund					X								X										X								
Examples: IRA: Heartland 500 Index fund							X						X											X							
1 **Arm Family Trust (believed to contain Energy Stocks)**														√											√						
2 **Blind Trust Established Under the Ethics in Government Act**									√						√											√					
3 **Trusteeship for Michael Faraway Trust**																														Trustee's Fees $2,500	

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Reporting Individual's Name: **Mark Arm** | SCHEDULE D | Page Number: **4**

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
Examples	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1	**Faraway Trust**	**Trust**	**Trustee**	**8/97**	**Present**

7.8 PREPAID TUITION PLANS

All states and some institutions have established prepaid college tuition or savings plans known as 529 plans. These are education savings plans to help families save for college costs. Prepaid tuition plans are contracts with a state or institution that allow a person to lock in today's tuition rates. Prepaid savings plans are investment accounts in which an individual chooses among offered investment options, usually mutual funds. The participant relies on the growth of these funds to pay for education expenses in the future. If an employee, spouse or dependent child has an interest in either one of these plans, the plan must be disclosed on the financial disclosure report.

Financial Disclosure Requirements

For prepaid tuition plans, the name of the plan and sponsor, the value (the cost the individual paid for the contract may be used) and income value, which will usually be none, should be reported on Schedule A.

For prepaid savings plans, each of the underlying investment choices should be broken out as a separate item, with value and income category checked. Most of the investment choices offered by these plans will be EIFs.

Conflict of Interest Analysis

An interest in a prepaid tuition plan, for purposes of 18 U.S.C. § 208 is a contractual interest in the plan sponsor's ability or willingness to honor its future obligation.

For prepaid savings plans, each of the underlying investment funds is an interest for purposes of 18 U.S.C. § 208. Most of these funds will be exempt. (See *Section 5.3: Waivers and Exemptions*).

8.0 INVESTMENTS

5 U.S.C. App. §§ 102 (a)(l)(B) & (a)(3)
5 C.F.R. §§ 2634.301 & 302

This chapter discusses some of the more common investments that filers must report, which they or their spouse or DEPENDENT CHILDREN hold. The sections of this chapter cover:

- cash deposit accounts in banks and similar financial institutions;
- corporate stocks, bonds, and stock OPTIONS; government obligations;
- MUTUAL FUNDS and unit investment trusts;
- limited partnerships;
- FUTURES and options on commodities and financial instruments;
- real property and mortgage investments; and
- collectibles, precious metals and intellectual property.

Of these investments, the following are considered securities: corporate stocks, bonds, and stock options; government obligations; mutual funds and unit investment trusts; limited partnerships; futures and options; and mortgage-backed instruments.

NOTE: Some statutes and regulations may define "securities" more narrowly, but the term is broadly construed for purposes of financial disclosure. The significance of the term "security" for financial disclosure is that filers must report transactions involving securities (as well as real estate) on Schedule B, Part I. However, transactions involving T-bills, notes, and bonds are not reportable.

Description of the Investment

Each section begins with a brief description of the general nature and distinctive characteristics of a particular investment. These descriptions are intended only as an elementary introduction or framework from which to pursue financial disclosure review and conflict of interest analysis. Ethics officials should consult financial reference manuals or research on the internet for a more definitive explanation of each investment.

Disclosure Requirements

Following the descriptive treatment of each investment type is a discussion of the financial disclosure requirements, with one or more graphic examples. See *Section 2.2: Reporting Forms* for use of brokerage statements as attachments in lieu of separately listing each item on an SF 278.

Conflicts Analysis

Finally, each section pinpoints conflict of interest considerations. See *Chapter 5: Resolving Conflicts of Interest* for different methods of conflict avoidance, such as RECUSAL, WAIVER or exemption, and divestiture. Some agencies may have additional statutory, regulatory, or policy restrictions which ethics officials must apply.

Related Information in Chapter 7

In reviewing the adequacy of investment disclosures and analyzing them for potential conflicts, reviewers should also consult *Chapter 7: Investment Vehicles*, for assets held in investment vehicles.

8.1 BANK AND OTHER CASH ACCOUNTS

5 U.S.C. App. §§ 102(a)(l) & (a)(3)
5 C.F.R. §§ 2634.301(b)(7) & (b)(9); § 2634.302(b)

Generally, cash in the form of paper currency and coins need not be reported on an SF 278, as it is not held for investment or the production of income. In contrast, cash deposit accounts in financial institutions, as well as cash equivalents, such as money market mutual funds with investment firms, ordinarily must be reported because they are held as an investment or for income production. In addition, rare coins held for investment and foreign currency held for exchange rate speculation must be reported.

Types of Cash Accounts
5 C.F.R. § 2634.301(c)(2)

Cash Deposit Accounts

Banks, credit unions, and savings and loan associations offer various types of cash deposit accounts, most of which bear INTEREST (or DIVIDENDS). The financial disclosure statute and regulation refer to them collectively as PERSONAL SAVINGS ACCOUNTS. The most common types that reviewers will see reported are checking accounts, passbook and other savings accounts, money market accounts, CDs (certificates of deposit), and IRAs (individual retirement accounts) held in the form of savings accounts or CDs. (For a discussion of IRAs generally, see *Section 7.3: Individual Retirement Accounts (IRAs)*.)

Account Differences Unimportant

Cash accounts vary as to the depositor's purpose (check-writing, duration of investment, deferral of income tax), withdrawal notice requirements (upon demand or at a specified maturity), interest or dividend rates, and minimum balance requirements. These differences are not significant for purposes of financial disclosure and conflict analysis.

Underlying Holdings Not Usually Relevant

A filer must report the existence of an account and the specific financial institution. No matter how these underlying investments perform, the institution is contractually obligated to return the PRINCIPAL and pay a fixed rate of interest. A depositor is, in effect, a creditor of the financial institution, not an equity holder. Therefore, the underlying investments are not normally important for disclosure purposes or conflicts analysis.

Most filers have no power to influence an account's value, except for employees of agencies that regulate financial institutions, so cash accounts rarely present conflict of interest concerns.

Money Market Funds

Like deposit accounts in financial institutions, shares in money market funds (MM funds) managed by investment firms are considered cash equivalents because of their relative security and liquidity. A money market fund is actually a type of MUTUAL FUND with low-risk investments (Government securities, CDs, and high quality bank or corporate obligations) which yields dividends and CAPITAL GAINS. Its rates are responsive to fluctuations in the market for these investments. MM funds often operate much like cash deposit accounts, providing such privileges as check-writing.

Treat MM Funds Like Cash Accounts

The name of the specific MM fund needs to be disclosed, but not the underlying assets because MM funds will qualify as EXCEPTED INVESTMENT FUNDS (EIFs). These funds do not generally present conflict of interest concerns. Most filers have no power to influence a fund's value because the rate of return is set on the open market. One exception is an employee who works for an agency that regulates mutual funds.

Non-Cash Accounts

Asset Management Accounts

Some filers and reviewers mistakenly believe that ASSET MANAGEMENT ACCOUNTS held at brokerage houses and financial institutions maybe treated as cash deposit accounts or cash equivalents for reporting purposes, particularly because they are sometimes referred to as cash management accounts (CMAs). In fact, asset management accounts may offer not only cash accounts, money market funds, and checking privileges, but also credit and debit card accounts, brokerage accounts (which may hold securities), and MARGIN ACCOUNTS (arrangements that permit customers to borrow in order to cover the cost of securities purchases). Therefore, the underlying investments in an asset management account must be separately reported.

Financial Disclosure Requirements

5 C.F.R. § 2634.301(c)

Cash accounts are reportable if at the close of the reporting period:

- they aggregate over $5,000 in a single financial institution (in contrast to the normal $1,000 threshold for assets); or
- they have accrued more than $200 in INCOME at a single financial institution during the reporting period.

For money market funds, these thresholds apply to each fund. When aggregating, filers must include all holdings in a single financial institution or money market fund for themselves, their spouse, and their DEPENDENT CHILDREN.

Identifying Cash Accounts

A cash account should be identified on **Block A** of **Schedule A** as follows:

- the name of the financial institution;
- the types of accounts held (optional); and
- the city and state where the institution is located (not required for recognized national and regional financial institutions).

Identifying MM Funds

MM funds should simply be identified in **Block A** with their full name. Underlying assets of MM funds need not be disclosed because, as publicly-traded funds, they qualify as EIFs.

Account Numbers Not Required

Filers should not list their account numbers. This private information is not necessary for conflict of interest review, and it could be misused by a person who requests the report.

Valuation

For **Block B,** filers must report the category of VALUE for the account or fund at the close of the reporting period. **Block C** must contain both the type and the category of amount of income that has accrued. While cash accounts normally pay interest, money market funds usually yield dividends and capital gains. For MM funds, filers should mark EIF instead of dividends and capital gains. The asset value and type and amount of income can be determined from periodic statements issued by the institution or fund. IRS Form 1099 will also reflect the type and amount of income (for use on annual reports). All income must be reported as it accrues, even if it is not withdrawn or not available without penalty, such as for an IRA or a CD.

If an account or fund was closed before the end of the reporting period (or dropped below the $5,000 threshold) but generated more than $200 in income, the filer must identify it in Block A, report it as an EIF (if it is a money market fund) or indicate the type of income (if it is a money market account or other cash account), and indicate the category of amount of income in Block C. The asset value in Block B should be marked "None."

Transaction Reporting not Required
5 C.F.R. § 2634.303(b)

Filers need not report transactions (deposits/purchases and withdrawals/sales) involving cash accounts (personal savings accounts) or money market funds.

Examples

The following graphic examples demonstrate reporting of cash accounts.

Reporting Individual's Name	SCHEDULE A continued (Use only if needed)	Page Number
Hiero Bosch		**2**

	Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)														Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)															
																Type				Amount											
		None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,01 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	**First Farm Savings; Wichita, KS: Checking**		√															√			√											
2	**Citibank: CDs, NOW, Money Market Account**				√													√				√										
3	**Japanese Yen (Partial Sale)**		√																√		√											
4	**Fidelity Special MM Fund**			√										√							√											
5	**Merrill Lynch Cash Management Account:**																															
6	**--Merrill Lynch Pacific Fund**		√											√							√											
7	**--Merrill Lynch Money Fund**		√											√							√											

Conflict of Interest Analysis

Conflicts Unlikely For Cash Accounts and MM Funds
18 U.S.C. § 208

For most filers, cash accounts rarely present conflicts of interest. A cash account could only pose a conflict of interest if a filer could affect the security of her deposit or the bank's ability to pay the promised rate of interest. The deposit's security and the payment of interest depend on the solvency of the bank, which few filers could influence. Even if they could affect their deposits, Federal deposit insurance may mitigate the extent of potential loss. Money market funds also rarely present conflicts because most filers are not in a position to influence a fund's value or rate of return.

Banking/Financial Agency Employees

It is primarily for employees of agencies that examine or regulate financial institutions or investment companies that cash accounts and money market funds may create conflict concerns. For example, when an entity is experiencing financial difficulties and may not be able to maintain its accounts or pay interest when due, an employee of the Department of the Treasury or the Federal Deposit Insurance Corporation may have duties that conflict. Similarly, an employee of the Securities and Exchange Commission might have matters before her that could affect the value of her money market fund shares.

In any case where filers will be working on matters that could have a direct and predictable effect on their cash account or money market fund shares, reviewers should consult the discussion in *Chapter 5: Resolving Conflicts of Interest*.

8.2 CORPORATE SECURITIES

5 U.S.C. App §§ 102(a)(l) & (a)(3)
5 C.F.R. §§ 2634.301(b)(2) & 2634.302(b)

Securities issued by corporations include:

- shares of stock, which represent an ownership interest;
- bonds, which evidence a creditor interest; and
- rights to buy or sell stock, such as OPTIONS, subscriptions and warrants.

Stocks Are Ownership Shares

Stocks

Stock shares represent an equity (ownership) interest in a corporation and entitle the holder to a claim on corporate assets and earnings. Normally, a company pays a portion of its earnings to shareholders as DIVIDENDS. Shareholders may also receive CAPITAL GAINS when they sell their stock.

Corporations issue two basic types of stock, common and preferred. Differences between the two types involve shareholder voting rights and the priorities for payment of dividends and liquidation claims. For financial disclosure and conflict analysis, these differences are ordinarily not significant, and there is no requirement to specify the type of stock on a disclosure report.

Bonds Are Debt Obligations

Bonds

Bonds constitute a debt owed by the corporate issuer to the bondholder, usually with the promise to pay a specified rate of INTEREST over a fixed period of time. Alternatively, bonds may be issued at a discount, with interest income being the difference between the discount (purchase) price and redemption value. Filers sometimes report discounted bonds as zero coupon or original issue discount (OID).

Corporations issue bonds to borrow money. As corporate debt obligations rather than equity interests, bonds do not provide corporate ownership privileges, like stock. They do, however, promise a return of the PRINCIPAL plus interest income, regardless of the company's earnings. Some bonds are secured by collateral, while others, such as debentures, are backed only by the company's good faith and credit standing.

Many investors hold bonds until their maturity, simply to earn the interest that accrues from them. Other investors choose to actively trade bonds for the potential capital gains income.

Options Are Rights To Buy or Sell

Stock Options

Corporate securities also encompass stock options (including subscriptions and warrants), which are rights to buy or sell stocks at specified quantities and prices within a certain time period. Like stocks and bonds, options are investments that may produce capital gains income when sold. Some options are a form of employee benefit. These types of options are not purchased and sold over an exchange. They are granted by a company to its employees as part of an incentive and compensation plan.

Financial Disclosure Requirements

Schedule A

Corporate securities must be disclosed on **Schedule A** if they are:

- valued above $1,000 from any single issuer at the close of the reporting period; or
- if they produce INCOME in excess of $200 from any single issuer during the reporting period.

As with other assets, filers must aggregate values of all securities from each source for themselves, their spouse, and their DEPENDENT CHILDREN.

Identifying the Asset

Disclosure of a corporate security should include in **Block A:**

- identification of the security as a stock, bond, or option;
- the name of the corporate issuer; and
- for non-publicly traded stock, a description of the issuer's trade or business and geographic location, since this information is not listed in investment manuals (see *Section 6.1: Business Ownership and Employment Relationships* for further discussion of private corporations).

NOTE: Filers need not specify the number of stock shares or bond units; the type of stock (common or preferred) or bond (secured or unsecured); the terms for income and maturity of a bond; or the terms of a stock option on Schedule A unless the options are under water. Vested and unvested options received as compensation must be reported on Schedule C, Part II and Schedule D, Part II (if applicable).

While private companies may issue stock directly to those who form the company or provide capital, securities of publicly traded corporations are mostly bought and sold through investment firms. Filers must disclose each security held in their portfolio that meets the asset or income thresholds. If the securities are held through an investment firm, it will normally provide periodic statements from which a filer may obtain the necessary information.

Determining Asset Value

In **Block B,** the filer should report the category of VALUE for the security at the close of the reporting period. To determine the value of a security, filers may use current market value of a share or unit as shown in daily indexes, face value of a bond, book or exchange value of stock, or any good faith estimate if the exact value is unknown or not easily ascertainable. They may wish to use the value shown on a brokerage account statement that is current at the end of the reporting period. See *Section 3.3: Schedule A* for further discussion of valuation methods. A shorthand method to value stock options is the difference between the fair market value of the stock and the exercise or strike price of the options, multiplied by the number of options held. If the fair market value is less than the exercise or strike price, the terms of the option should be disclosed. This includes number of shares, strike price and expiration date.

Stock and Bond Income

Block C should contain the category of income amount received or accrued from the security during the reporting period, along with an indication of each type of income. Stocks normally produce dividends, while bonds usually yield interest, and both may produce capital gains when sold. Characterization of income from securities as dividends, interest, and/or capital gains, as well as the amount, should be the same as shown on IRS Form 1099 (for annual reports). Alternatively, the amount and type of income for the reporting period may be determined in accordance with periodic statements from the security issuer or broker, or with other standard financial accounting practices.

Dividends and interest must be reported when accrued. This includes dividends automatically reinvested under a dividend reinvestment plan. Similarly, in the case of zero coupon or other bonds purchased at a discount, the growth in value must be reported as accrued interest income at the end of each reporting period, rather than waiting until maturity or sale.

NOTE: For “S” corporations, if income is paid as a net distributive share, the actual amount must be reported. See *Section 6.1: Business Ownership and Employment Relationships*.

Stock Option Income

For stock options purchased on the open market that are exercised, there will be no reportable income. Even though the option holder may be obtaining stock at a price below the current market value, this difference is included in the stock's cost basis. An option may, however, produce reportable capital gains income if it is sold rather than exercised.

Transactions

Schedule B, Part I

Corporate securities must be reported on **Schedule B, Part I,** when they are purchased, sold, or exchanged if the amount of the transaction exceeds $1,000. It is the value of a transaction, not the extent to which there are profits or losses, which determines its reporting. The exercise of a stock option is not a sale or exchange of the option, but the purchase or sale of the underlying stock must be reported as a transaction.

Non-Reportable Transactions

Filers need not report the following:

- stock splits or reissues;
- bonds that mature or are redeemed early by the issuer (called); or
- options that expire.

These events are not reportable transactions because the law only requires disclosure of purchases, sales or exchanges. See *Section 3.4: Schedule B, Part I*, for other exceptions, as well as information on how to report exchanges, recurring transactions, and sales pursuant to a CERTIFICATE OF DIVESTITURE.

Margin Accounts

Investors sometimes maintain a MARGIN ACCOUNT with their broker, from which they can borrow funds to purchase securities. Filers must disclose margin account liabilities on **Schedule C, Part I**, if the aggregate amount owed to any single broker exceeds $10,000 during the reporting period.

Examples

The following graphic examples demonstrate reporting of different types of corporate securities.

Reporting Individual's Name: **Kim Gordon**

SCHEDULE A continued (Use only if needed)

Page Number: **2**

	Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)															Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)														
																	Type				Amount										
		None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,01 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	**IBM Debentures**				√														√						√								
2	**IBM Common**		√														√					√											
3	**AT&T Stock**			√													√							√									
4	**Dell Preferred Stock**	√															√			√					√								
5	**Warrants--Lotus**			√																	√												
6	**Microsoft Stock Options**	√																		√				√									
7	**Dean Witter Portfolio:**																																
8	**--Compaq Common**			√													√						√										
9	**--Hewlett Packard Bonds**	√																	√	√			√										

Reporting Individual's Name: **Kim Gordon**

SCHEDULE B

Page Number: **3**

Part I: Transactions

None ☐

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

	Identification of Assets	Transaction Type (x): Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	Amount of Transaction (x): $1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
Example	Central Airlines Common	x			2/1/99			x									
1	**Dell Preferred Stock**		√		**3/15/03**	√											
2	**Microsoft Options**		√		**4/23/03**	√											
3	**Hewlett Packard Bonds**	√			**3/12/03**	√											
4	**Hewlett Packard Bonds**		√		**5/21/03**	√											

Conflict of Interest Analysis

18 U.S.C. § 208

Corporate securities represent financial ties to a corporation, so they may present conflicts for Government employees who hold them and participate in official matters that could affect the issuing corporation. This includes securities held by the filer's spouse or dependent children. The primary focus of conflict analysis is whether a Government employee has a financial interest in an official matter in which he participates.

Stocks and Stock Options

A Government employee who holds corporate stock or stock options will ordinarily have a financial interest in an official matter in which he participates if the corporation that issued those securities could itself be affected financially. Since stocks represent an ownership interest in a company, any matter that affects the issuing company's prosperity is presumed to directly and predictably affect the financial interests of its stockholders. Stock options present the same concern, because their values are closely related to the underlying stock. In some cases, filers have been able to accelerate the vesting of options acquired through an employment arrangement. In some cases, the acceleration might be an extraordinary payment, see *Section 6.1: Business Ownership and Employment Relationship*.

Bonds

57 FR 35023 (August 7, 1992, Preamble to Standards of Conduct)

Bonds, on the other hand, evidence a corporation's fixed debt obligation, which is not normally tied to the corporation's prosperity. Thus, the question of whether a particular matter that affects the corporation will have a direct and predictable effect on the financial interests of the bondholder (the employee) is less certain than it is for stocks.

In deciding whether a matter will have such an effect, a reviewer should analyze the matter's potential to alter either:

- the market resale value of a bond (by affecting market interest rates or the corporation's credit rating, for example); or
- the corporation's ability or willingness to repay the debt (by affecting its financial stability).

One factor to consider is the bond's quality rating, as reported by investment services.

Corporate Affiliates
5 C.F.R. § 2635.402(b) note

In assessing the potential for conflict between an employee's official duties and her ownership of a corporation's securities, reviewers must focus not only on the corporate issuer but also on its affiliates. While not all matters that directly and predictably affect a given corporation will similarly affect its parent company or subsidiaries, that possibility must, nonetheless, be recognized. Even though the particular company in which a Government employee holds securities is not a party in an official matter, she would be precluded from participating if the matter could directly and predictably affect her financial interests through the affiliate company. Reviewers may need to consult corporate reference manuals to ascertain affiliates of public companies disclosed on financial disclosure reports, and then apply the tests discussed above in determining whether affiliate securities are disqualifying.

Prohibited Financial Interests

Employees may be barred by statute or agency supplemental regulations from having certain interests in corporate entities.

In any situation where filers may have a potential conflict of interest with corporate securities, reviewers should consult the discussion in *Chapter 5: Resolving Conflicts of Interest*.

8.3 GOVERNMENT SECURITIES

5 U.S.C. App. §§ 102(a)(l) & 102(a)(3)
5 C.F.R. §§ 2634.301(b) & 2634.302(b)

Federal, state, and local governments issue securities in the form of debt obligations to help finance their programs and operations. Government securities are attractive to investors because they may offer safety and tax advantages. This section will discuss:

- U.S. Treasury securities;
- agency securities which are issued by Federal agencies and U.S. Government-sponsored corporations; and
- municipal securities issued by state and local governments.

NOTE: Some regulations may define the term "government securities" more narrowly, but in this chapter it includes each of the above items.

Treasuries

Treasury Securities

United States Treasury securities, often simply called TREASURIES, are debt obligations issued by the Federal Government and secured by the full faith and credit (the power to tax and borrow) of the United States. Treasuries include:

- **Treasury bills,** also called T-bills-short-term obligations having maturities of one year or less; issued at a discount from their maturity value;

- **Treasury notes** -- intermediate-term obligations with maturities of 1 to 10 years;

- **Treasury bonds** -- long-term obligations with maturities of 10 years or more;

- **U.S. savings bonds** -- issued in smaller denominations than Treasury bonds and not traded on the secondary market like other Treasuries; issued either at a discount from maturity value (Series EE) or at face value with periodic INTEREST (Series HH);

STRIPS (Separate Trading of Registered Interest and Principal of Securities) -- created by the Treasury when it strips the coupons (interest) from Treasury bonds and sells the coupons and the PRINCIPAL separately, at a discount from face value.

Commercially Marketed Treasuries

NOTE: Investment firms also strip Treasury bonds and market them under acronyms such as CATS (Certificates of Accrual on Treasury Securities) and TIGRS (Treasury Investors Growth Receipt). Though these strips represent ownership interests in Treasuries, the investment firm becomes the obligor for repayment, rather than the U.S. Treasury.

Government Agency Securities

Agency securities, often simply called "agencies," are debt obligations issued by Federal agencies and U.S. Government-sponsored corporations to help finance their operations. In addition to bonds, agency securities include mortgage and loan pass-through certificates. The certificate issuer holds pools of MORTGAGES or loans as the underlying assets, and passes income from them to investors. See also *Section 8.7: Real Estate and Mortgage Investments*.

Except for issues of the Government National Mortgage Association, agency securities are not generally backed by the full faith and credit of the United States government, like Treasuries. They are, however, indirect obligations of the U.S. that are backed by the sponsoring agency or corporation.

In addition to issuing debt obligations, U.S. Government-sponsored corporations such as the Federal National Mortgage Association may also sell equity shares.

Examples of some common agency security issuers are:

Common Issuers of Agency Securities

- Government National Mortgage Association (GNMA or Ginnie Mae);
- Federal National Mortgage Association (FNMA or Fannie Mae);
- Federal Agricultural Mortgage Corporation (Farmer Mac);
- Federal Home Loan Mortgage Corporation (FHLMC or Freddie Mac);
- Export-Import Bank of the United States (ExImBank);
- Farmers Home Administration (FmHA);
- Small Business Administration (SBA); and
- Tennessee Valley Authority (TVA).

Municipal Securities

"Munis"

Municipal securities, often called munis, are debt obligations (bonds and notes) of U.S. states, cities, counties, or other political subdivisions of states. Two common types are:

Two Types

- **General obligations (GOs)**, used for general expenditures and backed by the issuer's full faith and credit (taxing and borrowing power); and

- **Revenue bonds (REVs),** used to finance specific public service projects and backed by cash flow from those projects. Examples are bonds to finance bridges, turnpikes, tunnels, water and sewer systems, schools, power plants, prisons, transportation systems, hospitals, sports complexes, and airports.

Industrial Development Bonds

NOTE: As a means of attracting business to a community, a local government may issue a type of revenue bond called an industrial development bond (IDB), to finance construction of facilities for lease to a private corporation. The private company backs these securities, so the bond holder has a financial tie to that company, as well as the issuing government authority.

Muni Variations

Other varieties of municipals include tax bonds, tax anticipation notes (TANs), and revenue anticipation notes (RANs), which are obligations sold in anticipation of general or specific tax receipts or other income that the issuing government entity expects to collect.

Like other debt obligations, municipal securities may be issued at a discount as zero coupons. They may also be stripped like Treasuries, and sold and backed by investment brokers.

Financial Disclosure Requirements

Schedule A

Filers must disclose on **Schedule A** government securities that exceed the threshold for either the asset VALUE ($1,000 at the close of the reporting period) or INCOME ($200 during the reporting period) from any one source. Filers must aggregate values from each source for themselves, their spouse, and their DEPENDENT CHILDREN in determining whether these thresholds are met.

Reporting of a government security should include in **Block A** identification of the issuing government authority and the type of bond or other obligation, such as "Dade County, FL, school bonds" or "U.S. savings bonds." For U.S. Government agency securities, a standard representation such as GNMA or Ginnie Mae, is sufficient. There is no requirement to specify the number of bond units held, the interest rate, or the maturity date for any government security.

Asset Value

In **Block B,** filers must report the category of asset value for a government obligation at the close of the reporting period. This may be a bond's maturity value. Filers who hold bonds or certificates through a broker may use the value shown on their account statement at the end of the reporting period. They may also use current market value as reported in daily newspapers or a good faith estimate if the exact value is unknown or not easily determined. See *Section 3.3: Schedule A* for further discussion of valuation methods.

Income

Block C must indicate the type of income which has been paid or accrued during a reporting period, and the category of amount. The type of income will usually be interest. It may also include CAPITAL GAINS when an obligation has been sold.

In reporting the amount of income in Block C, it is not sufficient to state a bond's series or interest rate, because the law requires that a category of amount be reported explicitly. For interest paid periodically, filers should have no difficulty in determining the amount received. For interest which accrues on a zero coupon or other discounted bond, filers should use the amount shown on either their IRS Form 1099 (for annual reports) or a brokerage account statement. Otherwise, they should estimate the amount of accrued interest during a reporting period, such as by apportioning the difference between purchase price and maturity value over the bond's term.

Tax-Deferred or Tax-Exempt Income

Filers must report income from government obligations even if it is eligible for tax-deferred treatment (for example, Series EE U.S. savings bonds) or is tax-exempt (as with some municipals, for example). The disclosure law requires investment assets and their income to be reported, regardless of tax treatment.

Transactions
5 C.F.R. § 2634.303(b)

Filers need not report transactions of U.S. Treasuries on **Schedule B, Part I.** Purchases, sales and exchanges of all other government securities (U.S. Government agency securities and municipal obligations) must be reported if the amount of the transaction exceeds $1,000. It is the value of the transaction, not the amount of gain or loss, which must be evaluated.

Non-Reportable Transactions

No reportable transaction occurs when bonds and certificates mature or are redeemed early (called) by the issuer. For general exceptions to transaction reporting, as well as how to report exchanges and recurring transactions, see *Section 3.4: Schedule B, Part I*.

Examples

The following graphic examples demonstrate reporting of different types of government securities.

Reporting Individual's Name: **Chuang Tzu**

SCHEDULE A continued (Use only if needed)

Page Number: **2**

	Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)															Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)														
																	Type				Amount										
		None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,01 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	**Fairfax County, VA Revenue Bonds**			√															√				√										
2	**United States Savings Bonds**			√															√			√											
3	**GNMAs**			√															√			√											
4	**Treasury STRIPS**	√																	√	√			√										
5	**Lynchburg, VA Sewer Bonds**	√																	√	√		√											
6	**CAT strips**		√																√				√										
7	**United States T-Bills**			√															√			√											

Reporting Individual's Name: **Chuang Tzu**

SCHEDULE B

Page Number: **3**

Part I: Transactions

None ☐

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

	Identification of Assets	Transaction Type (x): Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	Amount of Transaction (x): $1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
Example	Central Airlines Common	x			2/1/99			x									
1	**Lynchburg, VA--Sewer Bonds**		√		**9/18/03**	√											

Conflict of Interest Analysis

Treasuries & Agency Securities
18 U.S.C. § 208

U.S. Government securities rarely present conflicts for Federal employees. Few employees work on matters that could directly and predictably affect the value of Treasury or U.S. Government agency securities. Possible exceptions are filers who work for Federal agencies that issue agency or Treasury securities or that regulate them (such as the Federal Reserve).

Note that for Treasury bonds which private investment firms have stripped (separated interest coupons from the principal) and sold, such as CATS, the investment firm is obligated, so the conflict analysis must also focus on the private investment firm.

Munis

For municipal securities, employees at some agencies may be working on matters such as grants and fund allocations to states and local communities that could affect these securities' value. In deciding whether a matter will have a direct and predictable effect on the financial interests of an employee who holds municipal bonds, reviewers should analyze the matter's potential to affect either:

- the market resale value of the bonds (by affecting market interest rates or the sponsor's credit rating); or
- the issuer's ability or willingness to repay its debt obligations (by affecting its financial stability).

One factor to consider is the bond's quality rating, as reported by investment services.

Industrial Development Bonds

Municipal industrial development bonds may present additional conflict concerns. The private company to which the bond issuer expects to lease the facilities that are being financed is responsible for backing the bonds. Reviewers must, therefore, focus their conflict analysis on both the municipal issuer of industrial development bonds and the private company involved.

In any case where filers could have a potential conflict of interest with government securities, reviewers should consult the discussion in *Chapter 5: Resolving Conflicts of Interest*.

8.4 MUTUAL FUNDS AND UNIT INVESTMENT TRUSTS

5 U.S.C. App. §§ 102(a)(l) & 102(a)(3)
5 C.F.R. §§ 2634.301(b)(9) & 2634.302(b)

Stocks, bonds, and other securities may be grouped together by investment companies or brokers and sold as MUTUAL FUNDS or unit investment trusts (UITs). Shares of mutual funds and units of UITs are themselves considered securities. These funds and trusts offer diversity (a broad range of holdings), a professionally selected portfolio, and liquidity which the individual investor might not otherwise enjoy.

These two forms of investment are quite similar for purposes of financial disclosure and conflict analysis. Their primary difference is that UIT portfolios are not managed (no additional purchases and sales are made) after the initial portfolio has been selected, while mutual funds may continue to buy and sell portfolio assets. The following discussion highlights other distinguishing characteristics.

Mutual Funds

Investment companies establish mutual funds by pooling money from individual investors and managing portfolios of securities with various objectives, such as regular income, long-term growth, diversity, focus on specific industries, tax protection, and balance between stocks and bonds. Investors purchase shares in the fund, and they receive DIVIDENDS and CAPITAL GAINS as a return on their investment.

Funds Have Various Investment Strategies

The portfolio of a mutual fund may specialize in such investments as U.S. Government bonds or agency securities, municipal bonds, corporate stocks and bonds, international stocks and bonds, diversified holdings that are representative of major stock indexes, commodity FUTURES, OPTIONS, securities of a specific industry or geographic sector, money market debt instruments, or various combinations and subsets of these categories. For more information about mutual funds that specialize in money market instruments, see *Section 8.1: Bank and Other Cash Accounts*.

Open and Closed Funds

Mutual funds that are open-ended have a fluctuating number of shares, which the investment company sells and redeems on a continuing basis at net asset value (daily fluctuating market value of one fund share). Closed-end funds have a finite number of shares, which are not issued and redeemed on a continuing basis by the issuing investment company, though they are often traded on an exchange.

REITs

NOTE: Closely related to mutual funds are Real Estate Investment Trusts (REITs), discussed in *Section 8.7: Real Estate and Mortgage Investments.* REITs manage a portfolio of real estate equity or mortgages and sell shares to individual investors.

Unit Investment Trusts

Brokerage firms create unit investment trusts (UITs) by establishing fixed portfolios of securities with similar maturity dates, such as corporate bonds, U.S. Government or municipal bonds, money market debt instruments, or mortgage-backed securities. They may also hold equities, such as preferred stock. A UIT offers a professionally selected portfolio, a diverse range of holdings, and various investment objectives, much like a mutual fund. Unlike mutual funds, UITs are not managed on a continuing basis -- the portfolio investments are fixed when it is established, and they remain unchanged until the underlying holdings mature or are redeemed.

Individual investors buy units of the trust, and they receive periodic INTEREST or dividends in proportion to their investment, as well as capital gains. The trust sells a fixed number of units and redeems them when the trust assets have been liquidated. Individual investors may also buy and sell units on the secondary market.

Exchange Traded Funds

An exchange traded fund (ETF) is a type of fund whose objective is to achieve the same return as a particular market index, like the S&P 500, or an economic sector, like the healthcare sector. ETFs, similar to index mutual funds and sector mutual funds, allow investors to buy and sell shares in the collective performance of an entire stock or bond portfolio as a single security. However, unlike mutual funds, ETFs are listed on an exchange and can be traded intraday. Also, investors can buy ETFs on margin and sell ETFs short. Generally, an ETF only sells its securities to reflect changes in the underlying index or sector. Dividends paid by companies and interest paid on bonds held in an ETF are distributed to ETF holders.

Financial Disclosure Requirements

Schedule A

Filers must disclose on **Schedule A** their interests in mutual funds, UITs, and exchange traded funds if the VALUE of their shares or units exceeds $1,000 in any one mutual fund or UIT at the close of the reporting period, or if the INCOME from any one of those investments exceeds $200 during the reporting period. Values must be aggregated from each source for the filer, spouse, and their DEPENDENT CHILDREN.

Full Name Required

In **Block A**, the filer must identify the mutual fund, UIT, or ETF by its **full name,** but need not indicate the number of shares or units held. Listing only the family of funds or trusts is insufficient, as it does not permit reviewers and the public to ascertain the specific nature of the holdings by consulting investment service guides. For example, "Fidelity Funds" is not sufficient, but "Fidelity Magellan Fund" is a proper entry. Similarly, a UIT must be fully identified, including its series number, such as "Nuveen Tax-Exempt Unit Trust, Ohio Trust 9." The proper reporting of an ETF might be Standard & Poor's 500 Index Depositary Receipts (Spiders or SPDRs).

Most Funds & UITs are EIFs

The underlying assets of mutual funds, UITs, and ETFs do not ordinarily need to be reported, as most will fit the definition of EXCEPTED INVESTMENT FUND (EIF) for financial disclosure purposes. See *Section 7.1: Excepted Investment Funds* for further guidance.

Asset Value

Block B should contain the category of asset value at the close of the reporting period. This may be based on the net asset value or current market value as shown in daily indexes, or any good faith estimate if the actual value is unknown or not easily ascertainable. Filers may use the value shown on a statement of their account from the issuing investment company or broker, if that value is current at the end of the reporting period. See *Section 3.3: Schedule A* for further discussion of valuation methods.

Type of Income

If a mutual fund or UIT, or ETF is an EIF, filers may simply mark the EIF column. They may choose to show the specific types of income in Block C (and they must do so if the fund is not an EIF), such as dividends for mutual funds, interest or dividends for UITs, and capital gains for either of the two, as reported to them by the issuer or indicated on IRS Form 1099 (for annual reports).

Amount of Income

In **Block C,** filers must also report the category of income amount received or accrued during the reporting period. That value should be as shown on IRS Form 1099 (for annual reports) or on statements from the investment company or broker, if they are current as of the end of the reporting period. Income from mutual funds and UITs must be reported when accrued, whether or not it has been withdrawn, is tax-exempt, or has been automatically reinvested.

Transactions

Purchases, sales, or exchanges of mutual fund or ETF shares and UIT units that occur during the reporting period must be shown on **Schedule B, Part I,** if the value of the transaction exceeds $1,000. This includes funds holding TREASURIES, even though Treasuries would be exempt from transaction reporting if held separately. It is the value of the transaction, not the amount of gain or loss, which must be evaluated.

For money market mutual funds, no transactions need to be reported, because they are treated like cash accounts. See *Section 8.1: Bank and Other Cash Accounts*. Also, redemption of UIT units at maturity is not a sale and therefore not a reportable transaction.

Transactions occurring within a fund or UIT portfolio are not reportable, as it is only those transactions involving the holder's units or shares which must be reported. This does not apply to buying and selling funds within a family of funds but does apply to portfolio transactions within a fund. See *Section 3.4: Schedule B, Part I*, for other exceptions and additional information about transactions.

Examples

The following graphic examples demonstrate reporting of mutual funds and unit investment trusts.

Reporting Individual's Name: Thurston Moore

SCHEDULE A continued (Use only if needed)

Page Number: 2

	Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)															Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)															
																	Type				Amount											
		None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	**Merrill Lynch Phoenix Fund**		√											√			D		I	C	D	I	C									
2 S	**Fidelity Balanced Fund**		√											√								√										
3	**American Funds: Investment Company of America**	√												√										√								
4	**Liberty Utility Fund**		√											√									√									
5	**Kemper Technology Fund**		√											√								√										
6 S	**Nicholas Fund**		√											√								√										
7	**Dean Witter Tax Exempt Trust, Series 10**		√											√									√									
8	**Nuveen Tax Exempt Unit Trust, California Trust 177**		√											√								√										

Reporting Individual's Name: Thurston Moore

SCHEDULE B

Page Number: 3

Part I: Transactions

None ☐

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

	Identification of Assets	Transaction Type (x): Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	Amount of Transaction (x): $1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
Example	Central Airlines Common	x			2/1/99			x									
1	**Nuveen Tax Exempt Unit Trust, California Trust 177**	√			**11/30/03**	√											
2 S	**Nicholas Fund (Partial Sale)**		√		**11/30/03**	√											
3	**Liberty Utilities Fund**	√			**5/31/03**	√											
4	**American Funds: Investment Company of America**		√		**8/9/03**		√										

Conflict of Interest Analysis

18 U.S.C. § 208
OGE 86 x 12

Reviewers need not examine the underlying portfolios of mutual funds, ETFs and UITs that are diversified in accordance with the exemption at 5 C.F.R. § 2640.201(a).

Sector Fund Exemption

Many more funds may qualify under the exemption rules, as SECTOR FUNDS.

Conflicts with Fund Holdings

The underlying holdings, or at least the focus, of any fund or UIT that is not exempt must be evaluated for possible conflicts with the filer's agency responsibilities. Reviewers may be able to determine from the name of a fund or UIT that its holdings will not present conflicts for the filer, or they may need to consult investment service guides. See other sections of this chapter that discuss conflict concerns for the various investments held in portfolios of funds and UITs.

As with any other asset, the focus is whether the filer's (or his spouse or dependent child's) financial interest could be directly and predictably affected by an agency matter in which he participates.

Conflicts with the Issuer

Even if there is no conflict with the underlying holdings of mutual funds, ETFs or UITs, filers at some agencies may have a potential conflict with the issuing investment company or brokerage. This will most likely occur if the filer is employed by an agency that regulates securities, such as the Securities and Exchange Commission.

Resolving Potential Conflicts

In any situation where filers could have a potential conflict of interest with mutual fund, ETF or UIT holdings, reviewers should read *Chapter 5: Resolving Conflicts of Interest*.

8.5 LIMITED PARTNERSHIPS

5 U.S.C. App. §§ 102(a)(l) & 102(a)(3)
5 C.F.R. §§ 2634.301 & 2634.302(b)

Partnerships may be formed when two or more persons join together for the purpose of conducting or investing in a trade or business. For a general partnership, such as a law firm (see *Section 6.2: Law Firms*), each general partner holds a managing position, is individually liable for the organization's debts, and receives a proportionate share of the partnership's income. In contrast, a limited partnership (LP) usually has only one general partner, who organizes and manages its operations. Investment capital for LPs comes from a group of limited partners, and the LP offers them reduced liability exposure, investment income, and tax advantages. This section focuses on the limited partnership.

Investment Objectives

Typically, LPs invest in real estate, speculative securities pools, oil and gas, equipment for leasing, corporate assets, agricultural products, commodity and financial FUTURES, and research and development for new products and services. The nature of these investments will determine whether limited partners can expect current income or long-term CAPITAL GAINS.

Examples

For example, a real estate LP might purchase shopping malls, apartment houses, or office buildings, from which it will receive INTEREST on loans, rents from tenants, and capital gains when it sells its holdings. An LP that operates as a hedge fund will engage in short-term, high-risk stock trades. An oil and gas LP finances exploration and marketing of energy resources, with the expectation of sharing in profits from sales or royalties. An equipment leasing LP may purchase computers, airplanes, or cable television equipment for lease to industry, and it will receive rents in return.

Development, production, and marketing of goods and services also offer a source of investment for LPs. Some finance new product research and development, from which they receive a portion of sales profits. Other LPs invest in movie production for royalty income. An agriculture LP invests in the production of crops or livestock, with the expectation of sharing in the profits from sales.

May Be Public or Private

Limited partnerships may be comprised of private investors, or they may sell shares publicly. As discussed below and in *Section 6.1: Business Ownership and Employment Relationships*, this difference is a primary determinant of the type and extent of information about the partnership that must be disclosed on a financial disclosure report.

Financial Disclosure Requirements

Unlike general partners, limited partners are strictly investors. Therefore, with respect to the partnership, limited partners will not have an outside position or fees for services to report, as do general partners. See *Section 6.1: Business Ownership and Employment Relationships*.

Assets & Income

Limited partners must report on **Schedule A** their partnership investment if the asset VALUE exceeds $1,000 at the close of the reporting period, or if any INCOME derived from the partnership exceeds $200 during the reporting period. Asset and income values from each partnership must be aggregated for the filer, spouse, and DEPENDENT CHILDREN.

Public LPs Are Usually EIFs

Publicly traded or offered LPs will ordinarily meet the definition of EXCEPTED INVESTMENT FUND (EIF), which reduces the financial disclosure detail required. See *Section 7.1: Excepted Investment Funds.*

Identifying Public LPs

In **Block A** of Schedule A, the filer must simply identify a publicly traded LP by its full name, such as "Jones Intercable Investors, LP." This is sufficient for reviewers and the public to discover more about the organization and its underlying holdings through investment service guides.

Identifying Private LPs

If the LP is not publicly traded, filers must report:

- the name or identification of the LP;
- its location; and
- a brief description of its purpose or operation. For example, "Oil and gas exploration in Oklahoma and Texas," "Office building rental in Portland, Oregon," "TV equipment leasing to Channel 99 in Oshkosh, WI," or "Investment partnership." If the partnership is a non-EIF investment partnership each underlying asset must be disclosed as a separate line item as long as that item meets the reporting threshold. Non-disclosure of underlying assets will only be permitted if the fund manager demonstrates that the underlying assets will not be provided and the filer agrees to divest.

Reporting LP Values

Block B must contain the category of asset value for LP shares held at the close of the reporting period. For LP shares held through a broker, this will be the value shown on a statement that is current at the end of the reporting period. Filers may also use any of the valuation methods described in *Section 3.3: Schedule A*. For investment partnerships that are not EIFs, each underlying asset must be disclosed as a separate line item with a Block B category of value for each asset.

Reporting LP Income

Filers must specify the exact amount of partnership income in **Block C**. This may be accomplished by writing "Partnership Income" and the actual amount in the "Other Income" column of Block C. There are four exceptions to the requirement for disclosing the exact amount of partnership income:

- For a publicly traded partnership that is an EIF, the filer may check a type and a category of income in Block C.
- For a non-EIF investment partnership for which all the underlying assets must be disclosed, the filer may check a type and category of income in Block C for each of the underlying assets.
- For a partnership that holds rental property, the filer may check "rent and royalties," for type of income and category of value for income.
- For a partnership interest for which there was no net distributive share, the filer may check the "none" box for income.

Accrued Income

Income from LPs must be reported when realized, whether or not it is available for withdrawal or is tax-deferred.

For annual reports, the types of income and the amount should match information provided to the filer by a broker or on Schedule K-l of the partnership's IRS Form 1065.

LPs Often Incur Losses

NOTE: Limited partnerships are sometimes used as tax shelters and post losses rather than capital gains. Therefore, it is not uncommon to see an LP reported as an investment asset with no income.

Transactions

Purchases, sales, or exchanges of shares or units held in a limited partnership must be reported on **Schedule B, Part I,** if the value of the transaction exceeds $1,000. It is the value of the transaction, not the amount of gain or loss, which must be evaluated. See *Section 3.4: Schedule B, Part I*, for exceptions and additional information about transactions.

Examples
The following graphic examples demonstrate reporting of limited partnerships.

Reporting Individual's Name	SCHEDULE A continued (Use only if needed)	Page Number
Marshall Sahlins		**2**

Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)															Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)													
																Type				Amount									
	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount))	Date (Mo., Day, Yr.) Only if Honoraria
1 **Jones & Jones Investment Partnership**			√										√																	**Partnership Income $5,000**	
2 **Roberts & Wong LP (Retail Copying), Trenton, NJ**			√																											**Partnership Income $2,450**	
3 **Johnson & Perry Ltd Investment Partnership, Assets Following:**																															
4 **--AT&T**		√														√					√										
5 **--General Electric**			√													√						√									
6 **--Deere & Co.**		√														√					√										
7 **Carlyle Real Estate LP VI (office buildings, Houston, TX)**	√																√					√									

Reporting Individual's Name	SCHEDULE B	Page Number
Marshall Sahlins		**3**

Part I: Transactions

None ☐

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

	Identification of Assets	Transaction Type (x): Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	Amount of Transaction (x): $1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
Example	Central Airlines Common	x			2/1/99			x									
1	**Carlyle Real Estate LP VI**		√		**8/26/03**		√										

Conflict of Interest Analysis

Reviewers Must Look to Underlying Holdings
18 U.S.C. § 208

Even though an LP may qualify as an EIF for reduced disclosure purposes, the underlying holdings must still be examined for possible conflicts with the filer's agency responsibilities. See *Section 7.1: Excepted Investment Funds*.

Conflict analysis of an LP requires the reviewer to focus first on the general nature of an LP's holdings, such as real estate, oil and gas, TV equipment leasing, the movie industry, or pharmaceutical research and development, in order to determine whether there is any potential for conflict.

Seeking Additional Information

If this general analysis reveals that the filer might be involved in official matters that could affect the type of investments which the LP holds, the reviewer should seek a more specific listing of the underlying holdings. For publicly traded LPs, this information may be found in investment service guides; for private LPs, consult the investment manager.

Conflicts for Regulators

Employees of agencies that regulate publicly-traded LPs, such as the Securities and Exchange Commission, will have additional conflict of interest concerns.

The reviewer must analyze the potential for a conflict and fashion preventive steps. The focus of the conflict analysis should be whether the filer's (or his spouse or dependent child's) limited partnership financial interest could be directly and predictably affected by an agency matter in which he participates. See the discussion in *Chapter 5: Resolving Conflicts of Interest*, for further guidance.

8.6 FUTURES AND OPTIONS

5 U.S.C. App. §§ 102(a)(l) & 102(a)(3)
5 C.F.R. §§ 2634.301(b)(2) & 2634.302(b)

A FUTURES contract (or future) is an agreement to buy or sell a commodity (such as agricultural products) or a financial instrument at a stipulated price, quantity, and time. It is a method of speculating about or hedging against future prices for the underlying commodity or instrument. Hedgers use futures as a means of protecting themselves against losses resulting from market price changes on underlying commodities or financial instruments that they may own or trade. Speculators buy and sell futures for potential profits from the change in value of the futures themselves.

Futures and Options Contrasted

Investors in futures are obligated to buy or sell the underlying commodity or instrument, unless the investor has offset his obligation with an opposite trade prior to the settlement (delivery) date. In contrast to a futures contract, an OPTION contract does not obligate the purchaser. It grants him the right, but not a legal obligation, to buy or sell on specified terms. He may choose not to exercise the option, depending on market price fluctuations. For stock options, see the discussion in *Section 8.2: Corporate Securities*.

Examples

Traditionally, futures and options have been bought and sold on agricultural commodities (crops, products, and livestock), as well as precious metals and energy fuels. There is also an active futures and options market in the INTEREST rates of financial instruments such as TREASURIES and Ginnie Mae agency certificates (see *Section 8.3: Government Securities*), and in the values of foreign currencies and stock indexes. Because futures and options are pinned to the price fluctuations of other investments and commodities, they are sometimes referred to as derivatives.

Financial Disclosure Requirements

A future or option must be reported if its fair market VALUE (unrealized gain) exceeds $1,000 at the close of the reporting period or if the INCOME from it exceeds $200 during the reporting period. Asset and income values from each source must be aggregated for the filer, spouse, and DEPENDENT CHILDREN.

Schedule A

In **Block A** of **Schedule A,** the filer must identify the future or option by name, such as "soybean futures." There is no requirement to specify the contract's terms unless the holding is under water. **Block B** should contain the category of asset value of the contract at the close of the reporting period. Value can normally be determined from a daily newspaper's financial section or from a brokerage account statement. Other valuation methods are discussed in *Section 3.3: Schedule A*.

Futures and Options Are Not EIFs

Income from futures or options will be CAPITAL GAINS, which should be reported by marking the capital gains column in **Block C.** Filers will not be able to use the EXCEPTED INVESTMENT FUND column, as futures and options do not meet the definition of an EIF.

Also in Block C, filers must indicate the category of amount for any reportable income. Though actually realized when the future or option is traded or settled, gains or losses are evaluated each year on paper for tax purposes. Filers should use the capital gains value that is provided to them by their broker or investment firm for tax purposes.

Futures and Options Often Lose Value

NOTE: It is not uncommon for a future or option to result in losses rather than gains; therefore, the reviewer may expect to encounter entries on a financial disclosure report with income marked as "none." Purchases, sales, or exchanges of futures and options must be reported as transactions on **Schedule B, Part I,** if the value of the transaction exceeds $1,000. It is the value of the transaction, not the gain or loss, which triggers this requirement.

Transactions

No reportable transaction of the future or option itself occurs when a future is settled by delivery of the underlying commodity or instrument, or when an option expires. See *Section 3.4: Schedule B, Part I*, for other exceptions and additional discussion. The purchase or sale of any underlying security (to settle a future or option) must, however, be reported as a transaction.

NOTE: For guidance on disclosure of corporate stock options, see *Section 8.2: Corporate Securities*.

Examples

The following graphic examples demonstrate reporting of futures and options.

Reporting Individual's Name	SCHEDULE A	Page Number
Boris Blank		**1**

Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)															Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)													
																Type				Amount									
For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income. For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse). None ☐	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,01 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples: Central Airlines Common				x												x						x										
Examples: Doe Jones & Smith, Hometown, State			x																											Law Partnership Income $130,000	
Examples: Kempstone Equity Fund					x								x										x								
Examples: IRA: Heartland 500 Index fund							x						x											x							
1 **Pork Belly Futures**		√																		√											
2 **Sorghum Futures**	√																		√				√								

Reporting Individual's Name	SCHEDULE B	Page Number
Boris Blank		**2**

Part I: Transactions

None ☐

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

	Identification of Assets	Transaction Type (x): Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	Amount of Transaction (x): $1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
Example	Central Airlines Common	x			2/1/99			x									
1	**Sorghum Futures**		√		**8/7/03**		√										

Conflict of Interest Analysis

Look to the Underlying Commodity or Financial Instrument
18 U.S.C. § 208

Reviewers should examine the underlying commodity or financial instrument of a future or option for possible conflict with the filer's agency responsibilities. The general nature of the commodity or financial instrument, as described on a financial disclosure report, should be sufficient to determine whether there is a potential conflict, since futures and options are ordinarily contracts for generic types of commodities or instruments, not specific holdings. For guidance on conflicts analysis for stock options, see *Section 8.2: Corporate Securities.*

The conflict potential for futures and options is of concern primarily for agencies that have responsibilities affecting the value of agricultural or energy products or interest rates. Filers who work for agencies that could affect the futures and options market itself, such as the Commodity Futures Trading Commission or the Securities and Exchange Commission, will have an additional conflict focus.

As with any conflict analysis, the question is whether the filer's financial interest could be directly and predictably affected by an official matter in which she may participate. For potential conflicts of interest with futures and options, reviewers should consult the discussion in *Chapter 5: Resolving Conflicts of Interest* for further guidance.

8.7 REAL ESTATE AND MORTGAGE INVESTMENTS

5 U.S.C. App. §§ 102(a)(l) & 102(a)(3)
5 C.F.R. §§ 2634.301(b) & 2634.302(b)

This section will discuss real estate, mortgage-backed securities, and real estate investment trusts (REITs), which are described as follows:

- **Real estate** includes land, the buildings and structures on it, and rights within the land, such as minerals.

- **Mortgage-backed securities** are issued when Government agencies (including U.S. Government-sponsored corporations) or private investment firms pool mortgages and pay out income from them to investors. A MORTGAGE is a loan to finance construction or purchase of real estate, whereby the borrower gives the lender a lien (a claim against the real estate) as security for repayment.

- **REITs** hold diversified portfolios or real estate and mortgages, and they sell shares, much like MUTUAL FUNDS.

Real Estate

Real estate investments typically include residential property, such as homes, apartment buildings, and hotels; commercial property, such as office buildings, business sites, and shopping malls; and land which is held for agricultural use or mineral exploration. Real estate as an investment also includes a vacant lot if held for the production of income, such as appreciation in value. Owners of real estate receive rents from tenants, with the potential for CAPITAL GAINS if they sell the property.

Types of Mortgage-Backed Securities

Mortgage-Backed Securities

Mortgages are discussed in *Chapter 10: Liabilities and Funds Receivable*. This section examines securities that are backed by mortgages held by a creditor (lender) or investment manager. Three common types are:

- Mortgage Pass-Throughs--Pass-throughs are created by pooling mortgages and selling share certificates backed by the pools. Monthly INTEREST and PRINCIPAL on these mortgages is "passed through" by the share issuer from the lending institution to certificate holders until the underlying mortgages mature or are paid off early. In addition to interest, shareholders may realize capital gains when they sell their certificates.

  NOTE: Most mortgage pass-throughs are issued by the Government National Mortgage Association (GNMA or Ginnie Mae), the Federal National Mortgage Association (FNMA or Fannie Mae), and the Federal Home Loan Mortgage Corporation (FHLMC or Freddie Mac). See discussion in *Section 8.3: Government Securities*. They may also be issued by private lenders.

- Collateralized Mortgage Obligations (CMOs) -- CMOs are mortgage-backed bonds (debt instruments) that pass income through as periodic interest. The mortgage pool portfolios are grouped by maturities as short, medium, or long-term, for better predictability as to full return of principal.

- Real Estate Mortgage Investment Conduits (REMICs) -- REMICs are partnerships, corporations, or trusts that issue securities backed by mortgage pools and that serve as income pass-throughs. REMICs may issue both bonds (debt) and ownership certificates (equity), from which an investor may receive income, usually as interest and capital gains. Issuers include U.S. Government agencies and private investment firms.

REITs Are Similar to Mutual Funds

Real Estate Investment Trusts

REITs manage diversified portfolios of real estate and mortgages, sell shares, and are usually publicly traded, much like mutual funds. Shareholders receive income as rents, interest, DIVIDENDS, and capital gains. See also *Section 8.4: Mutual Funds and Unit Investment Trusts*.

Financial Disclosure Requirements

Investment real estate and mortgage-backed securities, as well as shares in REITs, are assets held for the production of INCOME. Filers must report these assets if their fair market VALUE exceeds $1,000 at the close of the reporting period, or if the income from any asset exceeds $200 during the reporting period. Values must be aggregated from each source for filers, their spouse, and their DEPENDENT CHILDREN.

Personal Residence Not Reportable

One notable exception to the reporting requirement for real estate is a PERSONAL RESIDENCE. This includes one or more private dwellings (e.g., a vacation home if it is used as a second personal residence and/or vacation homes used as timeshares) of the filer or spouse that are not rented out during any portion of the reporting period.

Schedule A

In **Block A** of **Schedule** A, the filer must identify these assets as follows:

Real Estate

- For real estate, describe its nature and location, such as "residential real estate, Wapakoneta, OH," or "farmland in Lincoln County, IA (corn crop and natural gas royalties)." There is no requirement to report the specific address or the acreage. If the real estate is held in connection with a business operation, the business name, type, and location must be indicated, such as "Davis and Covaleski, Polled Herefords, Limited Partnership, Yreka, CA." See also *Section 6.3: Farm Assets and Income*.

Mortgage Securities

- For mortgage-backed securities that are publicly traded or available, list the issuer and full name of the specific portfolio, including any series number. Examples are "The Prudential Home Mortgage Securities Pass-Through Certificates, Series 2004-19," "Paine Webber CMO Trust, Series 0," or "Residential Funding Mortgage Securities I, Inc. Series 2003-S30 REMIC II." The number of units held need not be reported.

  NOTE: For bonds and certificates of U.S. Government agencies or Government-sponsored corporations, a standard representation such as Ginnie Mae or FNMA is sufficient. See *Section 8.3: Government Securities*.

REITs

- For shares of a publicly traded or available REIT, identify the specific name of the trust, such as "Consolidated Capital Properties VII." The number of shares need not be reported."

Some REITs and Mortgage Securities Are EIFs

Mortgage-backed securities and REIT shares that are publicly traded or available will fit the definition of EXCEPTED INVESTMENT FUND (EIF), so the underlying mortgages or other assets need not be listed. See *Section 7.1: Excepted Investment Funds*. Reviewers should ensure that the **full name** of the particular portfolio is reported (except for U.S. Government agency or Government-sponsored corporation issues, as noted above). The name of the issuer alone does not permit adequate conflict review of the specific underlying mortgage pool or real estate portfolio in investment service guides.

Mortgage-backed securities and REITs that are not publicly traded or available will not likely qualify as an EIF (because they will not meet the alternative requirement of WIDELY DIVERSIFIED), so the underlying type of properties and their city and state must be detailed on the financial disclosure report.

Asset Value

In **Block B,** the filer must report the category of value of the asset at the close of the reporting period. Real estate may be valued by using a tax assessment, recent appraisal, purchase price, or a good faith estimate. For the value of mortgage-backed securities and shares of REITs, filers may use a brokerage statement (if current at the end of the reporting period), or they may consult daily newspaper listings for publicly traded assets. See the various valuation methods described in *Section 3.3: Schedule A*.

Income

In **Block C,** the filer must mark the appropriate column to indicate the type of income. For real estate, this will be rents, royalties, and/or capital gains. For mortgage-backed securities and REIT shares, filers should indicate rents, interest, dividends, and/or capital gains, as reported to them on IRS Form 1099 (for annual reports) or a brokerage account statement. Alternately, in the case of an EIF, as described above, they may simply mark the EIF column instead of the type of income.

Filers must also report in Block C the category of income value which has accrued, whether or not it is actually available for withdrawal or is tax-deferred. For real estate, this will be gross amounts of rents and royalties (before expenses), as well as capital gains which are calculated for tax purposes at the time of sale. For mortgage-backed securities and REITs, the income value may be as shown on IRS Form 1099 or on a brokerage account statement.

Transactions

Schedule B, Part I, must reflect transactions of real estate (other than a personal residence, as described above), mortgage-backed securities, and REIT shares, if the value of the transaction exceeds $1,000. It is the value of the transaction, not the amount of gain or loss, which is the focus. Transactions occurring within a mortgage pool or REIT portfolio are not reportable; it is only transactions involving the individual's shares or units that must be reported. No reportable sale occurs when mortgage-backed securities mature. See *Section 3.4: Schedule B, Part I*, for other exceptions and additional information.

Liabilities

For real estate, there must be an entry on **Schedule C, Part I,** for any corresponding mortgage liabilities. Mortgages and home equity loans associated with a personal residence are exempt.

Examples

The following graphic examples demonstrate reporting of real estate assets.

Reporting Individual's Name: **Fox Mulder** | SCHEDULE A | Page Number: **1**

Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)															Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)														
																Type				Amount										
For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income. For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse). None ☐	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (*Mo., Day, Yr.*) Only if Honoraria
Examples: Central Airlines Common				x												x						x										
Examples: Doe Jones & Smith, Hometown, State			x																												Law Partnership Income $130,000	
Examples: Kempstone Equity Fund					x								x										x									
Examples: IRA: Heartland 500 Index fund							x						x											x								
1 **GNMA**		√																√			√											
2 **First Real Estate Investment Trust of New Jersey**			√										√									√										
3 **Vienna, VA Townhouse**					√												√							√								
4 **Aspen, CO Condo (Sold)**	√																√		√						√							
5 **Undeveloped Land; Sunbright, TN; (Natural Gas Royalties)**			√														√					√										

Reporting Individual's Name	SCHEDULE B	Page Number
Fox Mulder		**2**

Part I: Transactions None ☐

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

	Identification of Assets	Transaction Type (x): Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	Amount of Transaction (x): $1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
Example	Central Airlines Common	x			2/1/99			x									
1	**Aspen, CO Condo**		√		**8/4/03**					√							

Reporting Individual's Name	SCHEDULE C	Page Number
Fox Mulder		**3**

Part I: Liabilities None ☐

Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. Exclude a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

	Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x): $10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			x								
	John Jones, 123 J St., Washington, DC	Promissory note	1999	10%	on demand					x						
1	**Nationsbank**	**Mortgage on Vienna, VA Rental**	**1992**	**9.8%**	**30 yrs.**			√								

Conflict of Interest Analysis

Real Estate
18 U.S.C. § 208

For real estate, reviewers must consider its location and use (such as farming, mineral exploration or extraction, residential, or a particular type of business). From this information, they should be able to determine whether the value of the real estate could be directly and predictably affected by agency programs in which the filer will be participating.

Mortgage-Backed Securities

For most mortgage-backed securities (particularly those issued by U.S. Government agencies), it is unlikely that a security holder could affect his financial interest, as income is tied to the fixed payments made by borrowers. If matters on which an employee works could directly and predictably affect those payments, however, then the reviewer should examine the underlying mortgages by consulting investment service guides or the securities issuer.

REITs

For REITs, if the filer's agency responsibilities could directly and predictably affect real estate, then the reviewer should evaluate the underlying holdings for potential conflicts. Investment service guides provide information on the holdings of publicly-traded REITs. See also the conflict of interest discussion in *Section 8.4: Mutual Funds and Unit Investment Trusts*, as REITs are similar to mutual funds that are not widely diversified.

Potential Conflict with the Issuer

Reviewers must also consider whether a conflict might exist with the issuer of mortgage-backed securities and REITs, if the agency's functions could affect that entity.

If a potential conflict of interest exists, see the discussion in *Chapter 5: Resolving Conflicts of Interest* for guidance.

8.8 COLLECTIBLES, METALS, AND INTELLECTUAL PROPERTY

5 U.S.C. App. §§ 102(a)(l) & 102(a)(3)
5 C.F.R. §§ 2634.301(b)(5) & 2634.302(b)

This section discusses items of personal (physical) property, including collectibles, precious metals, and intellectual works, which must be reported if held for investment or the production of income.

Collectibles

Collectibles include virtually any items of personal property that are unique, limited in quantity, antique, or hold special quality or personal significance. Works of art, vintage automobiles, stamps, jewelry, gemstones, antique furniture, rare coins, and books are but a few examples.

Only Report Collections Held for Investment

Collections may serve a variety of purposes, such as enjoyment (a hobby or display), utility, and the expectation of an increase in value. They are only relevant for financial disclosure and conflict analysis, however, if they are held for investment or the production of income. For example, antique household furnishings and paintings displayed for decorative or artistic purposes would not be collectibles held for investment, while periodic sales from a collection would indicate an investment purpose.

Precious Metals

Precious metals, such as gold, silver, and platinum, may be held as a hedge against inflation or foreign exchange fluctuations. Other than coin collections or jewelry held strictly for enjoyment or utility, precious metals are ordinarily reportable because they are held for investment. Some investors take physical possession of precious metals in the form of ingots, jewelry, or coins, but metals are often held as warehouse certificates issued by brokers, bankers, and dealers. They may also be held indirectly through shares in metals MUTUAL FUNDS and FUTURES. See other sections of this chapter for treatment of these related securities investments.

Intellectual Property

Finally, filers may hold investments in intellectual property and related rights. Examples include original manuscripts, patents, copyrights, and publication contracts for literary works, musical scores, computer software, and similar creative or artistic endeavors.

Financial Disclosure Requirements

Schedule A

A collection, precious metal, or intellectual property interest that is held for investment or the production of income must be reported as an asset if it is valued above $1,000 at the close of the reporting period, or if it produces INCOME over $200 during the reporting period. Filers must aggregate values from each source for themselves, their spouse, and their DEPENDENT CHILDREN.

Transactions Are Not Reportable

Disclosure of purchase and sales transactions is not required for collectibles, precious metals, or intellectual property (except when precious metals are held through securities such as mutual fund shares or futures).

Collectibles

For collectibles held as investments, filers must describe their nature in **Block A** of **Schedule** A, such as "rare books," "impressionist oil paintings," or "classic cars." The category of VALUE must be indicated in **Block B.** Purchase price, a recent appraisal for insurance purposes, a published price guide, the recent sale price of similar items, or a good faith estimate are common methods of determining the fair market value of collectibles.

Block C should contain the type of any income and the category of amount. This will ordinarily be "none" until items from the collection are sold, at which time there may be CAPITAL GAINS.

Precious Metals

For precious metals that are held as investments, the filer should specify in **Block A** the type of metal owned. For clarity, she may also wish to indicate whether it is held as ingots, jewelry, coins, or warehouse certificates. There is no requirement to disclose the quantity. (For metals held indirectly through securities such as a metals mutual fund or future, see other relevant sections of this chapter for disclosure requirements.)

Block B should show the category of value, which will ordinarily be the published current market price. **Block C** must reflect the type of any income and the category of amount; this will ordinarily be "none" until the metals or their warehouse certificates are sold, at which time there may be capital gains.

Intellectual Property

Both Earned and Investment Income

Intellectual property produces EARNED INCOME (compensation for services) when the work itself is sold to a publisher, and it may yield INVESTMENT INCOME in the form of royalties as individual copies are sold. In **Block A,** intellectual property should be described by indicating its nature and any contractual arrangements, particularly for earned income.

Examples: "Elements of Accounting textbook; all advances previously received from Harcourt Brace Jovanovich" and "Screenwriting Royalties, *Pocahontas,* Disney Studios."

OGE 82 x 18

In **Block B,** the filer must indicate the category of value. This will include any advances and contract payments in the form of earned income that have not yet been received for transfer of the intellectual property to the publisher, as well as any royalties currently due from the publisher for completed sales. When an interest in future royalties cannot be ascertained it is acceptable to indicate in Block B that the value is unascertainable.

Actual Amount of Earned Income Required

In **Block C,** earned income payments received during the reporting period must be described in the "other" column, such as "advances and contract payments from publisher," and the actual amount must be reported. As royalties are paid, the filer must mark the box for royalty as the type of income, along with the category of amount.

Examples

The following graphic examples demonstrate reporting of collectibles and intellectual property.

Reporting Individual's Name: **Nick Cave**	SCHEDULE A	Page Number: **1**

Assets and Income BLOCK A	**Valuation of Assets** at close of reporting period BLOCK B															**Income:** type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. BLOCK C													
																Type				**Amount**										
For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income. For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse). None ☐	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,01 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (*Mo., Day, Yr.*) Only if Honoraria
Examples: Central Airlines Common				X												X						X									
Examples: Doe Jones & Smith, Hometown, State			X																											Law Partnership Income $130,000	
Examples: Kempstone Equity Fund					X								X										X								
Examples: IRA: Heartland 500 Index fund							X						X											X							
1 **1956 Mercedes Gull Wing (Automobile)**					√															√											
2 **Platinum Bars**				√																√											
3 **"The History of Clocks" Random House**	Value unascertainable																√					√									
4 **"On Hegel's Phenomenology"; 1/2 of advance still due; Univ. of PA Press**		√																		√											
5 **Collection of "Star Wars" Figures (Partial Sale)**		√																	√		√										

Conflict of Interest Analysis

Collectibles and Metals Rarely Pose Conflicts
18 U.S.C. § 208

Collectibles rarely present conflict of interest concerns, as the filer's Government duties seldom involve matters that could directly and predictably affect these interests. Likewise, precious metals do not ordinarily present a potential for conflict. The value of these items and their potential for producing capital gains upon resale are controlled primarily by market forces of supply and demand, as well as popular fads for certain types of collections, and interest and foreign exchange rates for precious metals.

A few agencies may have missions that could affect the value of specific types of collectibles or precious metals because of their roles concerning taxes or interest rates. Even when this possibility exists, it is unlikely that a filer would be acting in a particular matter that could have a direct and predictable effect on his financial interests. See *Chapter 5: Resolving Conflicts of Interest*.

18 U.S.C. § 209
5 C.F.R. Part 2635, Subpart H
5 C.F.R. Part 2636, Subparts B & C

Intellectual property is more likely to present conflict concerns, particularly if the subject matter of the work-product relates to the agency's mission or the employee's responsibilities, or if the publisher could be affected. Additionally, to the extent that advances and contract payments (other than continuing royalties) will be earned during Government employment, some classes of senior employees are subject to special restrictions. See *Chapter 11: Federal Ethics Laws and Regulations in Brief*, particularly the discussions of 18 U.S.C. § 209, outside activities, and earned income restrictions.

Employee-Inventors
OGE DAEOgram of September 7, 2000

In cases where the Government waives any interest in commercializing an invention and permits the employee-inventor to pursue patent rights, section 209 ordinarily does not preclude outside royalty payments to the employee-inventor.

9.0 GIFTS

> The servants of the nation are to render their services without any taking of presents.... The disobedient shall, if convicted, die without ceremony.
>
> -- Plato, Laws

While some may admire Plato for his direct and strict rule, public attitudes about the acceptance of gifts by Government employees have become considerably more reasonable since Plato's time. The criminal restrictions on bribery and supplementation of salary are still quite stringent, as are the Standards of Conduct rules on gifts from outside sources, though a variety of exclusions and exemptions allow the receipt of gifts in certain specified circumstances. Under these statutes, gifts are improper if demanded, solicited, or given to employees in connection with the performance of their duties. Such improper gifts undercut the efficient operation of Government by providing the donor with undue influence. Public disclosure and scrutiny of the receipt of these gifts is designed both to detect inappropriate gifts and to deter their initial acceptance.

Quotation found at: 1978 U.S. CODE CONG. & ADMIN NEWS 4216, 4333 (Senate Report No. 95-170)

When Congress passed the provisions for public disclosure of gifts, the Senate report specifically noted:

> the primary purpose for reporting gifts received is to disclose any gift that might have been given to influence the official performance of a government employee's responsibilities.

Part II of Schedule B on the SF 278 pursues this goal within the confines of the reporting periods and thresholds discussed in *Section 3.5: Schedule B, Part II*. That section also explains the reporting exclusions for gifts that are less likely to create conflicts of interest, including gifts received by a spouse or dependent child totally independent of his relationship to the filer.

See also 41 U.S.C. § 423 for procurement integrity provisions of the Office of Federal Procurement Policy Act.

This chapter discusses the financial disclosure requirements and conflict of interest analysis necessary for tangible gifts, entertainment gifts, travel and reimbursements. It does not discuss procurement integrity restrictions on gratuities. Reviewers may wish to ascertain whether employees are procurement officials and analyze their disclosures with this knowledge and applicable procurement regulations in mind.

OGE recommends that agencies encourage filers to seek guidance from an ethics official prior to receiving gifts that are reportable on the SF 278. This procedure allows persons to avoid having to pay for, to return, or otherwise to dispose of improperly received gifts.

9.1 NON-TRAVEL GIFTS

5 U.S.C. App. § 102(a)(2)
5 C.F.R. § 2634.304

Gifts discussed in this section include anything of monetary value (other than travel-related expenses), such as tangible items, services, gratuities, favors, entertainment, hospitality, loans, payments, and advances (see *Section 9.2: Travel-Related Gifts and Reimbursements* for travel-related gifts and reimbursements).

Gifts That Are Not Reportable

Reviewers should note that, in addition to anything for which fair market value is paid, certain items are not viewed as gifts for purposes of financial disclosure (see *Section 3.5: Schedule B, Part II*). For example, anything accepted by the Government under specific statutory authority or contract is not reportable. Gifts from RELATIVES and gifts received by the spouse or dependent child totally independent of their relationship to the filer, are also not reportable.

Financial Disclosure Requirements

Filers need to disclose gifts from a single source to themselves, their spouse or dependent child, on **Schedule B, Part II,** if they exceed the $285 reporting threshold and do not fall within recognized exclusions. Filers may disregard gifts with a fair market value of $114 or less when aggregating gifts from a single source. OGE may grant a waiver of the reporting requirement in special cases *(see Section 3.5: Schedule B, Part II*, for discussions of the exclusions and the reporting waiver). A complete disclosure of a gift provides:

- the identity of its source;
- the address of the source (city and state);
- a brief description; and
- its market VALUE.

Identity of Source

The **identity of the source** must include the person(s) or organization that presented the gift (and the person or group for whom they acted as an agent, if any). A gift from a group of individuals is considered a gift from a single source for purposes of the $285 threshold; however, for effective conflict analysis, the filer should list all donors to a group gift. (Ordinarily, filers need not identify the individual members of an organization that gave them a gift, unless that organization formed for the purpose of giving the gift.) This identification may be very brief, such as "Tom Mack," but it speeds review if filers explain the nature of their relationship with the giver, such as, "Tom Mack, personal friend." They may also want to note any ethics official's prior approval for receipt of the gift.

Description

The **description of the gift** also need only be detailed enough to indicate each item that was given, such as "vase." Further explanation may, however, help the report to withstand public scrutiny.

Market Value
5 U.S.C. App. § 109(19)
5 C.F.R. § 2534.304(e)
5 C.F.R. § 2635.203(c)

Filers must disclose the **fair market value** of gifts received from any single source that meet the $285 reporting threshold. (A gift from a group of individuals is considered a gift from a single source.) If a gift is available in the market, its value is the retail price. If an item is not generally available in the local area, the filer should use a good faith estimate of market value. Note that OGE has deemed the market value of a ticket for food and entertainment to be its face value, regardless of its value in secondary markets, such as to a ticket scalper.

The **date of receipt** is not a required element for disclosure of gifts. Filers may list a date of receipt if they so choose. The date requirement on the form refers only to gifts of travel or reimbursements for travel (see *Section 9.2: Travel-Related Gifts and Reimbursements*).

Examples

The following sample SF 278 demonstrates reporting of different gifts.

Reporting Individual's Name	SCHEDULE B	Page Number
Stephen Daedalus		**2**

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260, and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. Exclude anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☐

	Source *(Name and Address)*	Brief Description	Value
	Examples: Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty)	$500
	Examples: Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$300
1	**Tony Lama Boot Co., Dallas, TX**	**Leather Boots**	**$285**
2	**Ronald Dworkin, New York, NY**	**Four Bottles of Wine in gratitude for editing assistance**	**$290**
3	**Thomas Mack, Fairfax, VA**	**Rare Beagle puppy given as birthday present (9/16/03)**	**$325**

Conflict of Interest Analysis

After determining that gift disclosure information is complete, the reviewer should:

Questions a Reviewer Should Answer Before Certifying a Report

- consider the application of the bribery and supplementation of Government salary statutes (18 U.S.C. §§ 201 & 209);
- analyze the circumstances to determine whether the gift may have been given because of the filer's official position; and
- determine whether the donor was a PROHIBITED SOURCE by consulting the agency's listing of contractors, grantees, and similar listings.

If the donor gave the gift because of the employee's official position or the donor is a prohibited source, the reviewer should then examine whether the Standards of Conduct gift exceptions allow receipt of the item.

18 U.S.C. §201

The strongest sanction on gifts is the criminal prohibition against bribes and gratuities (see *Section 11.1: Criminal Conflict of Interest Statutes*). An important element of this statute is that the gift must be intended to influence official action or be in return for such action for the gift to be prohibited. In addition, the Emoluments Clause of the Constitution restricts the acceptance of foreign gifts (see *Section 11.3: Other Conflict of Interest Provisions* for more information on foreign gifts).

18 U.S.C. §209
5 C.F.R. § 2635.201 to § 2635.205

Another important consideration for gift acceptance analysis is whether the item received is a supplementation of salary in violation of a criminal statute. The criminal statute does not prohibit giving gifts to employees, but it does prohibit gifts given or received as compensation for Government service as a supplement to the employees' salaries. The difference is whether the giving of the item is connected to Government service. Also, some gift donors are considered prohibited sources of gifts under the Standards of Conduct, which allows the receipt of gifts from such donors only if they fit within certain exceptions. These rules help prevent any actual or apparent misuse of Government position for private gain or loss of impartiality in an employee's performance of Government duties.

The Employee Standards of Ethical Conduct fully lists these exceptions.
5 C.F.R. § 2635.204

The Standards of Conduct bans receipt of gifts given by PROHIBITED SOURCES or because of one's official position. The following list summarizes the exceptions to this gift prohibition:

- Gifts clearly motivated by a family relationship or private friendship;
- Commercial discounts and similar benefits offered to groups in which membership is not related to Government employment or, if membership is related to Government employment, where the same offer is broadly available to the public through similar groups; and certain benefits offered by professional associations or by persons who are not prohibited sources;
- Certain awards and honorary degrees;

  NOTE: Such awards greater than $200 require approval, in writing, by the agency ethics official. When such a gift is reported on an SF 278 that is forwarded to OGE for certification, the written approval should be included with the form.
- Gifts resulting from the outside business activities of employees and their spouses (totally independent of the relationship to the filer);
- Gifts in connection with political activities permitted by the Hatch Act Reform Amendments of 1993 (5 U.S.C. § 7323);
- Free attendance that the sponsor of a conference or other event provides for the day on which an employee is speaking or presenting information officially;
- Free attendance provided by the sponsor of a widely-attended gathering of mutual interest to a number of parties where the ethics official has made any necessary agency-interest determinations;
- Certain gifts of food and entertainment in foreign areas;
- Gifts accepted by the employee under a specific statute, such as the Government Employees Training Act (5 U.S.C. § 4111) with agency approval, or the Foreign Gifts and Decorations Act (5 U.S.C. § 7342);
  or
- Gifts permitted by a supplemental agency standards of conduct regulation.

Note that an employee may not use any of the exceptions listed above to solicit or coerce the offering of a gift. Nor may an employee accept gifts:

- for being influenced in the performance of official duties or
- so frequently as to appear to be using public office for private gain.

If the gift is received because of official position or is from a prohibited source and does not fit an allowed use of the exceptions, the reviewer should consider the gift improper and ensure that the employee disposes of it properly.

Acceptance versus Reporting

Note that filers must still report gifts on the SF 278 that fall within these exceptions (unless reported separately under the Foreign Gifts and Decorations Act). The exceptions allow the receipt of a gift, but that receipt must still be reported (see *Section 3.5: Schedule B, Part II* for gift reporting exclusions).

Further Inquiries

If the filer's disclosures are insufficient to determine the propriety of a gift, reviewers should seek more information to determine whether the gift is proper. It is especially important to note again in this context that reporting the gift does not constitute or imply any authority to retain the gift (see *Section 4.3: Obtaining Additional Information* for guidance on obtaining and recording additional information about gift disclosures).

Disposition of Prohibited Gifts

Disposal Options
5 C.F.R. § 2635.205

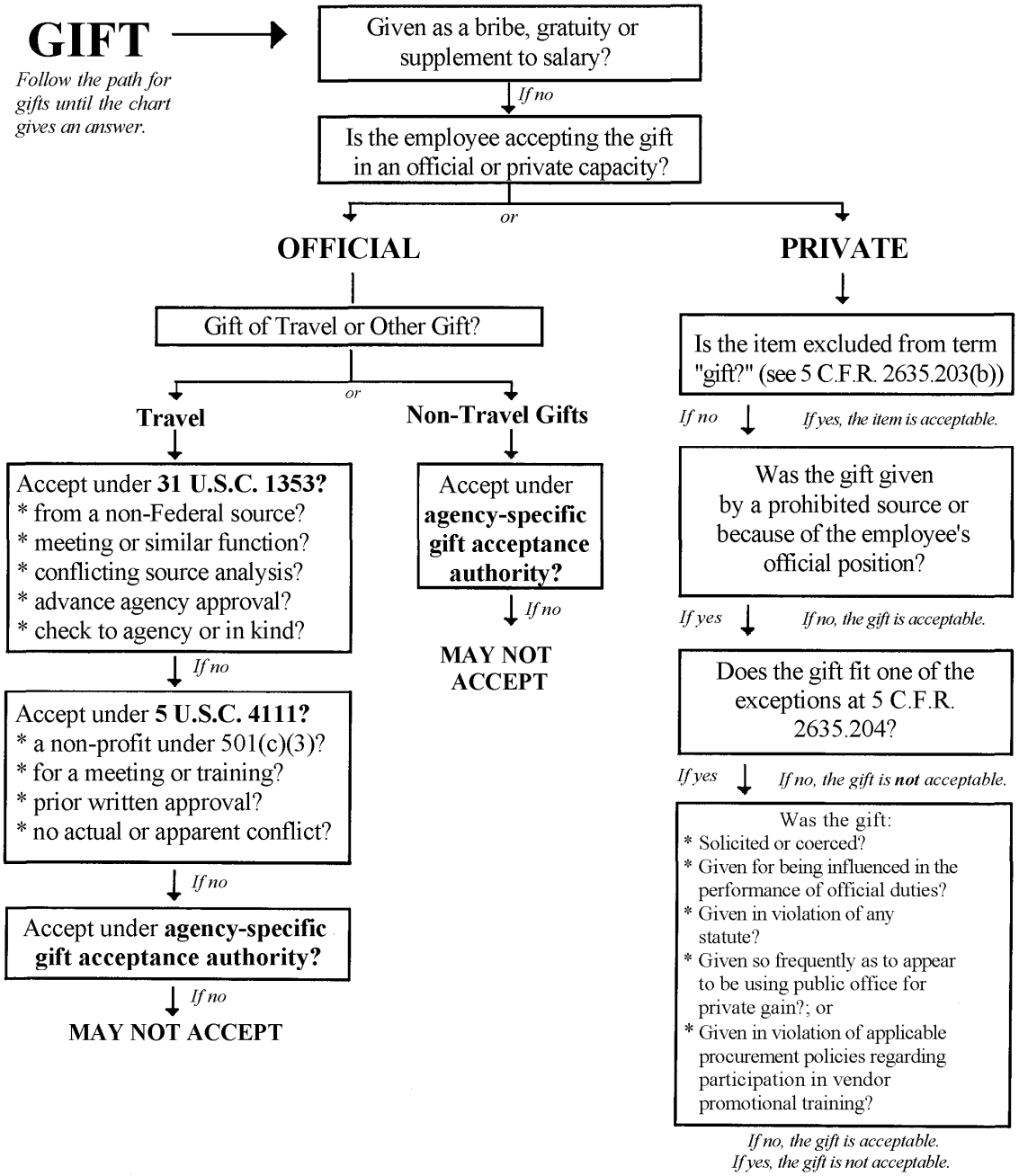
If a gift received in a private capacity poses a conflict of interest problem, the ethics counselor should ensure that the employee follows any of the several options listed below.

- The employee may pay the donor market value. The item is no longer a gift.
- The employee may return the gift.
- The employee's supervisor or ethics counselor may also approve donating the item to a charity, destroying it, or sharing it within the office when a perishable item is involved.

The agency may wish to pursue disciplinary action against an employee if she does not promptly comply with the requirements of the Standards of Conduct for disposal of prohibited gifts.

Referral For Prosecution

If the disclosure reviewer has information indicating that the employee has received a bribe, gratuity, or supplementation of salary, the reviewer must refer the matter to the Department of Justice for possible prosecution (see *Section 5.8: Processing Ethics Violations*).


GIFT
Follow the path for gifts until the chart gives an answer.
Given as a bribe, gratuity or supplement to salary?
If no
Is the employee accepting the gift in an official or private capacity?
or
OFFICIAL
PRIVATE
Gift of Travel or Other Gift?
or
Travel
Non-Travel Gifts
Accept under 31 U.S.C. 1353?
* from a non-Federal source?
* meeting or similar function?
* conflicting source analysis?
* advance agency approval?
* check to agency or in kind?
If no
Accept under 5 U.S.C. 4111?
* a non-profit under 501(c)(3)?
* for a meeting or training?
* prior written approval?
* no actual or apparent conflict?
If no
Accept under agency-specific gift acceptance authority?
If no
MAY NOT ACCEPT
Accept under agency-specific gift acceptance authority?
If no
MAY NOT ACCEPT
Is the item excluded from term "gift?" (see 5 C.F.R. 2635.203(b))
If no
If yes, the item is acceptable.
Was the gift given by a prohibited source or because of the employee's official position?
If yes
If no, the gift is acceptable.
Does the gift fit one of the exceptions at 5 C.F.R. 2635.204?
If yes
If no, the gift is not acceptable.
Was the gift:
* Solicited or coerced?
* Given for being influenced in the performance of official duties?
* Given in violation of any statute?
* Given so frequently as to appear to be using public office for private gain?; or
* Given in violation of applicable procurement policies regarding participation in vendor promotional training?
If no, the gift is acceptable.
If yes, the gift is not acceptable.

9.2 TRAVEL-RELATED GIFTS AND REIMBURSEMENTS

Sources outside of the Government often provide transportation and related food, lodging, and entertainment to employees, either in-kind or through reimbursement of expenses. A conflict of interest analysis should treat reimbursement the same as an in-kind gift (but they are measured against separate thresholds for reporting purposes). Reimbursement merely refers to the payment mechanism, not to the value exchanged.

Financial Disclosure Requirements

Filers must report any travel reimbursements or gifts that they, their spouse, or their dependent child personally receive, if they exceed the $285 threshold (from a single source) and do not fall within the exclusions (see *Section 3.5: Schedule B, Part II*). Filers may disregard gifts and reimbursements with a fair market value of $114 or less when aggregating from a single source.

NOTE: Based on statutory changes effective in 1993, *reimbursements* from a single source are measured against a $285 threshold separate from the threshold for all other gifts (items discussed in *Section 9.1: Non-Travel Gifts*, as well as travel-related in-kind gifts).

The description of the gift or reimbursement must include:

- the identity of its source;
- the address of the source (city and state);
- a brief description; and
- its market value.

Filers must indicate the **identity of the source,** including the entity that presented the gift or reimbursement (and the entity for whom the donor acted as an agent, if any). This identification may be brief, such as "Rock Collectors Association." Reviewers may wish to suggest that filers explain the nature of their relationships with the sources of gifts and other relevant information on the form itself, such as, "Rock Collectors Association, private activity unrelated to duties, prior approval from ethics official Jane Jones received for trip." Filers may also wish to note any prior agency approval for receipt.

The **description of the gift or reimbursement** for transportation, food, and lodging must include more information than for gifts described in *Section 9.1*, because of the law's requirements.

Descriptions of travel gifts must include:

- the travel itinerary,
- the dates of travel, and
- the nature of expenses provided.

This information must be disclosed on the SF 278 or in an attached memo, and it is available to the public along with the rest of the form.

Filers must disclose the **fair market value** of travel gifts and reimbursements received, which is usually the actual amount received.

If the filer's disclosures are insufficient to determine the propriety of a gift, reviewers should seek more information to determine whether the gift is proper. It is especially important to note again in this context that reporting the gift does not constitute or imply any authority to retain the gift (see *Section 4.3: Obtaining Additional Information* for guidance on obtaining and recording additional information about gift disclosures).

Example

The following sample SF 278 demonstrates reporting of travel gifts, both for official and personal trips.

Reporting Individual's Name	SCHEDULE B	Page Number
Tom Waits		**2**

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260, and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. Exclude anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☐

	Source *(Name and Address)*	Brief Description	Value
	Examples: Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty)	$500
	Examples: Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$300
1	**Michael Walzer, New York, NY**	**Roundtrip Travel from New York to Paris (1/27/03-2/1/03)**	$2,500
2	**Association of Concerned Citizens**	**Roundtrip Airfare--FOIA Conference (2/5-2/9) (Accepted under 5 U.S.C. 4111)**	$500
3	**Rock Collectors Association**	**Roundtrip Airfare and three nights lodging at annual convention in St. Louis (3/31-4/3). Private Activity unrelated to duties, prior approval granted by supervisor and ethics official.**	$600

Conflict of Interest Analysis

The analysis of travel-related gift and reimbursement acceptances requires very specific information. Reviewers often need to ask a series of questions such as:

Gathering Sufficient Information

- Was the travel in the filer's official or private capacity?
- Was the sponsor a non-profit organization under IRS Code § 501(c)(3)?
- What was the subject of the event/speech/meeting?
- Was the event related to official business or position by the nature of the invitation?
- Was the offer extended to the filer because of her current Government position?

An important initial determination in analyzing any gift of travel or reimbursement is whether the traveling employee is on official duty or is acting in a private capacity. In general, filers must report only travel and reimbursements they received in a private capacity, but there are some major exceptions, as noted below in the official duty travel discussion.

Official Duty Travel

When a private entity offers a reimbursement or gift of travel to an executive branch employee who is carrying out *official duties,* the general rule is that only the employing agency, not the employee, can accept the payment. Even the agency can accept the gift only under specific statutory authorities. When the agency accepts such payments, they are not reportable on the employee's SF 278. However, when the agency permits *the employee to accept* such payments under the Government Employees Training Act (5 U.S.C. § 4111), they *are* reportable on the employee's SF 278.

Agencies Need Specific Statutory Authority

Comptroller General's Decision B-128527, dated March 7, 1967 (46 Comp. Gen. 689)

Agency acceptance of reimbursed or in-kind travel from non-Governmental sources poses problems because agencies may not receive any funds without explicit authority to do so. Otherwise, the agency will be improperly augmenting its appropriations and violating Comptroller General decisions.

Three major authorities allow the agency to use outside travel payments for official duty—general statutory authority (implemented by the General Services Administration [GSA]), agency-specific statutes, and the Government Employees Training Act. While financial disclosure reviewers should only see Government Employees Training Act acceptances on SF 278s, as discussed below, filers often mistakenly disclose the first two, as well. Reviewers should amend disclosure reports that improperly report travel and reimbursements accepted by the agency, in order to avoid the impression that the employee improperly accepted a gift for official travel.

The GSA Travel Authority

31 U.S.C. § 1353
41 C.F.R. Part 304-1

The GSA authority and agency-specific statutes are the two ways in which the agency, not the filer, accepts the payment. Since the agency accepts, filers should not report such payments on the SF 278. The GSA authority is statutory, and is implemented through an executive branch-wide regulation. It allows the head of each agency (or her delegate) to accept payments for travel, subsistence, and related expenses from non-Federal sources for attendance at a meeting or similar function. On a semi-annual basis, each agency reports each acceptance of $250 or more (or the absence thereof) to OGE.

Agency Specific Gift Acceptance Authorities

Certain agencies also have statutory gift acceptance authority, generally found in their organic statute. These authorities often limit the acceptance to gifts for specific purposes. The agency must have a process to determine which offers of gifts it can accept under that authority. An agency's authority to accept gifts, including travel expenses, must stem from a statute, not a regulation.

Government Employees Training Act

5 U.S.C. §4111
5 C.F.R. §§ 410.701-706
26 U.S.C. § 501(c)(3) describes eligible non-profit donors

The Government Employees Training Act permits agencies to authorize *an employee* to accept travel expenses from certain non-profit organizations for training or meetings, even though the trip is for official duty. Because the employee personally accepts the travel or reimbursement, it is reportable on his SF 278. Filers or reviewers should note on the form that the employee received the travel or reimbursement under this authority.

Reviewers should ensure that the trip meets each of the following conditions on such acceptances:

- The funds must be for travel-related expenses to attend a meeting or training;
- The funds must come from a non-profit organization that the Internal Revenue Code describes at § 501(c)(3);
- The employee must have received prior written authorization for acceptance of such travel expenses;
- The agency must have certified that acceptance of the expenses does not create an actual or apparent conflict; and
- The agency must follow all other provisions of the implementing regulations (cited in the margin).

Reviewers should also note two important, but sometimes overlooked, considerations:

Two Important Considerations: Non-profit Status and Conflicts of Interest

- Some tax-exempt, non-profit organizations, such as political action committees, do not fall under subsection (c)(3). The IRS reading room can confirm the status of the organization if you provide the exact name of the organization and the state of incorporation. Its phone number is (202) 622-5164.

- The fact that the organization is non-profit as categorized under section 501(c)(3) does not mean that the offered travel expenses are always acceptable. If the organization is a PROHIBITED SOURCE, especially if its staff deals directly with the employee involved, the agency may decide to decline such reimbursements.

Summary for Official Travel

Employees should disclose on their SF 278s official travel and reimbursement only if they accept it under the Government Employees Training Act. When an agency has a specific statute that allows it to accept gifts or if it is accepting funds for a meeting or similar function under the GSA travel authority, the agency, not the employee, receives the gift. Accordingly, the employee should not disclose such payments.

Analysis of Private Acceptances is Similar to Non-Travel Gifts Analysis
18 U.S.C. §§201&209
5 C.F.R. § 2635.201 to 205

Private Capacity Acceptances

As with other gifts, if a filer receives a travel gift or reimbursement in a private capacity, the reviewer should first consider the criminal prohibitions on bribes, gratuities and supplementation of salary. Assuming no criminal issues are present, the reviewer should:

- analyze the circumstances to determine whether the gift may have been given because of the filer's official position, and
- determine if the donor was a PROHIBITED SOURCE by consulting the agency's listings of contractors, grantees or other similar listing.

Standards of Conduct

If the gift or reimbursement was given because of official position or received from a PROHIBITED SOURCE, the reviewer should determine if the exceptions in the Standards of Conduct listed below allow its receipt:

The Employee Standards of ethical conduct fully lists these exceptions.
5 C.F.R. § 2635.204

- Gifts based on a family relationship or a personal friendship;
- Commercial discounts and similar benefits offered to groups in which membership is not related to Government employment or, if membership is related to Government employment, where the same offer is broadly available to the public through similar groups; and certain benefits offered by professional associations or by persons who are not prohibited sources;
- Gifts resulting from the outside business activities of employees and their spouses (totally independent of the relationship to the filer);
- Customary travel and entertainment in connection with employment discussions;
- Gifts in connection with political activities permitted by the Hatch Act Reform Amendments of 1993 (5 U.S.C. § 7323);
- Free attendance that the sponsor of a conference or event provides for the day on which an employee is speaking or presenting information officially;
- Free attendance provided by the sponsor of a widely-attended gathering of mutual interest to a number of parties where the necessary determination of agency interest has been made; or
- Gifts accepted by the employee under a supplemental agency standards of conduct regulation or a specific statute, such as 5 U.S.C. §§ 4111 (Government Employee Training Act) or 5 U.S.C. § 7342 (Foreign Gifts and Decorations Act).

An employee may not solicit or coerce a gift or use any of the exceptions to accept a gift or reimbursement in return for being influenced in the performance of official duties; so frequently as to appear to be using public office for private gain; or in violation of any conflict of interest statute.

Filers must still report travel-related gifts and reimbursements that fall within one of the above exceptions (unless reported separately under the Foreign Gifts and Decorations Act). The exceptions are from the gift receipt prohibition, not the disclosure requirements (see *Section 3.5: Schedule B, Part II* for reporting exclusions).

If the Employee Should Not Have Received the Travel

If the travel or reimbursement is given because of official position or by a prohibited source and the exceptions do not allow it, the reviewer should consider the gift or payment prohibited and ensure that the employee promptly repays its full value. The agency should pursue any appropriate disciplinary action, as discussed in *Section 9.1*.

10.0 LIABILITIES AND FUNDS RECEIVABLE

This chapter discusses how filers should report debts, such as loans, which they, their spouse, or their dependent child have as a borrower (their liabilities), and how they should report receivable assets, such as loans, for which they, their spouse, or their dependent children are the lender. It then suggests conflict of interest analyses.

A loan is a transaction in which one entity, the lender, allows another, the borrower, to use property. In return, the borrower customarily promises to return the lender's property after a specified period and to pay a finance charge. The property, often cash, is called the principal. The finance charge is usually based on an interest rate, which is a percentage of the principal. In addition, borrowers must often commit some valuable property to the lender as collateral that becomes the lender's if the borrower does not repay the loan (or defaults).

A receivable asset might include money loaned by the filer, spouse, or dependent child, or compensation owed by a former employer, for example.

10.1 LIABILITIES

5 U.S.C. App. § 102(a)(4)
5 C.F.R. § 2634.305

A liability is a claim on the assets of an individual. It includes debts and loans such as promissory notes, MORTGAGES, credit card or revolving charge balances, student or investment loans, and consumer loans. Filers must report such liabilities on Schedule C, Part I, of the SF 278. They need to report loans exceeding $10,000 during the reporting period for which they, or their spouses or dependent children, are personally responsible, unless those loans meet any of the exclusions noted in *Section 3.6: Schedule C, Part I*, including:

- loans from a Government employee's TSP Account
- automobile loans (for collectibles, see also *Section 8.8: Collectibles, Metals, and Intellectual Property*) ;
- household furniture loans;
- mortgages on PERSONAL RESIDENCES (if not rented to another person);
- loans from certain relatives (spouse, parent, sibling, or dependent
  child of the filer or spouse)

Business Loans

Owners of businesses need not list business loans that directly relate to their trade or business.

Example: A filer operates a sports card shop as an outside business. He need not report any loans that the business assumes if those loans are related to sports cards. If that business decides to stop renting retail space and to buy the space it uses, the loan used to finance the purchase is also not reportable. If, however, the company then buys the unit next door and rents it to another company, the loan on the other unit is reportable, because it is unrelated to the business of sports cards.

Margin Accounts

Filers must disclose MARGIN ACCOUNT liabilities if the aggregate amount owed to any single broker exceeds $10,000 during the reporting period (See *Section 8.2: Corporate Securities*).

Types of Commercial Loans

Installment Loans versus Lines of Credit

Two general types of commercial loans are installment loans and lines of credit. In an installment loan, the borrower receives a set amount and must repay it in regular, often monthly, payments that end at a certain time. Car loans, mortgages, student loans and most consumer loans are installment loans. A line of credit, in contrast, is an agreement under which liabilities may be created. A borrower writes checks or makes charges to a credit card up to a preset limit and pays interest on the amount borrowed. He then has the option of repaying the entire balance at once or making monthly payments. For purposes of this section, a liability is created if the filer has actually borrowed money or exercised the borrowing authority under the line of credit.

Loans often have other distinctions in their key terms such as a fixed or an adjustable (variable) interest rate. Some loans have a security (collateral) that guarantees them, such as a house does for a mortgage. Other loans have no security except the borrower's promise or contractual agreement to repay, such as a credit card balance.

Financial Disclosure Requirements

Full disclosure of a reportable loan requires six elements on **Schedule C, Part I:**

Elements that Filers Must Disclose

- The **lender's identity** should include the name and address of the person, financial institution, or other entity to whom the filer owes the liability. A change in the name of a lender should not concern reviewers if the description of the loan is similar to the old one. Such changes usually indicate that a filer refinanced the loan, which is a common but non-reportable transaction.

- The **type of liability** should describe the purpose of the loan, such as mortgage on rental property, student loan or promissory note.

- The **date incurred** is the date of the beginning of the liability. Filers may also use the date on which they refinanced the liability. For lines of credit, filers may indicate the date when they first exercised their borrowing authority above the $10,000 reporting threshold.

- The **interest rate** should record the rate the filer pays on the loan at the date of filing. Describing the rate in reference to a prime rate, such as "prime + 1," or noting that the rate is "variable" or "floating" is also sufficient.

- The **term** of the loan is the total number of years or months that the loan allows for repayment. Describing the term as "on demand," "open-ended," "revolving" (credit cards) or something similar is also adequate.

Report Loan's Highest Value

- The **category of value** of the loan must be reported within the listed categories. Unlike Schedule A, which requires values as of the close of the reporting period, this schedule requires reporting the *highest value* of the liability during the reporting period. Credit cards or other revolving charge accounts, however, only require disclosure of their values at the close of the reporting period (if over $10,000).

Filers may find it helpful to note when loans have been paid off in the description of the loan. This practice eliminates the need to ask about the disappearance of some loans when comparing current and past reports. Reviewers should assume that loans formerly in the $10,000-15,000 category that fail to appear on the next report dropped below the reporting threshold during the reporting period.

Common Rental Property Errors

If a filer reports a mortgage on a rental property, she should list the rental asset on Schedule A, because it will usually be worth more than $1,000 at the close of the reporting period unless it is no longer held. A common mistake is for filers to fail to list the property on Schedule A because they had a tax loss on it. Reviewers should remind such filers that for rental property, **Schedule A** of the SF 278 requires the reporting of

- gross, not net, income, and
- property that has a fair market value in excess of $1,000 if held for investment or the production of income at the close of the reporting period, regardless of the amount of income it produced.

Co-signed Loans

Reportable liabilities include loans for which a legal obligation results from co-signing a promissory note. The filer should disclose the identity of the person for whom she co-signed. Conversely, if a filer is a guarantor no present liability exists; therefore, disclosure is not required.

Tax Deficiencies
OGE 90 x 2

Also reportable are *overdue* tax liabilities, payments owed for goods and services, and any other debtor obligation which represents a legal claim (liability) on personal assets.

Loans versus Gifts

A factor to examine in analyzing borrowed money is whether it is strictly a loan or also a gift. Money loaned on better than market-rate terms or to a non credit-worthy entity may have the characteristics of a gift. Similarly, if the lender decides to delay enforcement of a filer's debt when due (forbearance), that may represent a gift. The filer receiving such a loan would disclose it as a gift on Schedule B, part II and as a liability on Schedule C, Part I, to the extent appropriate for each. Both disclosures should receive a conflict of interest review.

Example: A filer receives a loan that requires repayment of principal but no interest. The principal is a reportable liability on Schedule C, Part I. The interest foregone is a reportable gift (subject to normal thresholds and exclusions).

5 C.F.R. § 2634.105(h) & (j)

If a lender decides to discharge (forgive) indebtedness, this creates reportable income on Schedule A for the filer who owed the debt.

Examples

The following SF 278 entries demonstrate reporting for liabilities (including an asset listing that is a common indicator of a liability).

Reporting Individual's Name	SCHEDULE A	Page Number
Nanci Griffith		**1**

Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)															Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)														
For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income. For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse). None ☐	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,01 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	Amount: $201 - $1,000	Amount: $1,001 - $2,500	Amount: $2,501 - $5,000	Amount: $5,001 - $15,000	Amount: $15,001 - $50,000	Amount: $50,001 - $100,000	Amount: $100,001 - $1,000,000	Amount: Over $1,000,000*	Amount: $1,000,001 - $5,000,000	Amount: Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples: Central Airlines Common				X												X						X										
Examples: Doe Jones & Smith, Hometown, State			X																												Law Partnership Income $130,000	
Examples: Kempstone Equity Fund					X								X										X									
Examples: IRA: Heartland 500 Index fund							X						X											X								
1 **Vienna, VA Townhouse**					√												√							√								

Reporting Individual's Name	SCHEDULE C	Page Number
Nanci Griffith		**3**

Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. Exclude a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None ☐

Creditors (*Name and Address*)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x): $10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples: First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			x								
Examples: John Jones, 123 J St., Washington, DC	Promissory note	1999	10%	on demand					x						
1 **Nationsbank**	**Mortgage on Vienna Rental**	**1992**	9.8%	**30 yrs.**			√								
2 **Chemical Bank**	**Credit Card**	**2003**	Prime + 2%	**Revolving**	√										
3 **Sallie Mae**	**Consolidated Student Loan**	**1996**	8%	**10 yrs.**		√									

Conflict of Interest Analysis

When an employee reports a loan, the reviewer should focus on two key items:

Two Primary Elements

- the terms of the loan and
- the identity of the parties involved.

As noted above, if a loan appears to have been made on terms not available to the general public, reviewers should treat the discounted loan as a gift and should inquire about the reasons why these special terms were available to the filer. The special terms could possibly reflect normal economic motives on the part of the lending institution, such as offering a lower rate to a customer with very large deposits or exceptional credit-worthiness. Terms to be examined include the finance charge, repayment period, and collateral required.

Commercial Loans

Like other routine consumer transactions, loans from banks and other financial institutions on terms generally available to the public normally do not give rise to significant financial conflict of interest concerns. The $10,000 reporting threshold also eliminates most minor debts from conflict scrutiny. Debts such as mortgages on rental property, student loans, and revolving credit accounts normally do not warrant further inquiry unless the filer's duties could affect the creditor.

Loans From Non-Commercial Sources

Person-to-Person Loans Need Special Scrutiny

Loans between two individuals deserve special scrutiny when the lending party does not normally make such loans. Such a loan can easily be a gift, either if the terms are better than market rates, or if the borrower could not get a loan on the market. Reviewers should analyze such a loan as if it were a gift from the lender to the borrower, and ensure against violations of the criminal prohibitions of bribes, gratuities, or salary supplements. Loans from relatives or personal friends, however, normally do not pose conflict of interest concerns unless special circumstances entangle the employee's personal and official capacities.

5 C.F.R. Part 2635, Subpart B

Reviewers should also scrutinize carefully any loans from PROHIBITED SOURCES of gifts under the Standards of Conduct. Such loans should be made on customary terms, with no hint of favoritism.

18 U.S.C. § 208
5 C.F.R. § 2635.502
5 C.F.R. Part 2635, Subpart B

Example: A Federal employee's spouse is starting a business but can't get a bank loan because of her bad credit rating. If she accepts a loan from a business entity that her spouse inspects or regulates, this may require his recusal under the criminal conflict of interest statute or the Standards of Conduct. It may also be an indirect gift to him prohibited by the Standards of Conduct.

An important element of any financial conflict of interest case is the real possibility of gain or loss. Unless a proposed Government action is significant enough to affect the lender's financial well-being in a manner which could change the loan's terms or which could otherwise affect the repayment of the loan, reviewers need not consider it a conflict of interest. Appearance issues may broaden the area of concern, but reviewers should note that loans made at arms-length on customary terms do not normally require an ethics agreement for RECUSAL, WAIVER, or other remedial action.

Loans Between Government Employees

5 C.F.R. Part 2635, Subpart C

The terms of the loan are especially important when Government employees receive loans from subordinates. In these cases, lenient terms of the loan may constitute an unauthorized gift to a superior. In this situation, reviewers should consult Subpart C of the Employee Standards of Ethical Conduct for further analysis.

Fulfilling Just Obligations

5 C.F.R. § 2635.809
OGE 91 X 15

Reviewers should also be aware that the Employee Standards of Ethical Conduct regulation requires employees to satisfy their just financial obligations, especially tax liabilities. The obligations in question include those that employees acknowledge and those that a court has ordered them to pay. Agencies need not and should not intervene in cases where the obligation is a matter of dispute between the employee and the alleged creditor.

10.2 FUNDS RECEIVABLE

5 U.S.C. App. §§ 102(a)(l)(B)(a)(3)
5 C.F.R. §§ 2634.301 & 2634.302

Filers and their spouses and dependent children may also serve as the lender for a loan, and this receivable account must be disclosed as an asset on Schedule A, not as a liability on Schedule C. Additionally, they may have other receivable accounts which must be reported, such as compensation owed by a former employer, and money owed to them for goods or services or as refunds, if income-producing. Filers should disclose such receivables valued at more than $1,000 or producing more than $200 in income. The subjective purpose behind the loan is not important--the controlling factor is whether the loan is made for the production of income.

Filers Need Not Disclose Loans to Certain Relatives

By statute, a loan to certain close relatives is not reportable. Accordingly, a filer need not disclose any personal liability owed to her, her spouse, or her dependent children if the liability is owed by her spouse, or by the parents, siblings, or children of the filer or her spouse.

Financial Disclosure Requirements

Elements of a Complete Disclosure

Because filers report notes and accounts receivable on **Schedule A**, as opposed to Schedule C, part I, they do not publicly disclose the terms of the loan on the form. They must, however, disclose:

- In Block A the **identity of the borrower**. This should include the name of the person(s) or other entity who owes the liability, and may include any relationship to the filer, as well as the purpose of the loan, for clarity. It should also include any co-signers who are legally obligated on the loan.

- Block B should list the **category of value** of the loan. Note that, unlike loans reported on Schedule C, Part I, filers should report the value of a receivable asset *at the close* the reporting period, not its highest value during the reporting period.

- Block C should list the **type and amount of income**. The type would almost always be "interest." The amount of income would be the interest earned on the loan during the reporting period. Return of principal or capital is not reportable income.

Filers need not report any transactions on Schedule B, Part I for notes or other receivable assets.

Examples

The following SF 278 entries demonstrate the reporting of receivable assets.

Reporting Individual's Name	SCHEDULE A	Page Number
Dick Wooten		**1**

Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)															Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)														
																Type				Amount										
For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income. For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse). None ☐	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,01 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (*Mo., Day, Yr.*) Only if Honoraria
Examples: Central Airlines Common				X												X						X										
Examples: Doe Jones & Smith, Hometown, State			X																												Law Partnership Income $130,000	
Examples: Kempstone Equity Fund					X								X										X									
Examples: IRA: Heartland 500 Index fund							X						X											X								
1 **Loan to Robert Nozick (cousin) for Graduate Education**			√															√				√										
2 **Loan to Smith, Jones, & Harris, P.C. (Attorneys)**						√												√						√								

Conflict of Interest Analysis

Reviewers May Seek the Loan's Terms for Conflict Analysis

Even though employees do not disclose the terms of a loan publicly, ethics counselors may need to know these terms to determine the nature of the linkage between the filer and debtor. Depending on the circumstances, that information may include:

- whether the debtor is a Government employee, and, if so, any supervisory or superior/subordinate relationships involved;
- whether the debtor is a PROHIBITED SOURCE of gifts under Standards of Conduct rules;
- the security or collateral on the loan; and
- the term and interest rate.

If the borrower is a relative or personal friend, then the reviewer may not need to obtain this information. For example, in the sample SF 278 entry above, the loan to a cousin would normally not warrant further questions. On the other hand, a reviewer might inquire as to the fields in which Smith, Jones, & Harris practice and possibly the clients they represent. If one of these parties has matters pending before the Government employee, then an analysis will be necessary under 18 U.S.C. § 208 and 5 C.F.R. § 2634.502. Reviewers should retain information they receive in response to such questions. This procedure eliminates the need for repetitious questioning upon each successive filing, and records the factual basis on which they certified the reports.

Whether a loan made by the filer or money due from a former employer creates a § 208 financial interest or appearance concern will depend on the circumstances. Since the debtor has a legal obligation to make payments to the filer, it is less likely that the filer's financial interest may be directly and predictably affected by the outcome of an official matter in which he is participating. The question is whether the matter may have such an effect on the debtor's ability or willingness to repay the debt.

5 C.F.R. Part 2635, Subpart C

Loans Between Government Employees

Loans between Government employees deserve scrutiny, especially if the debtor is the superior of the filer. In this case, lenient terms of the loan may constitute an unauthorized gift to a superior. When faced with this situation, reviewers should consult Subpart C of the Employee Standards of Ethical Conduct for further analysis.

PART III:
APPENDIXES

11.0 FEDERAL ETHICS LAWS AND REGULATIONS IN BRIEF

This chapter summarizes the legal provisions most relevant to executive branch financial disclosure review. Reviewers must ensure that interests reported on the financial disclosure report comply with the following two requirements:

- Disclosure Requirements: The statute and regulations view disclosure of assets to the public as an end in itself. A financial disclosure report must disclose all of the information that the statute and OGE guidance require.

- Conflict of Interest Requirements: Disclosure also facilitates a conflict of interest analysis. The certifying official must consider the information disclosed on a public financial disclosure report in light of Federal ethics laws and regulations.

A satisfactory review involves, at a minimum, examination of a report for compliance with key Federal ethics laws and regulations. **Because this section is merely a summary for quick reference, it should not be construed as a formal interpretation of any statute. Reviewers must consult the statutory language, along with any regulatory guidance and interpretive opinions.** Also, reviewers should consider any special statutes applicable to their agency.

Interpretive Opinions

See OGE's web site at www.usoge.gov to view the letters and opinions.

As a means of interpreting ethics-related statutes, the Office of Government Ethics (OGE) periodically publishes a supplement to *The Informal Advisory Letters and Memoranda and Formal Opinions of the United States Office of Government Ethics*. In addition to OGE's letters and opinions and, of course, Federal court opinions, the Office of Legal Counsel of the Department of Justice, the Merit Systems Protection Board, and the Comptroller General of the United States (General Accounting Office) also issue opinions relevant to the ethics area.

Enforcement of Ethics Laws

When an employee has a potential conflict of interest, ethics officials must help her resolve the conflict (see *Chapter 5: Resolving Conflicts of Interest*). When an ethics official finds evidence that an employee has already violated an ethics criminal statute or regulation, she must refer that evidence to the appropriate authority for action (see *Section 5.8: Processing Ethics Violations* for information on taking action against an employee).

Applicability

For employees who are appointed as SPECIAL GOVERNMENT EMPLOYEES the impact of some of the ethics statutes and regulations is reduced. Restrictions imposed upon their private activities are less extensive than those applied to regular employees because their limited time and authority as an employee make them less subject to improper influence. Each section of this chapter makes reference to any reduced impact of statutes and regulations on SGEs.

11.1 CRIMINAL CONFLICT OF INTEREST STATUTES

The criminal restrictions against conflicts of interest are found in chapter 11 of Title 18 of the United States Code (§§ 201-209). This section summarizes two statutes dealing with representations before the Government (§§ 203 and 205), the basic financial conflict of interest statute (§ 208) and the prohibition against outside supplementation of Government salary (§ 209). Additionally, this section briefly discusses § 201 (bribery and gratuities) and § 207 (post-employment restrictions). Pursuant to a Memorandum of Understanding with the Department of Justice, the Office of Government Ethics can provide interpretive guidance on Sections 202 through 209. The agreement does not allow OGE to render advice on Section 201.

Enlisted Members of the Armed Forces

These statutes, except for 18 U.S.C. § 201, do not apply directly to enlisted members of the armed forces, because they are excluded from the definition of employee in 18 U.S.C. § 202.

Compensation for Representational Services

18 U.S.C. § 203

This statute bars an employee from seeking or accepting compensation for representing another before the executive branch or the courts. It is not limited to matters before the employee's agency. This proscription includes the following elements:

- the employee must seek, accept, or agree to receive or accept compensation;
- the compensation must be for representational services (designed to influence rather than information-seeking or behind-the-scenes assistance) which are provided during his Federal employment, whether or not the employee renders the services personally or through another;
- the representational services must be in relation to a particular matter in which the United States is a party or has a direct and substantial interest; and
- the representation must be before any department, agency, court or other specified entity (not including Congress).

Outside positions, such as with a Government contractor, could lead to violations of the statute, depending on how the employee is compensated. A salaried contractor employee may be less likely to violate § 203 than one who shares in fees the company accepts for representations before the Government. Attorneys entering Government service from a law firm that practices before Federal entities should be especially aware of this statute. They may violate it if they receive partnership shares or contingency fees for cases that the firm handles before the Government while the attorney in question is a Government employee. This can be avoided by ensuring that any continuing compensation from the firm excludes income from these cases.

The statute contains exceptions for representation as part of official duty, testimony under oath, and certain representations of the employee's spouse, child, parent, or persons or estates served as a FIDUCIARY.

Section 203 also contains less restrictive standards for SPECIAL GOVERNMENT EMPLOYEES (SGEs). For SGEs, the § 203 ban applies only in relation to a particular matter *involving specific parties:*

- In which the employee participated personally and substantially as a Government employee; or
- which is pending in the employee's agency, if he has served more than 60 days as an employee with that agency during the preceding 365 days.

Additionally, the § 203 ban does not prevent SGEs from representing someone in the performance of work under a Government grant or contract if the agency head certifies in the Federal Register that it is required in the national interest.

Representation with or without Compensation

18 U.S.C. §205

This statute in many respects parallels the previously discussed statute (§ 203) but extends to situations where the employee does not receive any compensation. This proscription includes the following elements:

- the employee must be acting as agent or attorney for anyone, other than himself, whether or not for compensation;
- services must be representational (designed to influence rather than information-seeking or behind-the-scenes assistance);
- the employee's representations must be made before *any* department, agency, court or other specified entity (not including Congress); *and*
- the employee's representation must be made in relation to a particular matter in which the United States is a party or has a direct and substantial interest.

The law also prohibits receipt of any gratuity, or any share of or interest in a claim against the United States, in consideration for assisting in the prosecution of such claim.

Representational services for a friend or acquaintance are banned by the statute. Activities undertaken in order to carry out the responsibilities of outside positions can also lead to violations of the statute, such as when employees serving on boards of organizations represent them in seeking Government grants or other action. The statute precludes *pro bono* representation by Government attorneys before any Federal agency or any court in cases where the United States is a party or has a direct and substantial interest.

The statute contains exceptions for representation as part of official duty, testimony under oath, representation in certain personnel administration proceedings, representation of certain nonprofit organizations, and certain representation of the employee's spouse, child, parent, or persons or estates served as a fiduciary. It also limits the scope of the restriction for SGEs in the same manner as 18 U.S.C. §203.

Official Acts Affecting Financial Interests

18 U.S.C. § 208

This law bars an employee, including an SGE, from participating personally and substantially in an official capacity in any particular Government matter that would have a direct and predictable effect on his own or his imputed financial interests. The law imputes to the employee the financial interests of the following, if he has knowledge of these interests:

- his spouse;
- his MINOR CHILDREN;
- his general partner;
- any organization with which he serves as an officer, director, trustee, general partner or employee; and
- any person or organization with whom he is negotiating or has any arrangement concerning future employment.

Key elements of this statute include:

- participation that is personal and substantial;
- participation in an official capacity;
- participation in a particular matter, such as a proceeding, application, request, contract, claim, controversy, charge, or accusation; and
- the outcome of the matter would directly and predictably affect the employee's personal or imputed financial interests.

Unless an employee divests the interest causing disqualification or qualifies for a statutory waiver, she must avoid participating in any matter affecting her own financial interests or those imputed to her. An agency may require her to divest an interest if it determines that a conflict exists between the financial interest and her duties or the accomplishment of the agency's mission (see *Chapter 5: Resolving Conflicts of Interest*).

The statute provides for four types of waivers or exemptions:

1) agency determination that a financial interest is not so substantial as to affect integrity of the employee's services;
2) regulatory exemptions issued by OGE;
3) agency determination that the need for an SGE's services on an advisory committee outweighs potential for conflict with an interest;
4) certain financial interests arising from native American birthrights.

See 5 C.F.R. Part 2640 for more guidance on 18 U.S.C. § 208 and for a listing of regulatory exemptions.

Supplementation of Government Salary

18 U.S.C. § 209

This statute is designed to prevent the divided loyalties that result from the receipt of private payments during Government service. It prohibits an employee, other than a SPECIAL GOVERNMENT EMPLOYEE (SGE), from receiving any salary or any contribution to or supplementation of salary from any source other than the United States as compensation for services as a Government employee. Reviewers should look for possible violations of this prohibition when a filer reports certain payments or gifts that appear to be related to official duties or when a filer reports severance or other payments that he receives from a former employer after entering the Government.

Key elements of Section 209 include:

- receiving salary or any contribution to or supplementation of salary as a Government employee, if it is provided:

  1. by any source other than the United States; and
  2. to compensate for services as an employee of the United States.

While the first two elements are often relatively straightforward, the focus of a section 209 inquiry usually is on the last element--whether the compensation in question is for services as an employee of the United States. In many cases, the answer depends largely upon the intent of the parties.

The statute contains an exception for participation in bona fide pension, retirement, group insurance, and other employee welfare or benefit plans maintained by a former employer. The statute also contains exceptions for payments received under the Government Employees Training Act, for contributions from state or local governments, and for payments in certain other situations of more limited applicability.

Bribery and Gratuities

18 U.S.C. §201
This statute is solely interpreted by the Department of Justice

The bribery statute prohibits public officials (a term even more inclusive than "Government employee") from corruptly seeking, receiving, or agreeing to accept anything of value for themselves or others, in return for:

- being influenced in the performance of an official act;
- being influenced to aid in the commission of a fraud on the United States; or
- being induced to do or omit any act in violation of official duty.

This statute also prohibits current and former public officials from seeking, receiving, or agreeing to accept anything of value as a gratuity for or because of any official act which they have performed or are to perform, unless provided by law for the proper discharge of official duty.

Post-Employment Restrictions

18 U.S.C. § 207
5 C.F.R. Parts 2637 & 2641

A criminal statute prohibits or restricts all former employees, including former SGEs, from switching sides to represent someone back to the Government on *particular matters involving specific parties* in which they have personally and substantially participated or which were under their official responsibility. Additional restrictions apply for trade or treaty negotiators, senior employees and very senior employees. Because this statute is not directly related to financial disclosure issues, its full details have not been summarized here. For purposes of counseling departing employees, agencies should refer to the regulatory guidance which contains extensive discussion and examples.

Penalties

18 U.S.C. § 216
18 U.S.C. §§ 3571 & 3559

With the exception of § 201, the criminal offenses discussed in this section are punishable as follows:

- for willful violations (felony), imprisonment not to exceed 5 years and a fine of up to $250,000 or two times the amount of an employee's gain or the Government's loss;

- for other violations (misdemeanor), imprisonment not to exceed 1 year and a fine of up to $100,000 or two times the amount of an employee's gain or the Government's loss.

In addition, the Attorney General may bring a civil action in United States district court, where a civil fine may be imposed of up to $50,000, or the amount of compensation received, whichever is greater, and she may seek injunctive relief in United States district court to order cessation of conduct which violates these statutes.

Section 201 carries its own separate penalties, ranging up to 15 years imprisonment, a fine up to three times the value of any bribe, and disqualification from holding any "U.S. office of honor, trust, or profit."

11.2 STANDARDS OF CONDUCT REGULATIONS

E.O. 12674
5 C.F.R. Part 2635
5 U.S.C. §§ 7351 & 7353

The Standards of Ethical Conduct for Employees of the Executive Branch replaced each agency's standards of conduct regulations with a uniform set of regulations applicable to all Executive branch employees including SPECIAL GOVERNMENT EMPLOYEES (SGEs). The following synopsis provides only a shorthand reference to lengthier provisions in the regulations. Readers must refer to the regulations themselves in resolving ethical issues or they may seek the advice of an agency ethics official.

THE PRINCIPLES OF ETHICAL CONDUCT

SUBPART A: GENERAL PROVISIONS

The following principles of ethical conduct apply to all officers and employees of the executive branch and many form the basis for specific standards set forth in the regulation.

General Principles

- Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.
- Employees shall not hold financial interests that conflict with the conscientious performance of duty.
- Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.
- An employee shall not, except pursuant to the exceptions in subpart B, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.
- Employees shall put forth honest effort in the performance of their duties.
- Employees shall make no unauthorized commitments or promises of any kind purporting to bind the Government.
- Employees shall not use public office for private gain.

- Employees shall act impartially and not give preferential treatment to any private organization or individual.
- Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.
- Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.
- Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.
- Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those -- such as Federal, State and local taxes -- that are imposed by law.
- Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.

Appearance Standard

- Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or these Standards of Ethical Conduct.

Employees shall apply the principles stated above in weighing the propriety of conduct not otherwise addressed in the regulations.

Employees shall judge whether circumstances will violate the appearance principle, the last principle set forth above, from the perspective of a reasonable person with knowledge of the relevant facts.

There are special rules for determining which standards apply to employees detailed to other agencies, to other branches of the Federal Government, to State or local governments or to international organizations.

Enforcement
5 C.F.R. § 2635.106

A violation of the regulatory standards may be cause for corrective action or for disciplinary action against an employee. There are criminal penalties for violations of criminal statutes referred to in the regulations.

Employees are urged to seek the advice of agency ethics officials. Disciplinary action for violation of regulatory standards will not be taken against an employee who relies in good faith on such advice. However, employees may still be subject to prosecution for criminal violations, although the Department of Justice will take that advice in into consideration.

Definitions

Note that the terms used throughout the Standards of Ethical Conduct, such as "agency designee" and "special Government employee," are defined in subpart A. Terms of more limited applicability are defined in the subparts or sections to which they apply.

BASIC PROHIBITION ON GIFTS FROM OUTSIDE SOURCES

SUBPART B: GIFTS FROM OUTSIDE SOURCES

An employee shall not solicit or accept a gift given because of his official position or from a prohibited source. A *prohibited source* is defined as any person, including any organization more than half of whose members are persons:

- Seeking official action by his agency;
- Doing or seeking to do business with his agency;
- Regulated by his agency; or
- Substantially affected by the performance of his duties.

Exclusions from the Definition of a Gift

The term "gift" includes almost anything of monetary value. It does *not,* however, include:

- Coffee, donuts and similar modest items of food and refreshments when offered other than as part of a meal;
- Greeting cards and most plaques, certificates and trophies;
- Prizes in contests open to the public;
- Commercial discounts available to the general public or to all Government or military personnel;
- Commercial loans on standard terms, and pensions and similar benefits;
- Anything paid for by the Government, secured by the Government under Government contract or accepted by the Government in accordance with a statute; or
- Anything for which the employee pays fair market value.

Exceptions to the Gift Restrictions

Subject to the limitations noted below, there are exceptions which will permit an employee to accept:

- Unsolicited gifts with a market value of $20 or less per occasion, aggregating no more than $50 in a calendar year from any one source (this exception does not permit gifts of cash or investment interests);
- Gifts clearly motivated by a family relationship or personal friendship;
- Commercial discounts and similar benefits offered to groups in which membership is not related to Government employment or, if membership is related to Government employment, where the same offer is broadly available to the public through similar groups and certain benefits offered by professional associations or by persons who are not prohibited sources.
- Certain awards and honorary degrees;
- Gifts resulting from the outside business activities of employees and their spouses;
- Travel and entertainment in connection with employment discussions;
- Certain gifts from political organizations;
- Free attendance provided by the sponsor of an event for the day on which an employee is speaking or presenting information at the event;
- Free attendance provided by the sponsor of a widely-attended gathering of mutual interest to a number of parties where the necessary determination of agency interest has been made;
- Invitations to certain social events extended by persons who are not prohibited sources, provided no one is charged a fee to attend the event;
- Certain gifts of food and entertainment in foreign areas; or
- Gifts accepted by the employee under a specific statute, such as 5 U.S.C. 4111 and 7342, or pursuant to a supplemental agency regulation.

Limits on the Use of the Exceptions

None of the exceptions noted above allow an employee to solicit or coerce the offering of a gift or to accept gifts:

- In return for being influenced in the performance of official duties;
- In violation of any statute;
- So frequently as to appear to be using public office for private gain; or
- In violation of applicable procurement policies regarding participation in vendor promotional training.

Disposition of Gifts

When an employee cannot accept a gift, the employee should normally decline the gift or pay the donor its market value. If the gift is a tangible item, the employee may instead return the gift. Subject to approval, perishable items may be donated to a charity, destroyed or shared within the office.

BASIC PROHIBITION ON GIFTS BETWEEN EMPLOYEES

SUBPART C: GIFTS BETWEEN EMPLOYEES

An employee shall not:

- Give or solicit for a gift to an official superior; or
- Accept a gift from a lower-paid employee, unless the donor and recipient are personal friends who are not in a superior-subordinate relationship.

Definitions

"Gift" has the same meaning as in subpart B. Carpooling and similar arrangements are excluded where there is a proportionate sharing of the cost and effort involved.

"Official superior" includes anyone whose official responsibilities involve directing or evaluating the performance of the employee's official duties or those of any other official superior of the employee. The term is not limited to immediate supervisors but applies to officials who are higher in the supervisory chain.

Exceptions

An employee may accept gifts that fit the following exceptions (unless he coerced a subordinate into giving the gift):

1 . On an occasional basis, including birthdays and other occasions when gifts are traditionally exchanged, given and accepted:

- Items other than cash aggregating $10 or less per occasion;
- Food and refreshments shared in the office;
- Personal hospitality at a residence;
- Appropriate hostess gifts; and
- Leave sharing under OPM regulations;

2. On infrequent occasions of personal significance, such as marriage, and on occasions that terminate the superior-subordinate relationship, such as retirement, giving and accepting gifts appropriate to the occasion; and

3. Voluntary contributions of nominal amounts to be made or solicited for gifts of food and refreshments to be shared in the office or for group gifts on occasions described in the preceding paragraph, such as a marriage.

DISQUALIFYING FINANCIAL INTERESTS

SUBPART D: CONFLICTING FINANCIAL INTERESTS and 5 C.F.R. Part 2640

Under the criminal conflict of interest statute, 18 U.S.C. § 208, an employee is prohibited from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or certain other persons have a financial interest, if the particular matter will have a direct and predictable effect on his own or that person's financial interests. In addition to matters that affect his own financial interests, this prohibition applies to particular matters that affect the financial interests of the employee's spouse, MINOR CHILD or general partner, or any person the employee serves as officer, director, trustee, general partner or employee. (The prohibition also applies to particular matters that affect the financial interests of a person with whom the employee is negotiating for or has an arrangement concerning future employment. However, this aspect of the statute is addressed more specifically in subpart F.)

Disqualification

An employee may disqualify herself by not participating in the matter. Although an employee should notify the person responsible for his assignment of the need to disqualify, a written disqualification statement is necessary only if an ethics agreement with the Senate confirming committee requires it or an agency ethics official or the person responsible for the employee's assignment requests it.

Other Solutions

Disqualification is not required if the financial interest is the subject of one of the statutory waivers or exemptions described in 5 C.F.R. Part 2640 or if the employee has sold or otherwise divested the conflicting interest (see *Section 5.3: Waivers and Exemptions* for more information).

Prohibited Interests

In general, employees may acquire and hold financial interests subject only to the disqualification requirement imposed by 18 U.S.C. § 208. However, some agencies have statutes that prohibit employees from acquiring or holding particular interests. In addition, agencies have the authority, by supplemental regulation, to prohibit employees from acquiring or holding certain financial interests. Agencies also may prohibit an individual employee from holding financial interests where disqualification would impair the employee's ability to perform the duties of his position or adversely affect the agency's mission. An employee directed to divest a financial interest may be eligible for special tax treatment of the transaction.

CERTAIN PERSONAL AND BUSINESS RELATIONSHIPS

SUBPART E: IMPARTIALITY IN PERFORMING OFFICIAL DUTIES

Even though Subpart D may not require disqualification, an employee should not participate in an official capacity in certain matters without first obtaining specific authorization if, in his judgment, persons with knowledge of the relevant facts would question his impartiality in those matters. The matters covered include a particular matter involving specific parties if the employee knows that the matter is likely to affect the financial interests of a member of his household or that one the following persons is a party or represents a party in the matter:

- A person with whom the employee has or seeks a business or other financial relationship;
- A member of the employee's household or relative with whom the employee has a close personal relationship;
- A person the employee's spouse, parent or child serves or seeks to serve as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee;
- A person the employee has, in the past year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee; or
- An organization, other than a political party, in which the employee is an active participant.

Disqualification and Authorization

An employee may disqualify himself or herself in the same manner as when required under subpart D for disqualifying financial interests. Notwithstanding the employee's determination that his impartiality would be questioned, the agency designee can authorize the employee to participate in the matter based on a determination that the Government's interest in the employee's participation outweighs the concern that a reasonable person would question the integrity of agency programs and operations. The authorization permitted by subpart E cannot be given, however, if the employee's disqualification is also required by subpart D. Employees should use the process set forth in subpart E to decide whether they should or should not participate in matters not highlighted above in which their impartiality is likely to be questioned.

Extraordinary Payments from Former Employers

An employee is disqualified for 2 years from participating in any PARTICULAR MATTER in which his former employer is a party or represents a party if, prior to entering Federal service, that employer gave him an extraordinary payment in excess of $10,000. Note that a routine severance or other payment made under an established employee benefits plan is not an extraordinary payment. There is authority to waive all or part of this disqualification requirement.

DISQUALIFICATION WHILE SEEKING EMPLOYMENT

SUBPART F: SEEKING OTHER EMPLOYMENT

An employee is prohibited from participating in an official capacity in any particular matter that, to his knowledge, has a direct and predictable effect on the financial interests of a person with whom he is seeking employment. For this purpose, "employment" means any form of non-Federal employment or business relationship involving the provision of personal services.

Definitions

"Seeking employment" includes bilateral negotiations with another, mutually conducted with a view to reaching an agreement regarding possible employment. It also includes conduct short of negotiations, such as sending an unsolicited resume or other employment proposal. It can include employment contacts by or through an agent or intermediary. It does not include simply:

- Rejecting an unsolicited employment overture;
- Requesting a job application; or
- Sending an unsolicited resume or other employment proposal to a person affected by performance of the employees duties only as a member of an industry or other discrete class.

Having begun to seek employment, an employee generally continues to be seeking employment until he or the prospective employer rejects the possibility of employment and all discussions end. An employee is no longer seeking employment with the recipient of his unsolicited resume or other employment proposal after two months have passed with no indication of interest in employment discussions from the prospective employer.

Disqualifications and Other Solutions

Disqualification during negotiations can be accomplished in the same manner as when required under subpart D for disqualifying financial interests. If the employee's conduct in seeking employment amounts to negotiations, the employee can participate in the matter affecting his prospective employer only if granted an individual waiver described in subpart D. If his conduct falls short of negotiations, the employee may be authorized to participate using the procedures in subpart E.

Application of Criminal Restrictions

An employee may not participate in a particular matter that, to his knowledge, has a direct and predictable effect on the financial interests of anyone with whom he has an arrangement concerning future employment. In this case, an employee may be able to participate in a particular matter affecting a future employer only if he has received an individual waiver described in subpart D.

USE OF PUBLIC OFFICE FOR PRIVATE GAIN

SUBPART G:
MISUSE OF POSITION

An employee shall not use his public office for his own private gain or for the private gain of friends, relatives or persons with whom he is affiliated in a non-governmental capacity, or for the endorsement of any product, service or enterprise. In particular, an employee shall not use his Government position, title or authority:

- In a manner intended to induce another to provide any benefit to himself or to friends, relatives or affiliated persons;
- In a manner that could be construed to imply that his agency or the Government sanctions or endorses his personal activities or those of another; or
- To endorse any product, service or enterprise except in furtherance of statutory authority to do so, in accordance with agency programs to give recognition for achievement or to document compliance with agency standards or requirements.

Nonpublic Information

An employee shall not engage in a financial transaction using nonpublic information, or allow the improper use of nonpublic information to further his own private interests or those of another. Information that is "nonpublic" includes information the employee knows or reasonably should know:

- Is routinely exempt from disclosure under the Freedom of Information Act or protected from disclosure by statute;
- Is designated as confidential by an agency; or
- Has not actually been disseminated to the general public and is not authorized to be made available to the public on request.

Government Property

An employee has a duty to protect and conserve Government property and to use Government property only for authorized purposes. Authorized purposes are those for which Government property is made available to the public or those purposes authorized in accordance with law or regulation.

Official Time

Unless authorized in accordance with law or regulation to use such time for other purposes, an employee shall use official time in an honest effort to perform official duties. And, an employee shall not encourage, direct, coerce or request a subordinate to use official time to perform activities other than those required in the performance of official duties or those authorized in accordance with law or regulation.

OUTSIDE POSITIONS

SUBPART H: OUTSIDE ACTIVITIES

In addition to the standards set forth in subpart H, an employee's outside employment and other activities must comply with all ethical requirements set forth in the subparts A through G of the regulation, including the requirement to avoid even the appearance of using public office for private gain. For example, the prohibition against use of Government property for unauthorized purposes would prohibit an employee from using the agency photocopier to promote an outside speaking tour.

Restrictions Imposed by Other Laws

An employee's outside employment and other activities must comply with applicable laws other than the Standards of Ethical Conduct. Several are listed in subparts H and I. Outside activities frequently raise questions about the following:

- The restrictions in 18 U.S.C. 203 and 205 on employees engaging in representational activities before the United States;
- The constitutional prohibition against accepting any office, title or compensation from a foreign government; and
- The Hatch Act, which prohibits most employees' participation in certain partisan political activities.

Prior Approval for Outside Activities

When supplemental agency regulation require it, an employee must obtain approval before engaging in outside employment or activities.

Conflicting Outside Activities

An employee shall not engage in outside employment or activities prohibited by statute or by supplemental agency regulation, or that would materially impair the ability to perform his official duties by requiring his disqualification under subpart D or E.

Restrictions on Receipt of Compensation

With certain exceptions, Presidential appointees to full-time noncareer positions shall not receive any outside earned income for outside employment or other outside activities performed during that appointment. Higher-level noncareer employees may not, in any calendar year, receive outside earned income which exceeds 15 percent of the rate of pay for Level II of the Executive Schedule. These noncareer employees also may not receive any compensation for teaching without prior approval, serve as officers or board members of outside entities, practice certain professions that involve a fiduciary relationship or be affiliated with entities that practice them.

Expert Witnesses

In the absence of specific authorization, an employee shall not represent anyone other than the United States as an expert witness in any proceeding before a court or agency of the United States if the United States is a party or has a direct and substantial interest. The restriction applies even though no compensation is received. A less restrictive standard applies to special Government employees.

Teaching, Speaking and Writing

An employee shall not receive compensation, including transportation, lodging and meals, for teaching, speaking or writing that is related to his official duties. Teaching, speaking or writing is "related to an employee's official duties" if:

- The activity is undertaken as part of his official duties;
- The invitation to engage in the activity was extended primarily because of his official position;
- A person whose interests may be affected by the employee's official duties extends the invitation or the offer of compensation;
- The information draws substantially on nonpublic information; or
- For most employees, the subject of the teaching, speaking or writing deals in significant part with any matter presently assigned to the employee, any matter to which the employee had been assigned in the previous one-year period, or to any ongoing or announced agency policy, program or operation. Additional restrictions apply to certain noncareer employees. SPECIAL GOVERNMENT EMPLOYEES are subject to less restrictive standards.

Teaching Exception

An employee may receive compensation for teaching certain courses, notwithstanding that the subject matter is related to his official duties and notwithstanding that he may have been offered the opportunity because of his official position.

Fundraising

Provided that he does not otherwise violate the Standards of Ethical Conduct, an employee may engage in charitable fundraising activities in a personal capacity if he does not use his official title, position or authority to further that effort or personally solicit funds or other support from subordinates or from anyone known to him to be a prohibited source for purposes of the gift restrictions in subpart B. A SPECIAL GOVERNMENT EMPLOYEE, however, may solicit charitable contributions from a prohibited source as long as that person does not have interests affected by the performance of his official duties.

Financial Obligations

Employees shall satisfy in good faith all just financial obligations.

11.3 OTHER CONFLICT OF INTEREST PROVISIONS

Honoraria Ban

National Treasury Employees Union v. United States, 115 S.Ct. 1003(1995)
OGE DAEOgram of February 28,1996

The general ban on receipt of HONORARIA by Government employees, which Congress enacted in 1989, is no longer applicable. The Supreme Court overturned the ban in February 1995, and the Department of Justice clarified its total nullification in February 1996 (see *Section 6.4: Honoraria*). Therefore, the statute no longer applies.

The Standards of Ethical Conduct, however, continue to prohibit most compensated teaching, speaking or writing that relates to official duty. See Subpart H of the Standards of Conduct Summary in *Section 11.2: Standards of Conduct Regulations*.

Foreign Gifts and Foreign Agents

U.S. Constitution, Article I, Section 9, Clause 8
5 U.S.C. § 7342
18 U.S.C. §219
22 U.S.C. §611 *et seq.*

The U.S. Constitution prohibits a Government employee from accepting any gift, office, title, or emolument, including salary or compensation, from any foreign government except as authorized by Congress. The Foreign Gifts and Decorations Act provides implementation. In addition, under a criminal statute, an employee may not act as an agent of a foreign principal, including a foreign government, corporation, or person, if the employee would be required to register under the Foreign Agents Registration Act.

Agency-Specific Conflict of Interest Statutes

In addition to the laws and regulations listed above, some employees may be subject to agency-specific statutes which ban or restrict their financial interests and affiliations.

Post-Employment Restrictions

18 U.S.C. § 207
5 C.F.R. Parts 2637 & 2641
41 U.S.C. § 423(f)

In addition to reviewing a departing employee's termination financial disclosure report, an ethics official should advise her of the key laws that may restrict post-Government employment activities, including any laws that are specific to the department or agency (see *Section 11.1: Criminal Conflict of Interest Statutes* for a brief discussion of 18 U.S.C. § 207). The Office of Federal Procurement Policy Act and the implementing Federal Acquisition Regulations contain additional post-employment restrictions for former procurement officials.

11.4 SPECIAL LIMITATIONS ON SENIOR NONCAREER EMPLOYEES

Statutory Restrictions

5 U.S.C. App. §§ 501-505
5 C.F.R. § 2635.804
5 C.F.R. §§ 2636.301-307
OGE 90 X 20, & 90 X 24

Noncareer employees, other than SPECIAL GOVERNMENT EMPLOYEES (SGEs), whose rate of basic pay is at or above 120% of the rate of basic pay for GS-15-01 are subject to several special restrictions, *if* serve in positions such as the Senior Executive Service (or SES-type positions), SCHEDULE C (or similar political-type) positions, or Presidential appointment to an Executive Schedule position. The regulation should be consulted for specific "covered positions." These provisions are enforced through agency disciplinary or corrective action, and there are Federal civil penalties up to $11,000 or the amount of any improperly received compensation. Agencies should refer violations of these statutes to the Civil Division, Federal Programs Branch, Department of Justice, Washington, DC.

15% Outside Earned Income Limitation

Persons who are covered noncareer employees may not have outside earned income attributable to a calendar year which exceeds 15 percent of the annual rate of basic pay for Level II of the Executive Schedule. These restrictions apply on a *pro rata* basis to persons who enter into covered noncareer positions after January 1st of any calendar year. Outside earned income means wages, salaries, honoraria, commissions, professional fees, and any other form of compensation for services other than salary, benefits, and allowances paid by the U.S. Government. The regulation defines several exclusions.

Acceptance of Compensation for Specified Activities

A covered employee is prohibited from receiving compensation for:

- Practicing a profession which involves a fiduciary relationship;
- Affiliating with or being employed to perform professional duties by a firm, partnership, association, corporation, or other entity which provides professional services involving a fiduciary relationship; or
- Serving as an officer or member of the board of any association, corporation, or other entity.

Use of Name

Covered employees may not permit their names to be used by any firm, partnership, association, corporation, or other entity which provides professional services involving a fiduciary relationship.

Advance Approval for Teaching

A covered employee may receive compensation for teaching only when the DAEO specifically authorizes it in advance.

Executive Order Restrictions

Outside Earned Income Ban

E.O. 12674, § 102
5 C.F.R. § 2635.804

Additional restrictions apply to full-time, noncareer Presidential appointees. They are prohibited from receiving any earned income for outside employment or activity performed during their Presidential appointment. Outside earned income is defined in the same manner as for the 15% restriction on outside earned income discussed above.

12.0 PROCESSING PRESIDENTIAL NOMINEE REPORTS

5 C.F.R. § 2634.201(c)

Most individuals nominated by the President, or individuals for whom the President-elect has stated an intent to nominate, to a position requiring the advice and consent of the Senate (a PAS POSITION) must file an SF 278. Foreign Service officers, and all officers in the uniformed services are exempt from filing, unless otherwise specified by the assigned Senate Committee. In addition to being subject to the conflict of interest criminal statutes and regulations, PAS appointees also have special outside earned income and outside position restrictions (see *Section 11.4: Senior Noncareer Employees*). Reviewers should analyze nominee reports especially thoroughly, given the increased public trust in and scrutiny of these positions. These reports go through an expedited review process.

The Administration needs to discover if a nominee has any investment, financial, or employment linkages with the private sector that could raise issues involving conflicts of interest or the appearance of such conflicts. The White House, OGE, and agency ethics officials work together to identify and resolve issues internally before they become the unfortunate subject of a news media or Congressional inquiry. The White House, OGE, and agency ethics officials share the responsibility for educating nominees about full disclosure and substantive matters relating to their reports.

The Expedited Nominee Review Process

PHASE ONE:
Before Nomination
5 C.F.R. § 2634.605(c)

The Presidential nominee financial disclosure process has three distinct phases. It begins before formal nomination. At this point, all information relating to the nominee is strictly confidential.

1. The Office of Presidential Personnel and the Office of the White House Counsel request that prospective nominees who will serve full-time complete a public financial disclosure report. Those who will serve less than 60 days in a calendar year file an SF 278 if the Senate confirming committee requires that they do so. (See *Section 2.1: Officials Required to File*).

2. The White House forwards copies of the report to the agency's DESIGNATED AGENCY ETHICS OFFICIAL (DAEO) prior to nomination, and to OGE. Potential nominees to be U.S. Ambassadors, U.S. Attorneys, U.S. Marshals, and some Department of Defense positions file reports directly with the DAEO. (If a report is filed directly with an agency, the agency is responsible for getting a copy of the draft to OGE and a copy to the White House. However, U.S. Attorney and U.S. Marshal reports are only provided to OGE.)

3. OGE and the agency ethics official review the report for technical completeness and conflict of interest issues, in consultation with the White House Counsel's Office.

PHASE TWO: After Formal Nomination

Next, the President formally nominates the person. After the nomination is forwarded to the Senate, the review process may proceed very rapidly.

1. Within three working days, the DAEO makes certain that the final version of the report is complete and submits the certified report to OGE. With the report, the DAEO must include an opinion letter which states that the information in the attached SF 278 discloses no conflict of interest under applicable laws and regulations and that discusses any issues raised.

   In addition to the DAEO's certification, there must be some written documentation from the prospective employee providing details on any ethics agreements into which she plans to enter. These letters constitute the ethics agreement between the agency and the filer and may be publicly releasable.

2. If OGE finds no unresolved conflict, OGE certifies the report and forwards it to the appropriate Senate confirmation committee. OGE includes, with the report and any ethics agreements for the particular nominee, an opinion letter stating that, on the basis of the information reported, the nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Prior to the date of the first Senate committee hearing to consider a PAS nomination:

PHASE THREE: Five Days before the Confirmation Hearing
5 C.F.R. § 2634.606

1. The nominee must make the report current with respect to earned income and honoraria received by him or his spouse as of five days before the date of the first hearing. The filer accomplishes this by sending a letter to the Chairman of the Senate committee considering the individual's nomination.

2. The filer should submit copies of this five-day update letter to the relevant DAEO and to OGE.

Responsibilities of the DAEO

While other ethics officials may review the report, the DAEO's certification responsibilities are nondelegable with respect to nominees. The DAEO personally, or the alternate DAEO in the DAEO's absence, must certify the SF 278. The DAEO is also responsible for transmitting to OGE evidence of compliance with the nominee's ethics agreements, within three months after confirmation.

Part-time PAS Nominees and Additional Financial Information

Congress May Require More Information

Some Congressional committees request, as a condition of confirmation, that nominees who serve less than 60 days complete an SF 278. In addition, Congressional committees may require additional financial information from any Presidential nominee referred to that committee. If requested by confirming committees, OGE will also review reports for positions in other branches of the Government.

Schedule B

Nominees Already Subject to Annual Filing May Wish to Complete Schedule B

The statute does not require nominees to complete Schedule B (transactions and gifts). If, however, nominees who already serve in a position covered by the public financial disclosure requirements do not complete Schedule B then they must file separate annual reports for their pre-existing positions. OGE recommends that nominees complete Schedule B if they already serve in covered positions. This Schedule B, however, should not go forward to the Senate. Rather, the agency should insert a blank Schedule B for nominee purposes and then insert the filled out Schedule B into their own records to create an annual report.

Consulting Other Forms

In addition to the SF 278, nominees also complete a White House Personal Data Statement, an FBI personal history form, and separate questionnaires required by the Senate committees. These forms call for some of the same information, but each form approaches it in a different way. Before returning to filers with SF 278 questions, DAEOs should review any of the other forms available to them to ensure consistency and to answer questions with the information already supplied.

Notification of Ethics Agreements

5 C.F.R. § 2634.803

In addition to the DAEO's opinion letter outlining the ethics agreements, the DAEO must promptly inform OGE of any ethics agreements made after submission of the disclosure report, including any made between the Senate committee and the nominee. Likewise, OGE must inform the Senate committee and the DAEO of any ethics agreements it makes with the nominee.

Committee Practices

The various Senate committees that consider confirmation of Presidential nominees have slightly different procedures concerning public financial disclosure reports and resolving conflicts of interest. For example, the Senate Armed Services Committee has had an informal rule that generally requires divestiture, rather than waiver or recusal, in the case of a conflicting holding. Individual committees should be consulted for their current practices.

13.0 SF 278 CASE STUDIES

This chapter provides the reviewer with an opportunity to practice reviewing reports. It contains two case studies that emphasize the basics of reviewing an SF 278.

In the **first study,** you adopt the filer's perspective and complete an SF 278 based on a listing of financial interests. Your goal is to complete the form correctly and completely. A sample form follows immediately after the statement of filer's interests.

The **second study** shifts to the perspective of the reviewer. You must review an incorrectly completed SF 278 and seek any needed additional information. This study tests your understanding of how to review a completed SF 278 for technical accuracy and for conflicts of interest.

13.1 CASE 1: YOU ARE THE FILER -- ALBERT A. ALPHA

Thanks to your outstanding career as a private-sector attorney, you have been nominated by the President to be the Associate Commissioner for Regulatory Affairs for the Food and Drug Administration, Department of Health and Human Services. You were officially nominated on September 15, 2003, and your position will not require confirmation by the Senate.

You were formerly a member of the law firm of Alpha and Omega, (7541 Lancelot Ln., Short Hills, NJ 20305; (212) 589-2983), where you had been a partner since 1990. Pursuant to a partnership agreement, you received a lump sum payment from your capital account. The firm also paid you your partnership share, calculated on service performed through 09/1/03 and valued at $180,000 (with a breakdown of $103,000 for calendar year 2002 and $77,000 for eight months of service in 2003). Your 401(k) from the firm is valued at $75,000, and it is invested in the Fidelity Dividend Growth Fund. Your 401(k) earned $7,200 in interest, dividends, and capital gains in 2002 and $10,100 in 2003 up through September 1st.

In addition to your 401(k) plan, you have three IRAs. One is invested in the Liberty High Income Bond Fund, worth $10,000; the second is in the Fidelity Magellan Fund and worth $11,500; and the third is in the Fidelity Retirement Growth Fund and worth $10,980. In 2002, the funds earned $210, $0, and $510 in dividends respectively, but no capital gains were made. In 2003, through September 1st, the funds generated $300, $250 and $10 in dividends and $1000, $450 and $750 in capital gains respectively. You also hold $75,000 worth of stock in Pfizer, which generated $1,240 of dividends in 2002 and $725 of dividends as of September 1, 2003.

In June 2001 you became one of four general partners equally invested in a bio-tech research company called Obelesk Research located in Princeton, NJ. The company's assets were estimated at $1.2 million as of September 1, 2003. In addition, your partnership income for 2002 was $3,750, and you estimate $4,200 for January 1 through September 1, 2003.

Your spouse earns $65,000 annually as an employee of the Ford Foundation in New York City and has a TIAA/CREF retirement plan, all invested in the CREF Variable Annuity, Bond Market fund. It has a fair market value of $200,000 and accrued $5,600 in interest. Jointly you and your spouse own a $285,000 rental house at 45 Longwood Drive, Alexandria, VA. You've collected $42,000 in rents during the reporting period but had a net loss because of $50,000 in expenses. You carry a 30-year mortgage on the rental property. You acquired the mortgage from Citicorp, Washington, DC in 1995 at 9% interest. In January of 2002, the amount owed on the loan was $255,000. Your statements show the amount owed dropped to $228,000 by August 2003.

While a partner at the law firm of Alpha and Omega, you represented the following clients between January 2001 and August 31, 2003, and the firm billed the indicated amount for services you rendered to each client: Jansen Pharmaceuticals, Inc. of Trenton, NJ ($8,750 [1/01-11/01]); Alliance Pharm. Corp., New Haven, CT ($6,150 [2/01-5/01]; Bluefield Medical School, Bluefield, NJ ($10,740 [3/02-8/03]); AmeriHealth Systems, Atlanta, GA ($4,500 [9/02-9/03]); and Muehlenberg Hospital, Plainfield, NJ ($15,950 [2/03-7/03]).

You should now obtain a blank SF 278 and complete it as if you were this filer. After you are satisfied with your work, examine the completed SF 278 on the following pages and compare it to the form you completed. If you do not understand the differences between your form and the form on the following pages, look to sections in part II of this Guide that explain the disclosure requirements.

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved:
OMB NO. 3209-0001

Date of Appointment, Candidacy, Election, or Nomination *(Month, Day, Year)*	Reporting Status (Check Appropriate Boxes)	Incumbent ☐	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate ☐	Termination Filer ☑ Termination Date *(If Applicable) (Month, Day, Year)*
9/15/03					

Reporting Individual's Name	Last Name: **Alpha**	First Name and Middle Initial: **Albert A.**
Position for Which Filing	Title of Position: **Associate Commissioner for Regulatory Affairs**	Department or Agency *(If Applicable)*: **Food and Drug Administration**
Location of Present Office (or forwarding address)	Address *(Number, Street, City, State, and ZIP Code)*: **7541 Lancelot Lane, Short Hills, NJ 20305**	Telephone No. *(Include Area Code)*: **(212) 589-2983**
Position(s) Held with the Federal Government During the Preceding 12 Months *(If Not Same as Above)*	Title of Position(s) and Date(s) Held:	
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination:	Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☑ No

Certification	Signature of Reporting Individual	Date *(Month, Day, Year)*
I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	**Albert A. Alpha**	**9/10/03**
Other Review (If desired by agency)	Signature of Other Reviewer	Date *(Month, Day, Year)*
Agency Ethics Official's Opinion	Signature of Designated Agency Ethics Official/Reviewing Official	Date *(Month, Day, Year)*
On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).		
Office of Government Ethics Use Only	Signature	Date *(Month, Day, Year)*

Comments of Reviewing Officials *(If additional space is required, use the reverse side of this sheet)*

(Check box if filing extension granted & indicate number of days_____) ☐

(Check box if comments are continued on the reverse side) ☐

Fee for Late Filing

Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a $200 fee.

Reporting Periods

Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

Nominees, New Entrants, and Candidates for President and Vice President:

Schedule A--The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.

Schedule B--Not applicable.

Schedule C, Part I (Liabilities)--The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

Schedule C, Part II (Agreements or Arrangements)--Show any agreements or arrangements as of the date of filing.

Schedule D--The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Agency Use Only

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Supersedes Prior Editions, Which Cannot Be Used. 278-112 NSN 7540-01-070-8444

Reporting Individual's Name
Albert A. Alpha

SCHEDULE A

Page Number
1

Assets and Income
BLOCK A

Valuation of Assets at close of reporting period
BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item.
BLOCK C

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income.

For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse).

None ☐

	Assets and Income	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,01 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	Amount: $201 - $1,000	Amount: $1,001 - $2,500	Amount: $2,501 - $5,000	Amount: $5,001 - $15,000	Amount: $15,001 - $50,000	Amount: $50,001 - $100,000	Amount: $100,001 - $1,000,000	Amount: Over $1,000,000*	Amount: $1,000,001 - $5,000,000	Amount: Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples	Central Airlines Common				X												X						X										
	Doe Jones & Smith, Hometown, State			X																												Law Partnership Income $130,000	
	Kempstone Equity Fund					X								X										X									
	IRA: Heartland 500 Index fund							X						X											X								
1	**Alpha & Omega (Law Firm), Short Hills, NJ**	√																														**Partnership Income $180,000**	
2	**Alpha & Omega 401(k) (Fidelity Dividend Growth Fund)**				√									√												√							
3	**Liberty High Income Bond Fund (IRA)**		√											√									√										
4	**Fidelity Magellan (IRA)**		√											√								√											
5	**Fidelity Retirement Growth Fund (IRA)**		√											√									√										
6	**Pfizer Stock**				√												√						√										

Reporting Individual's Name
Albert A. Alpha

SCHEDULE A

Page Number
2

Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)															Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)															
For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income. For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse). None ☐	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,01 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (*Mo., Day, Yr.*) Only if Honoraria
Examples: Central Airlines Common				X												X						X									
Examples: Doe Jones & Smith, Hometown, State			X																											Law Partnership Income $130,000	
Examples: Kempstone Equity Fund					X								X										X								
Examples: IRA: Heartland 500 Index fund							X						X											X							
1 **Obelesk Research Partnership; Princteon, NJ (Biotech Research)**						√																								Partnership Income $7950 (Approx.)	
2 S **Ford Foundation, NY, NY**																														**Salary**	
3 S **CREF Variable annuity Bond Market fund**					√								√											√							
4 **Rental house Alexandria, VA**						√											√								√						
5																															
6																															

Do not complete Schedule B if you are a new entrant, nominee, or Vice Presidential or Presidential Candidate

Reporting Individual's Name	SCHEDULE B	Page Number
Albert A. Alpha		**3**

Part I: Transactions

None ☐

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

	Identification of Assets	Transaction Type (x)			Date (Mo., Day, Yr.)	Amount of Transaction (x)											
		Purchase	Sale	Exchange		$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
	Example Central Airlines Common	x			2/1/99			x									
1																	
2																	
3																	
4																	
5																	

*This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260, and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. **Exclude** anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☐

	Source *(Name and Address)*	Brief Description	Value
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty)	$500
	Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$300
1			
2			
3			
4			
5			

Prior Editions Cannot Be Used.

Reporting Individual's Name	SCHEDULE C	Page Number
Albert A. Alpha		**4**

Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at **any time** during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None ☐

	Creditors *(Name and Address)*	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x): $10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			x								
	John Jones, 123 J St., Washington, DC	Promissory note	1999	10%	on demand					x						
1	**Citicorp, Washington, DC**	**Mortgage on Alexandria Rental House**	**1995**	**9%**	**30**					√						
2																
3																
4																
5																

*This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None ☐

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1	**I win keep my 401(k) plan at Alpha & Omega. Neither Alpha & Omega nor myself will make any further contributions to the pension. Pursuant to partnership agreement, I received a lump sum**	**Alpha & Omega (Law Firm), Short Hills, NJ**	**2/90**
2	**payment from my capital account. My partnership share was calculated for services performed through 9/1/2003.**		
3			
4			
5			
6			

Reporting Individual's Name	SCHEDULE D	Page Number
Alpha, Albert A.		**5**

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization *(Name and Address)*	Type of Organization	Position Held	From *(Mo., Yr.)*	To *(Mo., Yr.)*
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1	**Alpha & Omega, Short Hills, NJ**	**Law Firm**	**Partner**	**1990**	**9/03**
2	**Obelesk R & D, Princeton, NJ**	**Bio-Tech Partnership**	**General Partner**	**6/98**	**Present**
3					
4					
5					
6					

Part II: Compensation in Excess of $5,000 Paid by One Source

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

None ☐

	Source *(Name and Address)*	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	**Alpha & Omega, Short Hills, NJ**	**Legal Services**
2	**Bluefield Medical School, Bluefield, NJ**	**Legal Services**
3	**Jansen Pharmaceuticals, Inc., Trenton, NJ**	**Legal Services**
4	**Muehlenberg Hospital, Plainsfield, NJ**	**Legal Services**
5	**Alliance Pharmaceuticals Corp., New Haven, CT**	**Legal Services**
6		

13.2 CASE 2: YOU ARE THE REVIEWER

This exercise gives the reviewer practice in analyzing a completed form and in following up with questions to the reviewer. For this review exercise, your goals are:

- to generate a list of questions for the filer that would clarify the report;
- to spot the issues that require conflict of interest analysis; and
- to understand how you would counsel the employee.

You should follow these steps:

1. Check to see if each entry is complete. For entries that are incomplete, write a question that will assist in clarifying the entry;

2. Analyze the entries for any conflict of interest. Draft a cautionary or a disqualification letter if necessary;

3. Compare your questions/conflict warnings to the model provided;

4. Given the filer's response, repeat the analysis process and draft any further questions or necessary notices for the filer;

5. Compare your second round of questions to the model, and annotate the report as needed; and

6. Compare your annotated report with the model.

The materials for this study are arranged in the following order:

- Incorrectly completed SF 278
- Model initial questions to the filer
- Response from the filer, based on the model questions
- Model final response to filer
- Correctly annotated SF 278

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved:
OMB NO. 3209-0001

Date of Appointment, Candidacy, Election, or Nomination *(Month, Day, Year)*	Reporting Status (Check Appropriate Boxes)	Incumbent ☐	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate ☑	Termination Filer ☐ Termination Date *(If Applicable) (Month, Day, Year)*
Reporting Individual's Name	Last Name: Dogfield, Jr.			First Name and Middle Initial: Beringer	
Position for Which Filing	Title of Position: **Assistant Director for Pollution Prevention**			Department or Agency *(If Applicable)*: **Environmental Protection Agency**	
Location of Present Office (or forwarding address)	Address *(Number, Street, City, State, and ZIP Code)*: **401 M Street; Washington, DC 20406**			Telephone No. *(Include Area Code)*: **(202) 555-1212**	
Position(s) Held with the Federal Government During the Preceding 12 Months *(If Not Same as Above)*	Title of Position(s) and Date(s) Held				
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination: **Environment and Public Works**			Do You Intend to Create a Qualified Di versified Trust? ☐ Yes ☑ No	
Certification: I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	Signature of Reporting Individual: Beringer Dogfield, Jr.			Date *(Month, Day, Year)*: **9/20/03**	
Other Review (If desired by agency)	Signature of Other Reviewer			Date *(Month, Day, Year)*	
Agency Ethics Official's Opinion: On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).	Signature of Designated Agency Ethics Official/Reviewing Official			Date *(Month, Day, Year)*	
Office of Government Ethics Use Only	Signature			Date *(Month, Day, Year)*	

Comments of Reviewing Officials *(If additional space is required, use the reverse side of this sheet)*

(Check box if filing extension granted & indicate number of days_____) ☐

(Check box if comments are continued on the reverse side) ☐

Fee for Late Filing

Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a $200 fee.

Reporting Periods

Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

Nominees, New Entrants, and Candidates for President and Vice President:

Schedule A--The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.

Schedule B--Not applicable.

Schedule C, Part I (Liabilities)--The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

Schedule C, Part II (Agreements or Arrangements)--Show any agreements or arrangements as of the date of filing.

Schedule D--The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

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Supersedes Prior Editions, Which Cannot Be Used. 278-112 NSN 7540-01-070-8444

Reporting Individual's Name: **Dogfield**

SCHEDULE A

Page Number: **1**

Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)															Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)															
For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income. For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse). None ☐	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,01 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	Amount: $201 - $1,000	Amount: $1,001 - $2,500	Amount: $2,501 - $5,000	Amount: $5,001 - $15,000	Amount: $15,001 - $50,000	Amount: $50,001 - $100,000	Amount: $100,001 - $1,000,000	Amount: Over $1,000,000*	Amount: $1,000,001 - $5,000,000	Amount: Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples: Central Airlines Common				X												X						X										
Examples: Doe Jones & Smith, Hometown, State			X																											Law Partnership Income $130,000	
Examples: Kempstone Equity Fund					X								X										X								
Examples: IRA: Heartland 500 Index fund							X						X											X							
1 **Trusteeship for the Beringer Dogfield, Sr. Trust**																														**Trustee Fees $500**	
2 **GAIA Magazine, Inc., Washington, DC**																														**Salary & Severance $165,000**	
3 **Brechtel, Plainsville, NJ**																														**Consulting Fees $11,000**	
4 S **Bookworld, Inc.**																														**Salary $50,000**	
5 S **Valu-Wide Insurance--Fixed Annuity**			√															√													
6 J **American Savings CD (IRA)**		√																√			√										

Reporting Individual's Name: **Dogfield**

SCHEDULE A

Page Number: **2**

Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)															Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)																
																Type				Amount												
For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income. For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse). None ☐	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,01 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (*Mo., Day, Yr.*) Only if Honoraria
Examples: Central Airlines Common				x												x						x										
Examples: Doe Jones & Smith, Hometown, State			x																												Law Partnership Income $130,000	
Examples: Kempstone Equity Fund					x								x										x									
Examples: IRA: Heartland 500 Index fund							x						x											x								
1 J **Fidelity Funds (IRA)**				√									√										√									
2 J **PCS Common**				√												√					√											
3 **Nation-Wide Term Life**							√													√												
4 **Sovran Bank (Checking)**	√																	√		√												
5 **Rental House, Alexandria VA**						√											√								√							
6 **Janus Income & Growth Fund**	√												√											√								

Do not complete Schedule B if you are a new entrant, nominee or Vice Presidential or Presidential Candidate

Reporting Individual's Name	SCHEDULE B	Page Number
Dogfield		**3**

Part I: Transactions

None ☐

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

	Identification of Assets	Transaction Type (x): Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	Amount of Transaction (x): $1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
Example	Central Airlines Common	x			2/1/99			x									
1	**IBM**		√		**8/2000**			√									
2																	
3																	
4																	
5																	

*This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260, and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. **Exclude** anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☑

	Source *(Name and Address)*	Brief Description	Value
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty)	$500
	Frank Jones, San Francisco, CA	leather briefcase (personal friend)	$300
1			
2			
3			
4			
5			

Prior Editions Cannot Be Used.

Reporting Individual's Name	SCHEDULE C	Page Number
Dogfield		**4**

Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at **any time** during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None ☐

	Creditors *(Name and Address)*	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x): $10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001- $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			x								
	John Jones, 123 J St., Washington, DC	Promissory note	1999	10%	on demand					x						
1																
2																
3																
4																
5																

*This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits

None ☑

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1			
2			
3			
4			
5			
6			

Reporting Individual's Name	SCHEDULE D	Page Number
Dogfield		**5**

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization *(Name and Address)*	Type of Organization	Position Held	From *(Mo., Yr.)*	To *(Mo., Yr.)*
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1	**Beringer Dogfield, Sr. Trust**	**Trust for my Dependent Child**	**Trustee**	**8/90**	**Present**
2	**Citizens for the Prevention of Cruelty to Dogs**	**Non-Profit; Public Interest**	**President**	**7/98**	**Present**
3	**GAIA Magazine**	**Professional Journal**	**Editor**	**11/97**	**8/15/03**
4	**National Association for Environmental Engineers**	**Professional Association**	**Advisory Board Member**	**2/96**	**Present**
5					
6					

Part II: Compensation in Excess of $5,000 Paid by One Source

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

None ☑

	Source *(Name and Address)*	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1		
2		
3		
4		
5		
6		

Case 2 Model Questions to the Filer

October 11, 2003

MEMORANDUM

TO: Beringer Dogfield, Assistant Director, Pollution Prevention

FROM: Stimpson J. Katt, Designated Agency Ethics Official

SUBJECT: Resolutions to Financial Conflicts of Interest and Questions Concerning technical Problems on your SF 278

Here is a summary of the issues that we discussed in the meeting on October 10, 2003. Please look over it carefully, and if you have any questions, contact me.

1. Your ownership of Pollution Control Systems, Corp. (PCS) poses a potential conflict of interest. Under 18 U.S.C. § 208(a), Federal employees are barred from participating in any particular matter which would directly and predictably affect their financial interest. Upon review of your duties, you are disqualified from taking any official action relating to PCS including making policy decisions that could affect PCS unless a waiver is issued. Under 18 U.S.C. 208(b)(l), the prohibition can be waived if it is determined that the financial interest is found to be not so substantial as to likely affect the integrity of the employee's services. Please supply us with details of your investment including the exact value of the investment and the percentage of outstanding shares you hold so a determination can be made. If granted, the waiver would be applied to rulemaking and policy matters and would not be extended to any matter that would involve PCS as a specific party. A notice of your disqualification has been sent to your director.

2. Your position as a member of the advisory board of the National Association of Environmental Engineers (NAEE), a non-profit organization, may conflict with your official duties as Assistant Director for Pollution Prevention. Under § 2635.502 of the Standards of Conduct, you should consider whether to recuse from matters in which the NAEE has an interest or is or represents a party. The NAEE deals with many of the areas that would fall within your official duties as Assistant Director; as a result, please consult with me prior to any official involvement in these matters.

3. Your position as president of Citizens for the Prevention of Cruelty to Dogs appears at the outset not to conflict with your official duties. You are advised, however, that you cannot represent this organization in any way before a Government agency. Title 18 U.S.C. §203 and §205 prohibit a Federal employee from such representations before any agency or court, even if they are without compensation.

In addition to these issues, I have found a number of technical errors and substantial discrepancies on the financial disclosure report that you submitted to this office on September 20, 2003. A description of the problems are discussed below. Without full disclosure, I cannot analyze your report for potential conflicts of interest.

Please respond to these questions by October 25, 2003. If the issues are unclear or if you are having difficulty obtaining the requested information, please stop by the ethics office or call me at extension xxxx. I cannot certify your report until all the questions are addressed.

A copy of the report has been sent back to you so that it may be easier to address these questions.

Cover Page

1. You need to fill in the date of your appointment on the cover sheet.

Schedule A

1. Please disclose the underlying assets of the Dogwood Family Trust (p.l, #1) on Schedule A since your dependent child has a beneficial interest in the trust (as reported on Schedule D).

2. What is the amount of income from the Value-Wide Insurance annuity (p.l, #5)? You need to report all accrued income over the $200 threshold, even if deferred for tax purposes.

3. What is the specific name of the Fidelity mutual fund (p.2, #1)?

4. Do you have a pension plan with GAIA magazine? If so, are you keeping it, or will you roll it over into some other investment vehicle? Whatever your plans, it must be reported on Schedule A and C, part II. If you expect to receive any more severance from GAIA, it should be reported as receivable.

Schedule B

1. Transactions do not need to be reported on Schedule B for new entrant reports. If you made more than $200 in dividends from IBM or in capital gains from the sale, however, then it must be reported on Schedule A.

Schedule C

1. You listed a rental property on Schedule A (p.2, #5). If you have a mortgage on that property, then it must be reported on part I of this schedule.

2. If you have a continuing agreement with GAIA for a severance payment, the terms of the severance payment must be reported on Part II of this schedule. The amount and the date of the agreement must be disclosed along with whether the payment is a part of an established company plan.

Schedule D

1. Your position as a consultant with Brechtel should be shown on Part I.

2. You must list your job at GAIA and your consulting for Brechtel on part II of the Schedule.

3. Do you receive compensation from the National Association for Environmental Engineers or Citizens for the Prevention of Cruelty to Dogs? If you did and if the compensation from either entity was greater than $200, it must be reported on Schedule A.

Over-reporting

There are a few items of over-reporting to bring to your attention that will help protect your privacy on future reports.

- term life insurance (p.2,# 3) is not considered an investment vehicle and does not need to be reported
- the amount of your spouse's salary (p.l, #4) is not required to be disclosed
- the threshold for bank accounts (p.2, #4) is $5,000 (or $200 in income)

I look forward to hearing from you shortly.

Case 2: Response from the Filer

October 29, 2003

MEMORANDUM

To: Stimpson J. Katt, DAEO

From: Beringer Dogfield, Assistant Director for Pollution Prevention

Subject: Corrections on the SF 278 report

Here are the answers to questions you raised on my SF 278 report. I hope I adequately addressed them. If you have any further questions, please give me a call at extension xxxx.

Schedule A

1. The underlying holdings of the Beringer Dogfield, Sr. Trust:

The earnings disclosed are from January 2002 to August 30, 2003.

a. First Washington Bank, money market account, $16,350, which earned $230 in interest.
b. First Washington Bank, Certificates of Deposit, $6,823, which earned $202 in interest.
c. U.S. Saving Bonds, $24,000, which earned $570 in interest.
d. Southern Bell stock, $28,570, which earned $2,140 in dividends and capital gains.

2. The Value Wide annuity earned $300 in tax-deferred income.

3. The mutual fund's specific name is Fidelity Select Environmental Services.

4. I had a 401(k) pension plan at GAIA which held shares of the Janus Income and Growth mutual fund (see page 2, #6). On September 10, 2003, I rolled the interest over into a CD at First Federal Bank in New York. The value of the CD is $100,001 to $250,000, and it earned no interest during the reporting period.

Schedule B

I sold all my IBM stock in July 2003, earning $1,300 in capital gains. I did not receive any dividends during the reporting period.

Schedule C

1. I do have a mortgage on the rental property I listed. The mortgage is with Riggs Bank, Washington, DC which I received in 1991 at 10% interest rate. The amount owed on January 1, 2002 was $78,000.

2. The severance payment was a part of a bona-fide company policy; many previous employees received similar payments upon termination. It was given for my years of service at GAIA. I was paid $8,000 on August 15, 2002.

Schedule D

1. I did not receive any compensation from the National Association of Environmental Engineers or Citizens for the Prevention of Cruelty to Dogs.

2. The dates of my consultant position with Brechtel are May 8, 2001 through July 21, 2002.

Thank you for bringing these matters to my attention.

Case 2: Model Final Response to the Filer

November 9, 2003

MEMORANDUM

To: Beringer Dogfield, Assistant Director, Pollution Prevention

From: Stimpson J. Katt, Designated Agency Ethics Official

Subject: Resolution of a conflict of interest identified on corrected SF 278 report

Here is a summary of the issue we discussed via telephone on November 1, 2003. Please call me at extension xxxx if you have further questions.

You disclosed that the specific Fidelity fund in your IRA is the Fidelity Select Environmental Services (p.2, #1). Sixty-five percent of the holdings of the fund are companies that can be affected from policy decisions in your office. It is determined that a recusal from matters involving these companies would hinder the performance of your official duties, and, therefore, it will be necessary for you to divest of Fidelity Select Environmental Services. However, you could retain up to $50,000 of the fund under a regulatory exemption for interests in sector mutual funds at 2640.201(b). As we discussed, you may request a Certificate of Divestiture from the Director of the Office of Government Ethics to ease the burden of selling the amount not covered by the exemption or all of the shares of this asset. If you choose to sell the fund down to the exemption amount, OGE will not issue additional CDs if the value of the fund goes above $50,000 again. Please send your request to me, and I will then forward it to OGE. Remember that you must first obtain a CD before you roll over the fund.

Until you divest the fund, also remember that you are disqualified from taking any official action, including policy decisions, that could affect the companies in the fund. Your director has been sent a copy of the recusal along with a list of the prohibited companies.

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved:
OMB NO. 3209-0001

Date of Appointment, Candidacy, Election, or Nomination *(Month, Day, Year)*	Reporting Status (Check Appropriate Boxes)	Incumbent ☐	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate ☑	Termination Filer ☐	Termination Date *(If Applicable) (Month, Day, Year)*
9/1/2003						

Reporting Individual's Name	Last Name: Dogfield, Jr.	First Name and Middle Initial: Beringer
Position for Which Filing	Title of Position: **Assistant Director for Pollution Prevention**	Department or Agency *(If Applicable)*: **Environmental Protection Agency**
Location of Present Office (or forwarding address)	Address *(Number, Street, City, State, and ZIP Code)*: **401 M Street; Washington, DC 20406**	Telephone No. *(Include Area Code)*: **(202) 555-1212**
Position(s) Held with the Federal Government During the Preceding 12 Months *(If Not Same as Above)*	Title of Position(s) and Date(s) Held:	
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination: **Environment and Public Works**	Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☑ No

Certification	Signature of Reporting Individual	Date *(Month, Day, Year)*
I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	Beringer Dogfield, Jr.	**9/20/03**
Other Review (If desired by agency)	Signature of Other Reviewer:	Date *(Month, Day, Year)*:
Agency Ethics Official's Opinion	Signature of Designated Agency Ethics Official/Reviewing Official	Date *(Month, Day, Year)*
On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below)		
Office of Government Ethics Use Only	Signature:	Date *(Month, Day, Year)*:

Comments of Reviewing Officials *(If additional space is required, use the reverse side of this sheet)*

(Check box if filing extension granted & indicate number of days_____) ☐

[1] **Annotations made by Stimson J. Katt per information from the filer 10/29/2003**

(Check box if comments are continued on the reverse side) ☐

Fee for Late Filing

Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a $200 fee.

Reporting Periods

Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

Nominees, New Entrants, and Candidates for President and Vice President:

Schedule A--The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.

Schedule B--Not applicable.

Schedule C, Part I (Liabilities)--The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

Schedule C, Part II (Agreements or Arrangements)--Show any agreements or arrangements as of the date of filing.

Schedule D--The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Agency Use Only

OGE Use Only

Supersedes Prior Editions, Which Cannot Be Used. 278-112 NSN 7540-01-070-8444

Reporting Individual's Name: **Dogfield**

SCHEDULE A

Page Number: **1**

Assets and Income — BLOCK A

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income.

For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse).

None ☐

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

	Assets and Income	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,01 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples	Central Airlines Common				X												X						X										
	Doe Jones & Smith, Hometown, State			X																												Law Partnership Income $130,000	
	Kempstone Equity Fund					X								X										X									
	IRA: Heartland 500 Index fund							X						X											X								
1	**Trusteeship for the Beringer Dogfield, Sr. Trust**																															**Trustee Fees $500**	
2	**GAIA Magazine, Inc., Washington, DC**																															**Salary $157,000 1. Severance $8,000**	
3	**Brechtel; Plainsville, NJ**																															**Consulting Fees $11,000**	
4 S	**Bookworld, Inc.**																															**Salary**	
5 S	**Valu-Wide Insurance--Fixed Annuity**			√															√			√	1.										
6 J	**American Savings CD (IRA)**		√																√			√											

Reporting Individual's Name: **Dogfield**

SCHEDULE A

Page Number: **2**

Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)															Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)															
For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income. For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse). None ☐	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,01 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	Amount: $201 - $1,000	Amount: $1,001 - $2,500	Amount: $2,501 - $5,000	Amount: $5,001 - $15,000	Amount: $15,001 - $50,000	Amount: $50,001 - $100,000	Amount: $100,001 - $1,000,000	Amount: Over $1,000,000*	Amount: $1,000,001 - $5,000,000	Amount: Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (*Mo., Day, Yr.*) Only if Honoraria
Examples: Central Airlines Common				x												x						x									
Examples: Doe Jones & Smith, Hometown, State			x																											Law Partnership Income $130,000	
Examples: Kempstone Equity Fund					x								x										x								
Examples: IRA: Heartland 500 Index fund							x						x											x							
1 J **Fidelity Funds (IRA) Select Environmental Services** [1.]				√									√										√								
2 J **PCS Common**				√												√					√										
3																															
4																															
5 **Rental House, Alexandria VA**						√											√							√							
6 **Janus Income & Growth Fund; 401(k) from GAIA** [1.]	√												√											√							

Reporting Individual's Name: **Dogfield**

SCHEDULE A

Page Number: **2a**

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income.

For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse).

None ☐

	Assets and Income	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,01 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples	Central Airlines Common				X												X						X										
	Doe Jones & Smith, Hometown, State			X																												Law Partnership Income $130,000	
	Kempstone Equity Fund					X								X										X									
	IRA: Heartland 500 Index fund							X						X											X								
1	**Holdings of the Beringer Dogfield, Sr. Trust:** [1]																																
2	**--First Washington Bank (Money Market Account and CD)**			√															√			√											
3	**--U.S. Savings Bonds**			√															√			√											
4	**--Southern Bell**			√													√			√			√										
5	**First Federal Bank, NY, CD (IRA)** [1]					√													√		√												
6	**IBM** [1]	√																		√			√										

Reporting Individual's Name	SCHEDULE B	Page Number
Dogfield		**3**

Part I: Transactions

None ☐

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

	Identification of Assets	Transaction Type (x): Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	Amount of Transaction (x): $1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
Example	Central Airlines Common	x			2/1/99			x									
1																	
2																	
3																	
4																	
5																	

*This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260, and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. **Exclude** anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☐

	Source *(Name and Address)*	Brief Description	Value
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty)	$500
	Frank Jones, San Francisco, CA	leather briefcase (personal friend)	$300
1			
2			
3			
4			
5			

Prior Editions Cannot Be Used.

Reporting Individual's Name	SCHEDULE C	Page Number
Dogfield		**4**

Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at **any time** during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None ☐[1]

	Creditors *(Name and Address)*	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x): $10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			x								
	John Jones, 123 J St., Washington, DC	Promissory note	1999	10%	on demand					x						
1	**Riggs Bank, Washington, DC** [1.]	**Mortgage on Alexandria Rental House**	**1991**	**10%**	**30**			√								
2																
3																
4																
5																

*This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits

None ☑

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1			
2			
3			
4			
5			
6			

Reporting Individual's Name	SCHEDULE D	Page Number
Dogfield		**5**

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization *(Name and Address)*	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1	**Beringer Dogfield, Sr. Trust**	**Trust for my Dependent Child**	**Trustee**	**8/90**	**Present**
2	**Citizens for the Prevention of Cruelty to Dogs**	**Non-Profit; Public Interest**	**President**	**7/98**	**Present**
3	**GAIA Magazine**	**Professional Journal**	**Editor**	**11/97**	**8/15/03**
4	**National Association for Environmental Engineers**	**Professional Association**	**Advisory Board Member**	**2/96**	**Present**
5	**Brechtel** [1.]	**Scientific Research Firm**	**Consultant**	**5/99**	**7/02**
6					

Part II: Compensation in Excess of $5,000 Paid by One Source

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

None ☒[1.]

	Source *(Name and Address)*	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	**GAIA Magazine, Washington, DC** [1.]	**Editor**
2	**Brecthel, Plainville, NJ** [1.]	**Technical Writing Consulting**
3		
4		
5		
6		

14.0 MODEL DOCUMENTS

Agencies may wish to use the model letters in this chapter to:

- inform filers of the filing requirement,
- provide cautionary advice,
- document recusals, and
- grant waivers under 18 U.S.C. § 208(b)(l).

The use of these letters, while helpful, is optional. Larger agencies may wish to adapt these letters to their particular structures, while small agencies might use them without modification.

This chapter also contains a model for agency written procedures on collection and review of SF 278s, a useful SF 278 review checklist, and suggested procedures for following up on the collection of delinquent termination reports.

14.1 NOTIFICATION OF FILING REQUIREMENT

Agencies often send a letter to filers to transmit a blank SF 278 and remind them of the filing requirements. Following is an example of standard language for such notification letters. The language should be tailored to meet the individual context.

The Ethics in Government Act of 1978, as amended, requires employees who hold certain senior-level positions to file a public financial disclosure report (SF 278). Since you [*hold / have held*] such a position, you must file a [*New Entrant / Annual / Termination*] report. The report is due [*May 15 (for annual filers)* ***OR*** *within thirty days of [date of entrance / termination] (for new entrant and termination filers)*].

If you are not able to submit your report on time, you may request an extension of this due date for good cause. To receive such an extension, you must request it before the due date of the report. This Office must receive the report by the due date or extended due date for it to be filed on time. If you file your report more than thirty days after the due date, or extended due date you will incur a $200 fee for late filing, as required by law.

Enclosed is a blank SF 278 for your use in filing your report. Be advised that your completed report is available to the public without notification to you. This public availability lends urgency to your complete and accurate reporting. You do have a right to request a list of persons who obtain copies of, or otherwise inspect, your report.

[New Entrant Filer]

Use Either the New Entrant or Annual/Termination Paragraph

As a new entrant filer, you must complete all of the report's schedules except for Schedule B. You should also note that Schedules A and C cover only the previous calendar year as well as the current year up to the date of filing. Schedule D, however, covers the previous two years in addition to the current year up to the date of filing. This Office recommends that you retain copies of your completed report to aid your future filings, which will occur annually on May 15 and upon your exit from your filing position.

OR

[Annual/Termination Filer]

This Office recommends that, during the preparation of your report, you refer to copies of your previously-filed reports in order to simplify the task and to ensure consistency in your reporting. In addition, you should reconcile your previous report with your current one in order to avoid questions that may arise from inadvertent omissions. As you complete your report, remember that, as an [*annual / termination*] filer, you must complete all schedules except for Schedule D, part II.

AND

If you have any questions about public financial disclosure or your requirement to file a [*new entrant / annual / termination*] report, please contact this Office at [number].

14.2 CAUTIONARY LETTER

An agency should immediately bring to the filer's attention assets that either do present or possibly could present a conflict of interest. These letters should not imply any accusation of wrongdoing on the part of the filer. They should instead identify the conflict or possible conflict for quick resolution. Any possible violations of criminal or regulatory standards should be separately pursued (see *Section 5.8: Processing Ethics Violations* and *Chapter 11: Federal Ethics Laws and Regulations in Brief*).

Following is standard language for such letters to the filer. The first letter is optional, as it simply informs a filer that his disclosures revealed no conflict. Where actual or apparent conflicts do exist, OGE strongly recommends a letter similar to the second or third example, in order to document clearly necessary ethics agreements.

The Ethics in Government Act of 1978, as amended, requires that you, due to your position as [*position*], file a public financial disclosure report. This Office reviews these reports in accordance with applicable statutes and regulations. The reviewers examine the reports for possible conflicts of interest, completeness and consistency with previous reports.

[No conflict exists]

First Option: No Problems Exist

Our review of your report, dated [*date*], has not revealed any conflicts of interest. Official matters may come before you in the future, however, that create a conflict of interest where none previously existed. If you have reason to question whether an interest creates a conflict in a particular situation, you should disqualify yourself from that situation and call your ethics counselor for further guidance.

[Conflict of an Asset/Position]

Second Option: An Asset Clearly Poses a Conflict

We have carefully reviewed the report you filed on [*date of filing*], and our analysis indicated that you hold [*an asset / a position*] that conflicts with your official duties.

Accordingly, you are hereby disqualified from taking any official action relating to [*the entity with which the filer holds the asset or position*]. Furthermore, you must provide written notification of this disqualification to your superior and to your immediate subordinates, instructing them to shield you from any matter involving [*conflicting holding or organization*]. A sample letter is attached *(see Section 14.5: Screening Arrangements* for a sample). In addition, you must forward a copy of that notification to this office. This disqualification may be rescinded should you subsequently resolve the conflict.

or

Ordering Divestiture/Resignation

After consulting with your supervisor, we have determined that recusal from the conflicting interest would not allow you to fulfill your Government duties. Accordingly, you are hereby directed to divest yourself of/resign from [*the conflicting interest*]. You must provide written evidence of your compliance to this Office within 60 days of your receipt of this letter.

Optional Language on Certificates of Divestiture

In order to ease the burden of ordered divestiture, you may ask us to request a Certificate of Divestiture (CD) from the Office of Government Ethics. This certificate will enable you to defer recognition of any capital gains tax that you may owe from the ordered sale of an asset. To qualify, you must request and receive a CD before you sell the asset. You should note, however, that the IRS only allows deferment if you invest the funds in permitted property within a specific period.

[Potentially Conflicting Asset]

Third Option: Assets that may Pose a Conflict

We have carefully reviewed the report that you filed on [*date of filing*]. Our review revealed no conflicts of interest; however, it did indicate that you have a potentially conflicting [*holding / position*]. This conflict stems from the possibility that a matter involving the entity in which you have an interest, or one of its subsidiaries, could come before you in your official capacity. You are barred by criminal statute from involvement in such a matter where you have an interest. If such a matter does arise, you must immediately disqualify yourself from any involvement in it and report it to your superior for action.

If you would like to discuss your financial disclosure report further, please feel free to contact your ethics counselor, [name of counselor].

14.3 MODEL ETHICS AGREEMENT

OGE DAEOgram of March 28, 2001

The following ethics agreement covers a number of the more common actions that may need to be addressed. Although written ethics agreement are not required for all employees, they are required for PAS employees.

_____

(Date)

John H. Burns
Designated Agency Ethics Official
Department of XXX Washington,
DC XXXXX

Dear Mr. Burns:

The purpose of this letter is to describe the steps that I intend to take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Deputy Secretary, Department of XXX.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter that has a direct and predictable effect on my financial interests or those of any other person whose interests are imputed to me, unless I first obtain a written waiver, pursuant to section 208(b)(l), or qualify for a regulatory exemption, pursuant to section 208(b)(2). I understand that the interests of the following persons are imputed to me: my spouse, minor children, or any general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

In order to avoid potential conflicts of interest under section 208, I agree to divest my holdings in the following companies within 90 days of my confirmation: Forest Enterprises, Inc.; General Electric Co.; Fidelity Select Utilities Fund; Dow Chemical Co. Furthermore, I agree, as custodian for my minor children, that I will divest their holdings in the same entities. My spouse also agrees to divest her holdings in the same entities. Until these divestitures have been completed, I will not participate personally and substantially in any particular matter that

will have a direct and predictable effect on these entities, unless I first obtain a written waiver or qualify for a regulatory exemption.

I also understand that the following stock or limited partnership holdings present a potential conflict of interest under section 208(a), although it has been determined that it is not necessary at this time for me to divest these interests: Merck, Inc.; Browning Real Estate LP; and IBM. I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on the financial interests of these entities, unless I first obtain a written waiver or qualify for a regulatory exemption.

Upon confirmation, I will resign my position as Vice President of Springfield Corporation. Furthermore, pursuant to 5 C.F.R. § 2635.502, for one year after I terminate my position with Springfield, I will not participate in any particular matter involving specific parties in which Springfield is a party or represents a party, unless I am authorized to participate. I will continue to participate in Springfield's defined benefit pension plan, and therefore, pursuant to 18 U.S.C. § 208, I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on the ability or willingness of Springfield to provide this contractual benefit, unless I first obtain a written waiver or qualify for a regulatory exemption.

Upon confirmation, I will resign my position as President of the Forest Enterprises, Inc. I also will receive a payment of $250,000 from Forest prior to my appointment, in consideration of my contributions as the founder of the company. I understand that this constitutes an "extraordinary payment," under 5C.F.R. § 2635.503, and, therefore, for two years after this payment is received, I will not participate in any particular matter in which Forest is or represents a party, unless I receive a written waiver pursuant to section 2635.503(c).

Upon confirmation, I will resign my positions on the boards of directors of the following for-profit or non-profit organizations: The Charity Foundation; Smith Corp.; and QRS, Inc. Pursuant to 5 C.F.R. § 2635.502, for a period of one year after the termination of these positions, I will not participate in any particular matter involving specific parties in which any one of these organizations is a party or represents a party, unless I am authorized to participate.

I will remain on the board of directors of Nonprofit, Inc., for which I do not receive any compensation. I also will retain my position as Secretary of Jones Family Farm, Inc., a business run by my family; with respect to this position, I agree to receive no compensation for

services as Secretary and to limit my income to passive investment income. Furthermore, pursuant to 18 U.S.C. § 208, I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on the financial interests of either of these organizations, unless I first obtain a written waiver or qualify for a regulatory exemption.

My spouse is employed as an associate by the law firm of Collins & Green, from which he receives a fixed annual salary. Pursuant to 5 C.F.R. § 2635.502, I will not participate in any particular matter involving specific parties in which Collins & Green is or represents a party, unless I am authorized to participate. Furthermore, pursuant to section 2635.502, I will not participate in any particular matter involving specific parties in which any client of my spouse is or represents a party, unless I am authorized to participate. In addition, my spouse has agreed not to represent any client with respect to any particular matter before the Department of XXX during my tenure.

Sincerely,

Jane S. Jones

14.4 RECUSAL LETTER

OGE DAEOgram of April 26, 1999

To fulfill ethics agreements, employees often execute written disqualifications or recusals. The following is a sample recusal. Employees should consult with their ethics counselor before executing a recusal to ensure that it is an appropriate remedy to the ethics problem. If the employee's recusal prohibits him from full job performance, the supervisor, the employee, and the ethics counselor should consider divestiture and other methods of resolving conflicts (see *Chapter 5: Resolving Conflicts of Interest*).

MEMORANDUM

TO: [Immediate Supervisor]

FROM: [Employee name and title of position]

SUBJECT: Notification of Commitment to Recuse

This memorandum is to provide you with written notification of my commitment to refrain from participation in certain matters in which I have a financial interest or a personal or business relationship and to describe the steps that I am taking to implement this commitment to recuse.

Recusal under 18 U.S.C. § 208

Description of Conflicting Interest

This recusal arises because [I own stock, own property, expect a payment, am an officer, am negotiating for employment, etc.] in, of or with [identify by name the asset or other interest that gives rise to the disqualifying financial interest, for example, 500 shares of XYZ Company stock or the ABC Foundation].

Disqualification from Certain Particular Matters

Under 18 U.S.C. § 208, I am prohibited from participating personally and substantially in any particular matter that would have a direct and predictable effect on my own financial interests or those of certain other persons or organizations identified in section 208. In my position of [identify position] in the [identify name of office] of the [identify name of agency], I may be called upon to participate in certain particular matters that could affect [identify the disqualifying financial interest]. These matters may include the following: [provide a

description of the particular matter or matters.] Until further notice, I will not participate officially in such matters.

Screening Mechanisms

In order to help ensure that I do not participate officially in these matters, I have taken or will take the following steps: (1) [delegation to subordinate language]. I have instructed [name and position] to handle any particular matter that could come before me that would affect [the name or description of the interest or entity causing the disqualification] and have arranged for [name of alternate supervisor] to serve as his or her supervisor for this matter; (2) I have provided [name of person who will act] and [names of any other persons that are to help with a screening arrangement] with a copy of this memorandum *{unless there is an objection to disclosure of the information }* and have asked [him/her/them] to [retain] [or refer to name of substitute actor] any matters which [he/she/they] believe are covered by my commitment to recuse; and (3) I have advised my immediate subordinates [and the name of any other group that typically sends the employee work directly] of this recusal. If you would prefer to act in these matters yourself or to select someone other than an individual under my general supervision to act in my stead, please notify me of your determination so that I might provide the appropriate information to my subordinates [and colleagues, if appropriate].

Provision for Changes in the Future

In order to ensure that this commitment to recuse continues to be effective, I will take the following steps in the future: (1) I will revise and update this memorandum whenever that is warranted by changes in my financial interests or the nature of my duties, or other changed circumstances, and provide you, the person exercising my authority and [any screening individuals] with a copy; and (2) I will advise my immediate subordinates and colleagues of any such changes.

Recusal under 5 C.F.R. § 2635.502

I also have the following covered relationship [or financial interest of a member of my household]. [Give a full description of the covered relationship or financial interest].

Appearance Standard

Under 5 C.F.R. § 2635.502(e), unless I am specifically authorized to do so by the agency designee, I must not participate in any particular matter involving specific parties where I or the agency designee have concluded that the financial interest of a member of my household, or the role of a person with whom I have a covered relationship, is likely to raise a question in the mind of a reasonable person about my impartiality.

Matters Covered by the Recusal

In my position of [identify position] in the [identify name of office] of the [identify name of agency], I may be called upon to participate in certain particular matters involving specific parties that could affect [identify the covered relationship or financial interest]. These matters may include the following: [identify relevant specific party matters]. I have consulted with the agency designee and have been advised that I should not participate in specific party matters affecting [the covered relationship or financial interest]. Until further notice [or "for a period of one year" in the case of certain terminated relationships], I will not participate officially in such matters, unless authorized by the agency designee.

Screening Mechanisms

In order to help ensure that I do not participate officially in these matters, I have taken or will take the following steps: (1) [delegation to subordinate language]. I have instructed [name and position] to handle any particular matter involving specific parties that could come before me that would affect or involve as a party [the name or description of the interest or entity causing the disqualification] and have arranged for [name of alternate supervisor] to serve as [his or her] supervisor for this matter; (2) I have provided [name of person who will act] and [names of any other persons that are to help with a screening arrangement] with a copy of this memorandum *{unless there is an objection to disclosure of the information}* and have asked [him/her/them] to keep [or refer to]--[name of substitute actor] any matters which [he/she/they] believe are covered by my commitment to recuse; and (3) I have advised my immediate subordinates [and the name of any other group that typically sends the employee work directly] of this recusal. If you would prefer to act in these matters yourself or to select someone other than an individual under my general supervision to act in my stead, please notify me of your determination so that I might provide the appropriate information to my subordinates [and colleagues, if appropriate].

Provision for Changes in the Future

In order to ensure that this disqualification continues to be effective, I will take the following steps in the future: (1) I will revise and update this memorandum whenever that is warranted by changes in my covered relationships, the financial interests of a member of my household, the nature of my duties, or other changed circumstances, and provide you, the person exercising my authority [and any screening individuals] with a copy; and (2) I will advise my immediate subordinates and colleagues of any such changes.

cc: [Agency ethics official (where appropriate), person exercising delegated authority, and any screening individuals]

14.5 SCREENING ARRANGEMENTS

OGE DAEOgram of June 1, 2004

When employees enter into recusal agreements under 18 U.S.C. § 208, 5 C.F.R. § 2635.502 or 5 C.F.R. 2635.503, they should have a screening arrangement to ensure that all parties understand the recusals. The following screening arrangement demonstrates the type of evidence that OGE requires for PAS employees who have recusals.

MEMORANDUM

To: [Employee's Supervisor]

From: [Employee's Name, Title] [Employee's signature]

Date:

Re: Screening Arrangement

This memorandum is to provide you with written notification of the screening arrangement I have implemented to ensure that I comply with my obligation to recuse myself from certain matters with which I have a financial interest, or a personal or business relationship. These recusal obligations are set forth in the Ethics Agreement I executed on [date] (copy attached), prior to my confirmation as [title, agency].

I am disqualified from participating personally and substantially in any particular matter that would have a direct and predictable effect on:

> [List each asset, entity or other interest that gives rise to a disqualifying interest under 18 U.S.C. § 208, e.g., XYZ Company or ABC Foundation].

Unless I am authorized to participate, I [also] am disqualified from participating in any particular matter involving specific parties in which any of the following entities is a party or represents a party:

> [List each entity with which the employee has a covered relationship or is otherwise covered by 5 C.F.R. § 2635.502, and any entity from which the employee received an extraordinary payment under 5 C.F.R. §2635.503].

In order to help ensure that I do not participate in matters relating to any of the entities listed above, I have taken or will take the following steps:

1. I have instructed [gatekeeper's name, title], to screen all [agency] matters directed to my attention that involve outside entities or that require my participation, to determine if they involve any of the entities or organizations listed above.

2. If [gatekeeper's name, title] determines that a matter involves any of these entities or organizations, directly or indirectly, [he] will refer them to [name and title of the person with authority to act on behalf of the employee] for action or assignment, without my knowledge or involvement.

3. I will provide [names and titles of gatekeeper(s) and persons who will act on behalf of the employee] with a copy of this memorandum so that they may fully understand the purpose and scope of my recusal obligations and this screening arrangement. In order to help ensure that I do not inadvertently participate in matters from which I should be recused, I am directing [name and title of gatekeeper] to seek the assistance of an agency ethics official if [he/she] is ever uncertain whether or not I may participate in a matter.

4. I will provide a copy of this memorandum to my principal subordinates [or, advise my principal subordinates of my recusal obligations and screening arrangement, as set forth in this memorandum]. I also will instruct my principal subordinates that all inquiries and comments involving any of the entities listed above should be directed to [name and title or the person(s) who will act on behalf of the employee], without my knowledge or involvement.

5. In consultation with an agency ethics official, I will revise and update my ethics agreement and/or this memorandum whenever that is warranted by changed circumstances, including changes in my financial interests, my personal or business relationships, or the nature of my official duties.

6. In the event of any changes to this screening arrangement, I will provide a copy of the revised screening arrangement memorandum to [or, advise] you, [name and title of gatekeeper], [name and title of person or office acting in my stead, if known], and my principal subordinates.

Attachment [the employee's ethics agreement]

cc: Office of Government Ethics
Designated Agency Ethics Official
[Gatekeeper's name, title, e.g., confidential assistant, scheduler, or other administrative personnel]
[Person(s) who are authorized to act on behalf of the official]
[Additional supervisors or subordinates, as appropriate]

14.6 MODEL 18 U.S.C. § 208(b)(l) WAIVER

The main financial conflict of interest statute (18 U.S.C. § 208) authorizes the agency appointing official or a designee to grant waivers of its prohibition after consultation, where practicable, with OGE. These waivers permit employees who would otherwise have a disqualifying financial interest to participate in certain Government matters without fear of violating § 208. The waiver must specify the financial interest involved and include a written determination that that financial interest is not so substantial as to be likely to affect the employee's integrity in acting officially in a matter.

This section provides a model that an agency might use to grant a waiver under 18 U.S.C. § 208(b)(l). Although the letter is focused on waivers for general policy matters, it includes an outline of the information that is useful for a thorough examination of any waiver request (see *Section 5.3: Waivers and Exemptions* for further information on waiver processing and analysis).

Letter or Memorandum Granting a Waiver Request

This letter [or memorandum] responds to your request for a waiver pursuant to 18 U.S.C. § 208(b)(l) to allow you to participate in a particular matter(s) affecting a financial interest you have in the matter(s). [Y*ou may wish to include the following language to emphasize to the employee that the issuance of the waiver is dependent on the information provided by the employee:* This waiver is being issued based upon the information you have provided to me regarding the nature and circumstances of the particular matter(s) involved and your full disclosure of your financial interest in the matter(s).]

Identify Position and Duties

You are a [title of position] in the [name of office] of the [name of agency]. In your position, you are required to [insert general description of duties].

Identify particular matter

You have been assigned to work on [or as part of your duties, you will be working on] a particular matter(s) in which you have a financial interest. The particular matter(s) is (are) [describe particular matter(s)].

NOTE: the note following § 2640.30l(a) states *that the disqualifying financial interest, the particular matter or matters to which the waiver applies, and the employee's role in such matters do not need to be described with any particular degree of specificity, but that the waiver should provide a clear understanding of*

- *the nature and identity of the disqualifying financial interest,*
- *the matters to which the waiver will apply, and*
- *the employee's role in such matters.*

For example, an agency may wish to waive all matters which an employee would undertake as part of his official duties; in such an instance, the agency would not be expected to specifically describe each particular matter. Instead, the waiver should make clear the nature of the employee's role and disqualifying interest in the class of matters.

Describe role of employee in matter

With respect to this (these) particular matter(s), you will be expected to [describe role of employee in particular matter(s)].

Describe disqualifying financial interest in matter

To promote an understanding of why the waiver is necessary, you may wish to preface the analysis of disqualifying financial interest with an opening sentence like the following: You have a disqualifying financial interest in the particular matter(s) described above because, in connection with the Governmental action on the particular matter(s), there is a potential for gain or loss to you [or your spouse, minor child, general partner, organization in which you are serving as officer, director, trustee, general partner or employee, or any person with whom you are negotiating or have any arrangement concerning prospective employment].] You [or other such person] [own, possess, are entitled to, or otherwise describe nature of rights] [identify what it is that is the subject of the ownership or other rights . . . stocks, real estate, an interest in a contract, or etc]. This interest is likely to be affected by the particular matter described above as [describe how the matter will affect the interest including why it is that there is a potential for gain or loss to the interest and a general analysis of the magnitude of the potential gain or loss to the interest.]

Determination Required by 18 U.S.C. § 208(b)(l)

As the official responsible for appointing you to your position [or other Government official to whom authority to issue such a waiver has been delegated], I have determined that the disqualifying financial interest in the particular matter(s) is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government. *You may wish to provide here a summary of the analysis pursuant to which the determination to issue the waiver was made, including the application of the factors listed in 5 C.F.R. § 2640.301(b).*

Identification of Any Limitations on the Waiver

[*If appropriate, the agency should further identify matters to which the waiver will and will not extend. Example:* This waiver shall apply only to general policy matters and does not extend to any matters involving parties or which will specifically and uniquely affect (subject of ownership interest or other rights). *If appropriate, the waiver could be limited by the value of the ownership interest that creates the disqualifying financial interest. Example:* This waiver shall not apply if the value of the interest in XYZ exceeds $50,000.]

OGE Consultation

[*Should the agency want to mention a consultation regarding the waiver with OGE, the waiver can indicate:* I have consulted with the Office of Government Ethics on this waiver and will provide them with a copy of it.]

14.7 AGENCY PROCEDURES FOR THE COLLECTION AND REVIEW OF SF 278s

5 C.F.R. § 2634.103(a) Note

Each agency is required by Section 402(d)(l) of the Ethics in Government Act to have written procedures for both the public and confidential financial disclosure systems regarding the collection, review, and evaluation of reports, as well as their public availability, as appropriate. Following is a model for such written procedures concerning the public disclosure system. Agencies may wish to issue separate written procedural guidance for the confidential disclosure system, or they may combine it with their guidance for the public system.

Agencies should be guided in issuing their written procedures by the OGE DAEOgram dated September 3, 1992, which is reprinted in this section. There is no particular format which is required; it should be an internal, utilitarian document, designed to inform filers and reviewers of their responsibilities under the law, and how those requirements have been implemented within the agency. Agency written procedures may include more or less information than the model in this section, but should address the minimum requirements specified in the DAEOgram.

The following model may be especially helpful for small to medium-sized agencies in creating a set of procedures that addresses their individual needs. Larger agencies may need to alter this model significantly, in order to adapt it to their unique structure, geographic dispersement, greater number of filers and reviewers, and other special characteristics.

[AGENCY] CIRCULAR XX-XX [DATE]

PROCEDURES FOR PUBLIC FINANCIAL DISCLOSURE

Background

Each agency is required by Section 402(d)(1) of the Ethics in Government Act to have internal written procedures for collecting, reviewing, evaluating, and making publicly available the public financial disclosure reports (SF 278) of those senior employees required to file. The governing regulation, 5 C.F.R. part 2634, should be consulted for the uniform requirements of the public disclosure reporting system, such as who files reports, what information is required to be reported, when reports are due, what agreements filers need to eliminate conflicts of interest, and what steps are required for ethics officials in reviewing and releasing reports to the public. This circular adds special information and procedures which are unique to [*agency*].

Identification and Notification of Filers

Statutory and regulatory criteria determine which positions require filing a public financial disclosure report (see 5 U.S.C. App § 101 & 5 C.F.R. § 2634.202). Employees who hold these positions must submit an SF 278 within 30 days of entering their position, annually by May 15, and within 30 days after leaving their position. (Presidential nominees should consult an ethics official for special filing requirements.) For [*agenc*y], the [*ethics or personnel*] office will maintain and update semiannually a master list of those positions that require filing. That office will also stock an adequate supply of SF 278 forms and distribute a blank copy, with [*agency*]'s supplementary guidance letter, to each filer. This distribution should normally be accomplished not later than10 [*or other number*] working days after an individual enters a position, not later than [*March 1 or other date*] each year thereafter, and at the time he leaves the position. Failure to make that distribution, however, does not relieve filers of the requirement to file reports at the times required by law.

Filing Instructions

All filers of the SF 278 at [agency] will submit their reports to the *Designated Agency Ethics Official's office, Room XX, [Name of Building], [Street address], Washington, DC 20000*. Reports must be **received** and date stamped in that office not later than the due date specified in the supplementary guidance letter, unless an extension has been granted in writing, in accordance with procedures herein. Filers should bring their reports to that office personally or mail them with sufficient lead-time to ensure their timely receipt. Failure to file on time may result in disciplinary or personnel action. Additionally, for a report which is filed more than 30 days late, a late filing fee of $200 is required by law, unless the Designated Agency Ethics Official finds "extraordinary circumstances" led to the late filing, and, therefore, issues a waiver of the fee.

Assistance

Printed instructions which are attached to the SF 278 provide detailed guidance to filers about what types of information they must report, the nature and extent of each disclosure, any permissible exclusions, and the extent to which information is required about a spouse and dependent children. Filers who have additional questions about how to complete their SF 278, who wish to request due date extensions, or who need more information about the public disclosure process should contact [*name of individual*], the Designated Agency Ethics Official, or one of the following persons [*names*], who are deputy ethics officials for [*agency*]. Any of these officials can be reached at *(202) xxx-xxxx, or fax (202) xxx-xxxx*. They can also provide assistance for filers who need advice about resolving conflicts of interest which a financial disclosure report may reveal.

Due Date Extensions

[*Agency*] has authority to grant due date extensions of up to 45 days, for "good cause." [Agency] can grant an additional extension of up to 45 days. **All extensions must be requested in advance of the due date, and must allow sufficient processing time prior to the due date.** Requests must be in writing and addressed to the ethics office at the address indicated above. Requests should state the reasons which support good cause for granting an extension, and should specify the number of days which are being requested beyond the due date. It is suggested that filers call one of the officials listed above to alert them that an extension request will be submitted. Any report submitted late without a properly granted due date extension may subject the filer to disciplinary or personnel action. Reports filed more than 30 days after a due date or extended due date will also result in a $200 late filing fee, unless waived by the Designated Agency Ethics Official or Alternate Designated Agency Ethics Official. See Penalties section below.

Requests for Special Exclusions

In **rare** cases, the financial disclosure statute provides for exclusion of certain information from public disclosure, such as gifts of a personal nature (from a fiancee or in connection with a wedding or baby shower, for example). Also, in **rare** cases, some special Government employees (serving less than 130 days a year) who meet specific criteria may be permitted under the statute to report confidentially all information required by the SF 278. These exceptions can only be approved by the Office of Government Ethics and must meet specific guidelines contained in the Ethics in Government Act. Filers should contact the ethics office at the above phone number if they believe they may qualify for a special exception. In general, however, the statute requires full public disclosure of all financial information specified (see the instructions to the SF 278 for specific disclosure requirements).

Ethics Review

One of the basic principles of financial disclosure is that reports should be reviewed by ethics officials to insure their completeness and to help resolve any conflicts of interest which are revealed. The Designated Agency Ethics Official or her ethics staff must review and certify (by signing and dating) each SF 278 which is required to be submitted at [*agency*]. All persons named in the section on Assistance above have been delegated to assist in that review process. [NOTE: Some agencies may wish to specify a tiered review process, depending on their resources and the number of filers.]

At the time an SF 278 is received by the ethics office, it will be date-stamped in the box in the lower right corner of the cover page which is labeled "Agency Use Only." The ethics office will maintain a log which lists all filers, due dates, dates of receipt of SF 278s, and the status of the review or any extensions or late filing fee collections.

SF 278 reports will be reviewed in accordance with 5 C.F.R. § 2634.605. That regulation requires an ethics official to certify that the report is complete and that the disclosed interests do not violate or appear to violate a conflict of interest statute, the Ethics in Government Act and implementing regulations, Executive Order 12674, as modified by Executive Order 12731, and implementing regulations, or agency-specific statutes and regulations. It may be necessary to contact the filer or his supervisor for additional information concerning the report or the potential for conflict in relation to the filer's duties. This may include requests for clarification or notification of a filer that she will be required to eliminate a conflict by divestiture, resignation from an outside position, recusal from certain agency matters, or other means. In order to conclude the review process as promptly as possible, the filer may be asked to comply with such requests by a specified due date. This due date will be set by the reviewer, depending on the nature and extent of information being sought and any logistical or procedural difficulties.

The review process will normally be completed within 60 days after receipt of an SF 278 by the ethics office, unless the reviewer has to contact the filer or her supervisor for more information. Copies of reports from Presidential nominees will be forwarded to the Office of Government Ethics, in accordance with 5 C.F.R. § 2634.602.

Resolving Conflicts of Interest

Actual or apparent conflicts of interest in a filer's performance of Government duties may be revealed during the review of an SF 278. Filers may be required by ethics officials to enter an ethics agreement, as discussed at 5 C.F.R. § 2634.802. These agreements do not imply any impropriety on the part of a filer; rather, they help to avoid conflicts and the public's legitimate perception of a conflict. Filers may be asked to agree to recuse from participation in certain Government matters; to divest of a conflicting asset; to resign from an outside position; to seek a waiver/exemption under the criminal conflict of interest statute; or to consider other means appropriate to the circumstances which will eliminate or ameliorate a conflict.

Penalties

The Ethics in Government Act requires agencies to refer to the Attorney General the names of filers when there is reasonable cause to believe that they have knowingly and willfully failed to file an SF 278 report or any information required on that report, or have knowingly and willfully falsified any information required to be reported. Civil penalties in a Federal court are authorized up to $11,000. Criminal charges may also be instituted for supplying false information on an SF 278. Additionally, this agency may take appropriate personnel or other action in accordance with applicable laws and regulations in the case of an SF 278 filer who fails to file a report, or omits required information, files late, or falsifies information. Delinquent filers will be advised of any such action which may be pursued.

Finally, the statute provides for a late filing fee of $200 for reports filed more than 30 days late. Filers will be notified in writing, in accordance with 5 C.F.R. § 2634.704, and advised of the procedures for paying the fee or requesting a waiver based on extraordinary circumstances. Requests for waiver of the fee can be granted only by the Designated Agency Ethics Official or Alternate Designated Agency Ethics Official.

Custody of and Access to Reports

The Ethics in Government Act requires that agencies make copies of an SF 278 available to the public upon written request, beginning 30 days after its receipt. (The established procedure for this is found at 5 C.F.R. § 2634.603.) OGE Form 201 will normally be used, because it contains a statement that the law requires the requestor to sign. That form will be available from the ethics office. Filers may obtain copies of any requests for their SF 278 reports, by using the same form.

All SF 278s at this agency will be maintained in the ethics office at the address indicated above, for a period of six years. Requests to examine or copy a report should be directed to that office. The ethics office will accept signed, written requests in person, by mail, or by fax. Copying fees may be charged, depending on the number of reports requested by any one person, in accordance with this agency's guidelines for public release of any other documents.

Following is the DAEOgram that OGE issued on September 3,1992, to give guidance to the agencies on establishing their internal procedures for financial disclosure.

September 3, 1992

MEMORANDUM FOR DESIGNATED AGENCY ETHICS OFFICIALS

FROM: STEPHEN D. POTTS
DIRECTOR

SUBJECT: Developing written procedures for the public and confidential financial disclosure systems

Pursuant to Section 402(d) (1) of the Ethics in Government Act of 1978, as amended, the Director of OGE is required to ensure that each executive branch agency establish written procedures for collecting, reviewing, evaluating, and where applicable, making publicly available, financial disclosure reports filed by the agency's officers and employees. This memorandum provides guidelines for developing written procedures required by that section.

Written procedures must be consistent with the new uniform regulation on financial disclosure (57 FR 11800-11830, of April 7,1992). Agencies may develop a single set of procedures covering the public and confidential financial disclosure systems, or separate procedures for each system. The procedures should also cover any alternative or supplemental reporting formats approved by OGE. Additionally, agencies should describe any special procedures to be used by component organizations, bureaus, regional and field offices. Agencies should address the following topics in these written procedures:

- Identifying incumbent, new entrant and termination (public reports only) report filers, including a determination of who will be responsible for identifying filers and maintaining and updating master listings of filers. For the confidential system, identifying officials who will designate positions for filing and how the designations will be documented.

- Distributing blank report forms (SF 278 and SF 450).

- Filing instructions. (Where and when to file reports, including any internal agency due dates).

- Identifying who filers should contact for assistance in completing the reports.

- Requesting and granting individual filing extensions from the agency and announcing blanket extensions for groups of employees or the entire agency.

- Granting exclusions from the filing requirements, including how to obtain approval from OGE for exclusions from the public financial disclosure requirements.

- Designating officials authorized to review and certify reports.

- Reviewing process (i.e. for completeness, conflicts of interest, violations of law, regulation or executive order).
- Levels of review and approval.
- Obtaining additional information from the filer when the report is incomplete, ambiguous, or raises conflict of interest issues and establishing an allowable timeframe within which the filer must provide the additional information.
- Amending and revising reports based on additional information obtained from the filer.
- Maintaining custody of reports.
- Providing for public access to public financial disclosure reports and security for confidential financial disclosure reports.
- Requiring remedial actions to resolve conflicts of interest or violations of laws, regulations or executive orders.
- Pursuing administrative or disciplinary actions where appropriate.
- Following-up on delinquent reports.
- Collecting the $200 late filing fee and requesting waivers of the $200 late filing fee (public reports only).

Agencies are not required to submit these procedures for OGE review or approval. Additionally, because these written procedures should establish the agency's internal procedural guidance, they should not be submitted to OGE as part of any agency supplemental regulations to the uniform financial disclosure regulation to be codified at 5 C.F.R. Part 2634 (57 FR 11800-11830, April 7,1992) or the standards of conduct to be codified at 5 C.F.R. Part 2635 (57 FR 35006-35067, August 7,1992). In most cases, these written procedures should eliminate the need for supplemental regulations.

Please note that each agency's written procedures will be examined during OGE's agency ethics program reviews in order to ensure that they are in conformance with all applicable laws, regulations and executive orders as required by the Act. However, each agency will determine who will issue these procedures, the format that will be used and who should receive them. You may direct any questions on developing these internal written procedures to your OGE desk officer.

14.8 SF 278 REVIEW CHECKLIST

The following is a checklist of some basic points to remember when filling out or reviewing an SF 278. The items address common errors and omissions. *Chapter 3: Report Contents* provides more detailed information on the contents of the various schedules. Various chapters of this *Reference* are cited next to elements that they address.

The Basic Rule

The basic rule when filling out or reviewing an SF 278 is that an entry should disclose all required information and be sufficiently detailed to allow a full conflict of interest analysis. Anything more than that basic requirement is unnecessary; anything less is inadequate. For example, a filer should not list the series numbers of Government securities or the account number for a bank deposit; merely identifying the asset as a Government security or providing the bank name and type of account allows a full conflict of interest analysis. On the other hand, a filer must report more than simply "Merrill Lynch Account," because that does not describe the nature of his assets and because conflicts of interest may arise from the underlying holdings in the account.

Schedule A

- ☐ Identify assets currently held, and specify the asset value, and the type and amount of income.
- ☐ Assets sold during the reporting period that earned more than $200 in income, including capital gains must also be reported. The asset value would be zero.
- ☐ Accrued income, even if tax-deferred, must be fully reported.
- ☐ Any "other" type of income, such as a salary, must include an actual amount instead of a category of amount (except that the amount may be left blank for a spouse's earned income).
- ☐ Any asset that meets the following three criteria may be listed as an "Excepted Investment Fund," and is eligible for reduced disclosure: 1) independently managed, 2) widely held *and* 3) publicly traded (or available) *or* widely diversified. EIFs may include mutual funds, unit investment trusts, and many public limited partnerships, for example.

- Investment clubs, brokerage accounts, or private trusts usually are not EIFs.
- For all business entities that are not publicly traded, filers must list the nature of the business as well as any assets or liabilities that are not incidental to the business.
- Any honoraria entries must include the date of the event.

Chapter 6 Employment, Ownership, and Outside Activities

- Filers who retain interests in a law partnership or similar entity must list an asset value for any capital accounts.

Chapter 7 Investment Vehicles

- For IRAs, 401(k) plans, Keogh plans, defined contribution pensions, and other investment vehicles, the underlying assets are listed as individual line-item entries, complete with asset values, types and categories of amount of income.

Chapter 8 Investments

- Real estate entries must include the address (city and state) of the property.

Schedule B. part I

- All entries should include a date of transaction. For frequent or periodic purchases or sales of a security, the filer may enter "periodic" or "monthly" instead of the exact dates.
- Exchanges must indicate two assets -- the asset originally held and the asset for which the filer exchanged it.
- If bank or brokerage statements are included in lieu of reporting transactions on the SF 278, the statements should include all transactions for the entire reporting period, not simply the last month or quarter.

Chapter 9 Gifts

Schedule B. part II

- In addition to personal gifts, gifts accepted from a non-profit organization under the Government Employee Training Act (5 U.S.C. § 4111) must be listed. Gifts accepted under agency gift acceptance authorities or under GSA travel authority (31 U.S.C. § 1353) need not be reported, because they are accepted by the agency, not the filer.

- Each listing of a gift of travel should include the dates and itinerary of travel, the nature of the gift (tickets, hotel), and the overall value of the gift.

Schedule C. part I

- The reported amount for a liability should be the highest amount wed during the reporting period except for revolving accounts such as credit cards.

Schedule C. part II

- Any arrangement with a past or future employer, including pensions, stock options, severance agreements, leaves of absence, or promises of employment, should be listed. Income generated from or any equity held in these sources should be reported on schedule A.

Chapter 6 Employment, Ownership and Outside Activities

Schedule D. part I

- All entries must include the address (city and state) and the nature of the outside organization.
- New entrants from outside the Government must list their former employer as well as any other compensated or uncompensated position.
- Filers must report any positions held during the reporting period, not only those held at the end of the period.

Schedule D. part II

- Lawyers and other filers with clients must list individual clients for whom they personally provided services valued at more than $5,000.
- Any entry must include the address (city and state) of the source of the income.
- Positions held should also be reported on Schedule D, part I.
- A new entrant's former employer should be included if the $5,000 threshold is met, even though also reported on Schedule D, part I.

Overall Check

Internal Consistency

Since many of the reporting requirements for the various schedules overlap, filers should perform an internal consistency check. This check ensures that the listings on the various schedules agree.

- ☐ Non-Federal pensions must be reported on Schedule A, including asset and income information, and also on Schedule C, part II, including the terms, dates and parties of the agreement (except for a spouse).
- ☐ Earned income from outside positions should be listed on Schedule A, and (except for a spouse) the outside position should be on Schedule D, part I (and on Schedule D, part II, for new entrants and nominees if the income for direct personal services was over $5,000).
- ☐ Any positions on Schedule D which are sources of income (other than clients of a business) must also be listed on Schedule A.

Consistency with Previous Filings

See "Review Assumptions" in *Section 4.3: Obtaining Additional Information*

- ☐ The current filing must reconcile with previous filings. Each entry should normally either:
  - Continue on the next report,
  - Disappear (or appear) because of a reported transaction or
  - Disappear because it slipped below a threshold or dissipated.

15.0 SAMPLE FORMS

This chapter contains copies of sample forms that are related to financial disclosure.

These forms can be found on OGE's website at www.usoge.gov.

- Standard Form 278: *Public Financial Disclosure Report*
- OGE Form 201: *Request to Inspect or Receive Copies of SF 278 Executive Branch Personnel Public Financial Disclosure Report or Other Covered Report*
- OGE Form 202: *Notification of Conflict of Interest Referral*

16.0 REFERENCE MATERIALS

This chapter contains reference materials that reviewers of SF 278s may find useful. These materials include an index of common abbreviations, a simple glossary of terms used in public financial disclosure, and an index for this *Reference*.

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16.1 ABBREVIATIONS

A

ADAEO	Alternate Designated Agency Ethics Official
APR	Annual Percentage Rate
ARM	Adjustable Rate Mortgage

C

CD	Certificate of Deposit Certificate of Divestiture
CFR	Code of Federal Regulations
CODA	Cash or Deferred Arrangement
CREF	College Retirement Equities Fund

D

DAEO	Designated Agency Ethics Official
DEC	Deputy Ethics Counselor (same as DEO)
DEO	Deputy Ethics Official (same as DEC)

E

EIF	Excepted Investment Fund

F

FOIA	Freedom of Information Act

G

GAO	General Accounting Office
GSA	General Services Administration

I

IRA	Individual Retirement Account
IRS	Internal Revenue Service, Department of the Treasury

M

MM(M)F	Money Market (Mutual) Fund
MSPB	Merit Systems Protection Board
MSPR	Merit Systems Protection Reporter

O

OGE	Office of Government Ethics
OPM	Office of Personnel Management

P

PA	Presidential Appointee
PAS	Presidential Appointee, Senate Confirmed

S

SEP	Simplified Employee Pension Plan
SF	Standard Form
SF 278	Public Financial Disclosure Report
SF 450	Confidential Financial Disclosure Report
SGE	Special Government Employee

T

TIAA	Teachers Insurance and Annuities Association
TIAA-CREF	TIAA - College Retirement Equities Fund

U

USC	United States Code

16.2 GLOSSARY

OGE intends the following definitions for use in understanding financial disclosure and conflicts of interest. These definitions are not intended for use in legal interpretations without further specification and research.

Alternate Designated Agency Ethics Official

Alternate Designated Agency Ethics Official (ADAEO) means the official selected by the agency head to act in the capacity of the Designated Agency Ethics Official in the event of her absence. Subpart B of 5 C.F.R. part 2638 provides information on the appointment and additional responsibilities of the ADAEO.

Agency

Agency includes any executive agency as defined in 5 U.S.C. § 105-any executive department, Government corporation, or independent establishment in the executive branch; any military department as defined in 5 U.S.C. § 102; and the Postal Service and the Postal Rate Commission. It does not include the General Accounting Office.

Asset Management Account

An asset management account, offered by a brokerage house, bank, or savings and loan, combines a number of financial services, such as checking, money market, brokerage, and margin accounts, or a revolving line of credit. These accounts allow a person to receive one statement that covers all of their finances. Customers sometimes use these accounts to shift assets and income automatically or as needed. For example, a person might have excess funds in a checking account automatically transferred to a money market account. Several variants of this account exist, with brand names like Cash Management Account, Active Assets Account, and Financial Management Account.

Capital Gain

The difference between an asset's basis (usually the cost) and sale price. In appropriate cases, a Certificate of Divestiture allows a financial disclosure filer to defer paying taxes on capital gain.

Certificate of Divestiture

The certificate of divestiture (CD) was created by the Ethics in Government Act of 1978 to reduce the tax burden of divestiture that can occur when an employee is ordered to comply with ethics restrictions. It allows an employee to defer the payment of capital gains tax after a sale of a conflicting asset (see *Section 5.5: Divestiture or Resignation* for a description of the process of obtaining a CD).

Defined Benefit Pension Plan

A pension plan by which an employer holds and invests pooled funds for all participating employees together, and the employer guarantees a fixed amount of benefits to employees after retirement.

Defined Contribution Pension Plan

A pension plan by which an employer or its agent maintains a separate account for each participating employee. Benefits at retirement depend upon the amount contributed and the investment performance of the plan's assets, which are selected by the employee or an independent manager.

Dependent Child

When used with respect to any reporting individual, a son, daughter, stepson, or stepdaughter who --

(1) Is unmarried and under age 21 and is living in the household of the reporting individual, or
(2) Is a dependent of the reporting individual within the meaning of 26 U.S.C. § 152.

See also the narrower term "minor child," as used in the conflict of interest statute.

Designated Agency Ethics Official

Designated agency ethics official means the primary officer or employee who is designated by the head of an agency to administer the provisions of title I of the Ethics in Government Act of 1978 and 5 C.F.R. part 2634 within an agency, and in his absence the alternate who is designated by the head of the agency. The term also includes a delegate of such an official, unless otherwise indicated. Subpart B of 5 C.F.R. part 2638 provides information on the appointment and additional responsibilities of a designated agency ethics official and alternate.

Dividend

A distribution of money or other property made by a corporation or other entity to its shareholders or investors out of its earnings and profits.

Earned Income

Earned income is contrasted with investment income. It includes wages, salaries, honoraria, commission, professional fees, and other forms of compensation for services.

Ethics Agreement

An ethics agreement is an arrangement that an employee or nominee makes with her agency to alleviate an actual or potential conflict of interest. It usually involves a promise to perform or seek one of the following: recusal, waiver, divestiture, resignation, reassignment, or qualified trust.

Excepted Investment Fund

An EIF is a *widely held* investment fund (whether a mutual fund, regulated investment company, common trust fund maintained by a bank or similar financial institution, pension or deferred compensation plan, or any other investment fund), if:

A. The filer *does not exercise control over* and does not have the ability to exercise control over the fund; **and**

B. *Either:* The fund is *publicly traded or* available;
or The assets of the fund are *widely diversified*.

A fund is widely diversified if it holds no more than 5% of the value of its portfolio in the securities of any one issuer (other than the United States Government) and no more than 20% in any particular economic or geographic sector. The significance of an EIF is that it permits reduced financial disclosure information, as indicated in *Section 7.1: Excepted Investment Funds*.

Fiduciary

A person such as a trustee or executor who holds a special trust and confidence to act in good faith for another's benefit. A fiduciary can be held legally liable for breaches of her fiduciary duty.

Futures

Contracts or agreements obligating the holder to buy or sell a commodity (such as agricultural products, metals, and energy fuels) or a financial instrument at a stipulated price, quantity, and time.

Honorarium

A payment of money or anything of value for an appearance, speech, or article, less any necessary travel expenses.

Income

Income includes but is not limited to the following items: earned income such as compensation for services, fees, commissions, salaries, wages and similar items; gross income derived from business (and net income if the individual elects to include it); gains derived from dealings in property including capital gains; interest; rents; royalties; dividends; annuities; income from the investment portion of life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; and income from an interest in an estate or trust. The term includes all income items, regardless of whether they are taxable for Federal income tax purposes, such as interest on municipal bonds. Generally, income means "gross income" as determined in conformity with the Internal Revenue Service principles.

Interest

Compensation for the use of money, usually stated as an annual rate.

Investment Income

Investment income is contrasted with earned income. It includes returns on investments, rather than compensation for personal services. Common forms of investment income are dividends, interest, capital gains, rents, royalties, and distributive shares. The financial disclosure reporting system also allows characterization of certain investment income as EIF (excepted investment fund) income.

Margin Account

Arrangement with a broker or financial institution permitting a customer to borrow in order to cover the cost of investment purchases.

Minor Child

A son or daughter who is under a state's age of legal competence, which is age 18 in most states. Prior to reaching a state's age of majority (legal competency), a minor cannot legally enter contracts, give legal consent, or otherwise transact business. Minor child is used in the conflict of interest statute (18 U.S.C. § 208) to describe those whose financial interests are attributed to a Government employee. See also the broader term "dependent child," as used in the financial disclosure law.

Mortgage

A loan to finance construction or purchase of real estate, whereby the borrower gives the lender a lien (a claim against the real estate) as security for repayment.

Mutual Fund

A portfolio of stocks, bonds, futures, options, money market instruments, or other securities, that is created and managed as an investment company and registered with the Securities and Exchange Commission. The mutual fund sells shares to investors and pools their money to purchase its investments.

Options

Contracts or agreements giving the holder the right (but not the legal obligation as with futures contracts) to buy or sell a commodity (such as agricultural products, metals, and energy fuels) or a financial instrument or stock at a stipulated price, quantity, and time.

PAS Employee

A PAS Employee is one who holds a senior noncareer position that requires nomination by the President and confirmation by the Senate.

Personal Hospitality of any Individual

Hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of or on property or facilities owned by that individual or his family (see the gift reporting exclusions in *Section 3.5: Schedule B, Part II*).

Personal Residence

Any real property used exclusively as a private dwelling by the reporting individual or his spouse, which is not rented out during any portion of the reporting period. The term is not limited to one's domicile; there may be more than one personal residence, including a vacation home (see asset, transaction and liability reporting exceptions in *Chapter 3: Report Contents*).

Personal Savings Account

Any form of deposit in a bank, savings and loan association, credit union or similar financial institution (5 C.F.R. § 30l(c)(2)). These accounts carry a higher reporting threshold than other assets.

Principal

The basic amount of an investment, upon which the investor may accrue interest or other income.

Prohibited Source

In the Standards of Conduct, a prohibited source for gifts is any person (including an individual or entity) who:

(1) Is seeking official action by the employee's agency;
(2) Does business or seeks to do business with the employee's agency;
(3) Conducts activities regulated by the employee's agency;
(4) Has interests that may be substantially affected by performance or nonperformance of the employee's official duties; or
(5) Is an entity a majority of whose members are described in (1) through (4).

Qualified Trusts

Blind or diversified trusts authorized by the Ethics in Government Act as a means of avoiding conflicts of interest for employees with extensive financial holdings. A qualified blind or diversified trust will insulate an employee from the criminal provisions of 18 U.S.C. § 208. Qualified trusts require approval by the Office of Government Ethics and must follow specific statutory guidelines. See *Section 5.6: Qualified Trusts*.

Recusal

A recusal is an ethics agreement in which an employee disqualifies himself from acting in official matters involving entities that present a financial conflict of interest for him.

Relative

An individual who is related to the reporting individual, as father, mother, son, daughter, brother, sister, uncle, aunt, great uncle, great aunt, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or who is the grandfather or grandmother of the spouse of the reporting individual, or who is the fiance or fiancee of the reporting individual. See the gift reporting exclusions in *Section 3.5: Schedule B, Part II.*

Reporting Individual

5 C.F.R. § 2634.202 defines "reporting individual." The term is synonymous with "filer." Section 2.1 offers further guidance.

Reviewing Official

The designated agency ethics official or his delegate, the Secretary concerned, the head of the agency, or the Director of the Office of Government Ethics, who has the responsibility of examining and certifying an SF 278.

Sector Fund

A mutual fund that concentrates its investments in any industry, business, single country other than the United States, or bond of a single state within the United States rather than maintaining a diversified portfolio.

Schedule C Employee

One who holds a Federal appointment for a position that is excepted from the competitive service because of its policy-determining nature or because it involves a close and confidential working relationship with the agency head or other top appointed official. Persons with this type of appointment range from secretaries and chauffeurs to policy advisors.

Special Government Employee

The term has the meaning given in 18 U.S.C. § 202(a): an officer or employee of an agency who is retained, designated, appointed, or employed to perform temporary duties, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days, either on a full-time or intermittent basis.

Strike Price

The strike price, or exercise price, refers to the price at which a person who holds a stock option may purchase the stock.

Treasuries

Debt obligations, such as U.S. Treasury bills, notes and bonds, issued by the Federal Government and secured by the full faith and credit (power to tax and borrow) of the United States.

Value

In determining the monetary equivalent for assets and gifts, value is a good faith estimate of the fair market value if the exact value is neither known nor easily obtainable by the reporting individual without undue hardship or expense. In the case of any interest in property, see the alternative valuation options in 5 C.F.R. § 2634.30l(e). For gifts and reimbursements, see 5 C.F.R. § 2634.304(e).

Waivers

Under the conflict of interest statute, 18 U.S.C. § 208, a waiver permits an employee to participate in specified Government matters which would otherwise conflict with private financial interests. Section 208(b)(l) and (b)(3) of the statute details the conditions under which a waiver may be granted. It must be issued in writing by the employee's appointing official or delegate. (The statute also provides, in section 208(b)(2), for exemptions by OGE regulation, for certain remote or inconsequential financial interests common to a large number of employees.) See *Section 5.3: Waivers*.

Widely Diversified

Widely diversified is a central element of the definition of an Excepted Investment Fund (see *Section 7.1: Excepted Investment Funds*) and of a Qualified Trust (see *Section 5.6: Qualified Trusts*). A fund (or a qualified trust) is widely diversified if it holds no more than 5% of the value of its portfolio in the securities of any one issuer (other than the United States Government) and no more than 20% in any particular economic or geographic sector.

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16.3 INDEX

Statutes and Constitutional Provisions

Constitution of the United States
Emoluments Clause 9-4, 11-20, 11-22
Statutes
18 U.S.C. § 201 ..... 9-4, 9-13, 11-8
18 U.S.C. § 202 ..... 2-6, 11-3
18 U.S.C. § 203 ..... 6-12, 6-16, 6-23, 6-28, 11-3-4
Contingency Fee Cases 6-23-25
Segregating Legal Fees 6-23
Special Government Employees 11-4
18 U.S.C. § 205 ..... 6-12, 6-16, 6-23, 6-28, 11-5
Pro Bono Representation 11-5
Special Government Employees 11-5
18 U.S.C. § 207 ..... 11-8, 11-23
18 U.S.C. § 208 ..... 3-7, 3-14, 3-15, 5-1, 5-6, 5-11, 6-12, 6-13, 6-14, 6-24, 6-33, 6-36, 11-6, 11-16, 14-6, 14-9
Ability or Willingness Standard 7-13, 8-7, 8-13, 8-20, 10-10
Bonds 8-13,8-20
Cash Accounts 8-7
Defined Benefit Plans 7-13
Defined Contribution Plans 7-13
Direct and Predictable Effect 5-1, 6-12, 11-6
Ethics Agreements ..... See *Ethics Agreements*
Excepted Investment Funds 7-4
Exemptions under § 208(b)(2) ..... See *Exemptions under 18 U.S.C. §208(b)(2)*
Financial Interest in a Particular Matter 5-1
Former employer 6-14
Futures & Options 8-35
Government Securities 8-20
Honoraria 6-31
Imputed Interests 3-7, 6-14
Limited Partnerships 8-31
Loans 10-7
Mutual Funds 8-26
Pensions 7-13-14
Public Availability of Waivers 4-15, 5-10
Qualified Trusts 5-19
Real Estate 8-41
Real Estate Investment Trusts (REITs) 8-42
Real Possibility Test 5-1, 6-13
Regulatory Agency Employees 8-7, 8-20, 8-31, 8-35, 8-41, 8-47

Seeking Employment 11-18
Severance Payments 6-12, 6-14, 6-16, 6-24
Stock & Stock Options 8-13
Third Party Guarantors 5-21, 7-14
Treasuries 8-20
Unit Investment Trusts (UITs) 8-26
Waivers ..... See *Waivers*
18 U.S.C. § 209 ..... 6-12, 7-14, 9-4, 9-13, 11-7
Contingency Fee Cases 6-23-25
Employee Benefits 6-16, 7-14, 11-7
Employee-Inventors 8-47
Gifts 9-4
Honoraria 6-31
Intellectual Property 8-47
Pensions 7-14
Severance Payments 6-5, 6-12, 6-16, 6-24
18 U.S.C. § 216 11-9
18 U.S.C. § 219 11-22
18 U.S.C. § 1001 2-20
31 U.S.C. § 1353 9-11
Employee Retirement Income Security Act 7-11
Ethics in Government Act 1-6, 4-1
Ethics Reform Act of 1989 1-6
Foreign Gifts and Decorations Act 9-5, 9-6, 11-22
Freedom of Information Act (FOIA) 2-6, 4-4, 4-13, 4-15, 5-10
Government Employees Training Act 3-24, 9-5, 9-10-13, 11-7
Hatch Act 9-5, 9-13, 11-20
Office of Federal Procurement Policy Act 9-1, 11-23

Judicial Decisions

Connett v. Department of Navy 2-20
Crandon v. United States 6-16
Duplantier v. United States 3-7
NTEU v. United States 6-29, 11-22
United States v. Boeing 6-16
United States v. Gorman 5-1

Executive Orders

E.O. 12674 ..... 5-7, 5-14, 11-10, 11-25

OGE Opinions & DAEOgrams

OGE DAEOgrams

September 3, 1992 14-19
February 28, 1996 11-22
April 2, 1997 6-36
April 14, 1999 ..... 5-21, 7-13
April 26, 1999 ..... 5-4, 5-15, 14-9
February 15, 2000 ..... 2-3, 2-5
February 22, 2000 ..... 2-10, 7-10
September 7, 2000 8-47
March 15, 2001 6-30
March 28, 2001 ..... 5-2, 14-6
December 19, 2001 ..... 6-33, 7-27
March 8, 2002 5-3
March 19, 2002 ..... 5-11, 7-5
April 12, 2002 7-27
April 24, 2002 6-33
April 26, 2002 5-7
June 11, 2002 7-27
July 1, 2002 6-16
August 8, 2002 ..... 2-14, 2-16, 2-18
September 27, 2002 3-21
August 25, 2003 2-10
October 23, 2003 2-5
June 1, 2004 ..... 5-3, 5-4, 14-12
July 19, 2004 2-8

Opinions

83 OGE 1 7-6
OGE 79x2 ..... 4-11, 4-15
OGE 79x7 2-6
OGE 81x3 2-8
OGE 81x22 2-2
OGE 82x18 8-45
OGE 82x22 2-8
OGE 85x8 4-15
OGE 86x3 7-23
OGE 86x12 ..... 7-4, 8-26

OGE 86x19 6-32
OGE 87x9 6-5
OGE 88x11 7-6
OGE 90x2 ..... 3-27, 10-4
OGE 90x14 5-18
OGE 90x20 11-24
OGE 90x24 11-24
OGE 91x5 6-32
OGE 91x15 10-7
OGE 91x30 5-7
OGE 91x34 7-11
OGE 92x10 5-8
OGE 92x11 5-15
OGE 92x12 5-4
OGE 92x14 5-18
OGE 96x5 6-29
OGE 99x6 5-21
OGE 00x1 2-8

Charts

Gift Acceptance Flowchart 9-7
OGE Organizational Chart 1-5

General Entries

40l(k) & 403(b) Plans 7-8
60 Day Filing Threshold 2-3, 2-5-7, 2-11, 2-12
Accounts Receivable 10-8-10
Accrued Income 3-9
Acting in a Position 2-3, 2-8
Administrative Law Judges 2-2
Administrator of an Estate 6-33, 7-28
Advisory Committees 2-8, 5-6
Agency Prohibitions 8-14, 11-16, 11-22
Agency Securities 8-16
Agreements or Arrangements 3-28
Alternative Reporting Formats 2-10
Annotating the SF 278 ..... 2-15, 3-5, 4-8, 4-11
Annual Reports ..... See *Incumbent/AnnualReports*
Annuities 7-17-19
Exemptions under 18 U.S.C. § 208(b)(2) 7-19
Antiques ..... See *Collectibles*
Appearance Standard 5-5, 6-12, 6-15, 6-31, 6-37, 10-7, 10-10, 11-11, 11-17, 14-7, 14-8, 14-10

Clients 6-23, 6-25
Covered Relationship 6-12, 6-15, 6-31, 6-37
Organizations in which One Actively Participates 6-37
Severance Payments 6-5
Armed Forces 2-15, 11-3
Art Collections 8-43-47
Asset Management Accounts 7-3, 8-4, 16-5
Assets
Aggregating 3-8
Basic Reporting Test 3-7
Exceptions 3-13
Reporting Thresholds 3-8
Valuing 3-12
Attachments to the SF 278 ..... 2-10, 4-15
Attorney-Client Confidentiality 3-31
Attorneys 6-19-25, 11-4
Contingency Fee Cases 6-23-25
Leaving Law Firms to Enter Government 6-22-25, 11-4
Listing Former Clients 3-31, 6-9, 6-25
Pro Bono Representation 6-23, 11-5
Restrictions on the Outside Practice of Law 6-19
Use of a Partner's Name 6-23-25, 11-24
Awards 3-10
Bank Accounts ..... See *Cash Accounts*
Beneficiaries or Beneficial Interests
Estates 3-22, 7-27-32
Life Insurance ..... See *Life Insurance*
Trusts 7-27-32
Wills 3-22, 7-27-32
Benefits from a Former Employer ..... See under *Outside Activities & Employment*
Bequests 3-22, 7-27-32
Blind Trusts 5-19-20, 7-31
Bonds 3-7, 3-17, 3-18, 8-8-14, 8-15-20
Ability or Willingness 8-13, 8-20
Debentures 8-8
General Obligations 8-16
Mutual Funds 8-21
Industrial Development 8-17
Maturity of 3-18, 8-8, 8-10, 8-17
Original Issue Discount 8-8
Revenue Anticipation Notes 8-17
Revenue Bonds 8-16
Tax Anticipation Notes 8-17

Treasury Bonds 8-15
U.S. Savings Bond 8-15
Zero Coupon 8-8, 8-18
Brokerage Statements 2-10, 4-7, 4-15, 7-10
Business Interests 6-4-18
Public vs. Private 6-4, 6-6
Assets Solely Incidental to a Business 3-18, 6-6, 6-8, 6-27
Liabilities Solely Incidental to a Business 3-26, 6-6, 6-8, 6-26, 10-2
Residual Interests 6-16
Sole Proprietorships 6-7
Capital Gains 3-9, 3-11, 7-21, 8-8-10, 8-18, 8-21, 8-23, 8-27, 8-33, 8-36, 8-39, 8-44, 16-5
Certificates of Divestiture ..... See *Certificates of Divestiture*
Case Study Exercises 13-2-29
Cash Accounts 3-7, 3-13, 3-18, 8-3-7
Account Numbers 8-5
Aggregating 3-13
Brokerage Statements 2-10
Cash or Deferred Arrangements 7-8-10
CATS 8-15, 8-20
Cautionary Letter (Model) 14-4
Certificates of Deposit 3-13, 8-3, 8-5
Certificates of Divestiture 3-11, 3-17, 4-15, 5-15-18, 16-5
Eligible Persons 5-17
Permitted Property 5-17
Public Availability 4-15, 15-1
Requesting 5-15-18
Trusts 5-18
Certification of Reports 2-1, 4-2, 4-3, 4-12
Delegation of DAEO's Certification Authority 4-12, 12-3
Timeframes for Review & Certification 4-3
Charitable Donations 6-30, 9-6
Citations 1-3-4
Collectibles 8-43-47
College Tuition 7-33
Combined Reports 2-12, 2-13, 3-6
Due Dates 2-12
Reporting Periods 3-6
Commodity Futures 8-32-35, 16-7
Common Stock ..... See *Stock*
Comptroller General Decisions 9-10
Confidentiality & Privacy 3-1, 3-31
Attorney Client Confidentiality 3-31
Privacy Rights & Public Disclosure 3-1

Contingency Fees 6-23-25
Copyrights 8-43-45
Corporate Affiliates 8-14
Corporate Securities 8-8-13
Cover Page 3-2-5
Covered Relationship ..... See *Appearance Standard*
Designated Agency Ethics Officials & Other Ethics Officials 16-6
  Access to SF 278s 4-15
  ADAEO 4-16, 16-5
  Annotating the SF 278 ..... See *Annotating the 278*
  Certifying Reports ..... See *Certification of Reports*
  Delegation of Authority 4-12
  Ethics Agreements ..... See *Ethics Agreements*
  Letters, Notices, and Requests to OGE 2-1, 2-4, 2-7, 2-13, 3-25, 5-3, 5-7, 5-15, 5-22, 14-6
  Referral for Prosecution 4-3, 5-22, 9-6, 11-1, 11-24, 15-1
  Reviewing SF 278s ..... See *Review Procedures*
Day Trading 3-18
Debentures 8-8
Defined Benefit Plans 7-6, 7-11-14
Defined Contribution Plans 7-7-10, 7-12-14
  Excepted Investment Funds 7-10
  Underlying Holdings 7-9
Department of Justice
  Interpretive Authority for Conflict of Interest Statutes 11-3
  Referral of Violations to 4-3, 5-22, 11-24, 15-1
Dependents
  Dependent Child Defined 3-15, 16-6
  Minor Child ..... See *Minor Child*
  Prepaid Tuition Plans 7-33
  Separateness of Dependent Child's Interests 3-14-15, 3-18
Destruction of SF 278s 4-15
Detailees 2-8
Disciplinary Action 2-16, 2-20, 4-3, 5-22, 9-6, 9-14, 11-11, 11-24
Disqualification ..... See *Recusal*
Diversification Test
  Excepted Investment Fund 7-2
  Diversified Investment Fund 5-17
  Diversified Mutual Fund 5-11
  Qualified Diversified trust 5-19
Divestiture 5-2-3, 5-14
  Certificates of Divestiture ..... See *Certificates of Divestiture*
  Requiring Divestiture 11-6
Dividends 3-9, 3-10, 16-6

Dividend Reinvestment Plans 3-17, 8-10
Divorce 3-13, 3-14, 3-26
Due Dates
Due Dates for SGEs 2-5
Exemption requests 2-4
Summary of Due Dates 2-19
Weekends & Holidays 2-19
Earned Income 3-9-10, 16-6
Government Benefits 3-9
Honoraria 6-29
Outside Earned Income 11-24, 11-25
Reporting Thresholds 3-9-10
Restrictions on Senior Noncareer Employees 5-14, 6-23, 6-28, 6-31, 11-20, 11-24, 11-25
Retirement Benefits 3-9
Spouse's Earned Income 3-10, 6-7, 6-29
Teaching, Speaking, Writing 6-31, 8-45, 11-21, 11-22, 11-24
Trustee Fees 6-33, 7-30
Unemployment Benefits 3-9
Employee Stock Ownership Plans (ESOP) 7-8
Employment ..... See generally *Outside Activities & Employment*
Equities ..... See *Stock*
Estates 3-22, 7-27-32
Ethics Agreements 5-2-3
Compliance timeframe 5-2-3
Disqualification ..... See *Recusal*
Divestiture ..... See *Divestiture*
Documenting 12-2
Evidence of Compliance 5-3
Forwarding to Senate 12-2, 12-4
Model 14-6-8
PAS Employees ..... See *PAS Employees*
Public Availability 12-2
Qualified Trusts ..... See *Qualified Trusts*
Reassignment 5-3, 5-13
Recusals ..... See *Recusal*
Resignation 5-3, 5-14
Ethics Officials ..... See *DAEOs & Other Ethics Officials*
Excepted Investment Funds 7-2-5
Defined Contribution Plans 7-10
Exchange Traded Funds 8-22
Prepaid Tuition plans 7-33
REITs 8-39
Excepted Trusts 7-31

Exchange Traded Funds 8-22
Exchanges 3-19
Executors 6-33, 7-28
Exemptions from Filing
  Employees Serving 60 days or less 2-3
  Schedule C Positions 2-4
  Special Government Employees 2-5
Exemptions under 18 U.S.C. § 208(b)(2) 5-1, 5-6, 5-11, 11-16
  Employee Benefit Plans 5-11
  Excepted Investment Funds 7-4, 7-5
  Mutual Funds 5-11
  Sector Funds 7-5
  Securities 5-11
  State and Local Government Pensions 7-14
  Unit Investment Trusts 5-11
Extension of the Filing Due Date 2-1, 2-13, 2-14, 2-15
  Combined Reports 2-12, 2-13
  Armed Forces 2-15
Extraordinary Payments 6-12, 6-17, 6-24
Fair Market Value 3-12, 3-22, 9-3, 9-9
Farms 6-26-28
Federal Advisory Committee 2-8, 5-6
Federal Bureau of Investigation
  Access to SF 278s 4-15
Fiduciary Relationship 7-28, 7-30, 7-31, 11-24, 16-7
Filing of Reports
  30-day Grace Period 2-18
  60-Day Determination 2-3, 2-5, 2-7, 2-11, 4-17
  Additional Designation for Filing 2-4
  Brokerage Statements 2-10
  Combined Reports 2-12, 2-13, 3-6
  Date of Receipt 2-1, 4-2
  Day-Counting Rules 2-3
  Detailees 2-8
  Due Dates 2-4, 2-5, 2-11, 2-19
  Exemption of PAS Employees 2-3
  Exemption of Schedule C Positions 2-4
  Extension of the Due Date 2-1, 2-13, 2-14, 2-15
  Filing a False Report 2-20
  Forwarding Reports to OGE 2-1, 4-16
  Incumbent Reports 2-11
  Late Filing Fee ..... See *Late Filing Fee*
  Master List of Filers 2-9
  New Entrant Reports 2-11

Penalties 2-16, 2-20
Recess Appointees 4-16
Reporting Periods 3-6
Schedule C Positions 2-4
Special Government Employees 2-3, 2-5, 2-6, 2-7, 2-12, 4-14, 16-10
Status as an Employee 2-8
Termination Reports 2-12
Transfer Between Covered Positions 2-12
Forms
IRS Form 8824 5-15
OGE Form 201 ..... 4-13, 4-15, 15-1
OGE Form 202 ..... 5-22, 15-1
OGE Form 450 ..... 1-1, 2-3, 2-5, 2-8
SF 278 ..... 2-10, 4-15, 15-1
Forwarding Reports to OGE 2-1, 4-16
Frequent Flyer Accounts 3-13
Fundraising 11-21
Funds Receivable 6-25, 10-1, 10-8-10
Honoraria 6-29
Future Employment Agreements 3-28, 6-5, 6-8, 6-14, 6-30
Futures 8-32-35, 16-7
Gay & Lesbian Partners 3-15
General Obligation Bonds 8-16
General Partnerships 3-29, 6-4, 6-6, 6-12, 6-19, 6-22-25, 6-32, 8-27, 8-28
Contrasted with Limited Partnerships 8-27, 8-28
Interests of General Partner Imputed to Filer 5-1, 5-11, 6-14, 6-22, 11-6, 11-16
Law Firms 6-19, 6-22-25
Partnership Income 6-6, 6-23
Gifts and Reimbursements 3-21-25, 9-2-14
Agency-Accepted Travel 3-24, 9-10
Aggregating Gifts 3-21, 9-2
Date of Receipt 9-3, 9-9
Disposing of Prohibited Gifts 9-6, 11-14
Exceptions to Gift Prohibition 9-5, 9-13, 11-13
Exclusions from Definition of Gift 11-12
Exclusions from Reporting 3-22-24, 9-2, 9-14
Gift Acceptance Flowchart 9-7
Gifts Between Employees 11-15
Hospitality 3-22
Inheritance 3-22
Loans vs. Gifts 10-4
Prohibited Source 9-4, 11-12, 16-9
Repayment of Prohibited Gifts of Travel 9-14
Reporting Thresholds 3-21, 9-2, 9-8

Subscriptions 3-22
Suitable Mementos of an Honoring Function 3-23
Travel 9-10-13
Valuation 3-22, 9-3, 9-9
Waiver of Reporting Requirements 3-25, 9-2
Government National Mortgage Association (GNMA) 8-16, 8-36
Government Securities 8-15-18
GSA Travel Authority 9-11
Guarantors 5-21
Health Insurance 6-14
Heirs 7-28
Honoraria 3-9, 3-10, 6-7, 6-29-31, 11-22, 16-7
Honoraria Ban 6-29, 11-22
Honoraria Donated to Charity 6-30
Restriction on Outside Earned Income 11-24
Speaking Engagements 6-7, 6-30
Teaching, Speaking, and Writing Related to Official Duties 6-29
Imputed Interests 3-7, 5-1, 11-6
Income 3-9, 16-7
Accrued Income 3-9
Aggregating 3-8
Capital gains 3-9, 3-11, 8-8-10, 8-18, 8-22-23, 8-27, 8-33, 8-36, 8-39, 8-44, 16-5
Dividends 3-10
Earned Income 3-9, 3-10, 6-5, 6-29, 6-32
Government Benefits 3-9
Gross vs. Net 3-9, 6-6
Honoraria 6-29
Interest 3-10
Investment Income 3-10-11
Partnership Share 3-9, 3-10
Rent 8-36, 8-39
Reporting Thresholds 3-8, 3-9
Royalties 8-45
Salary 3-9-10
Spouse & Dependent's Income 3-9, 3-10, 3-14
Unemployment Benefits 3-9, 3-13
Using Amount of Income Reported on IRS Form 1099 ..... 8-5, 8-10, 8-18, 8-23, 8-39
Veteran's Benefits 3-9, 3-13
Income Taxes ..... See *Taxes*
Incumbent/Annual Reports 2-11
Combined with Termination Reports 2-12
Due Dates 2-11
Forwarding Reports to OGE 4-16

Reporting Periods 3-6
Independent Counsel
Exemptions from Public Release of SF 278s 4-14
Reports Certified by OGE 4-16
Individual Retirement Accounts (IRAs) 7-15-16, 8-3
Industrial Development Bonds 8-17, 8-20
Inheritance 3-22, 7-27-32
Insurance 3-13, 6-14
Health Insurance 6-14
Benefits from a Former Employer 6-14
Claims 3-13
Life Insurance ..... See *Life Insurance*
Intellectual Property 8-43-47
Intelligence Officials
Exemptions from Public Release of SF 278s 4-14
Interest 3-9, 3-10, 10-3, 16-7
Interest Rate 10-3
Investment Clubs 7-23-26
Account Statements 7-23
Reporting Thresholds 7-23
Joint Ownership 3-15
Joint Ventures 6-4, 6-15
Keogh Plans 7-7
Late Filing Fee 2-1, 2-16-19
30-Day Grace Period 2-18
Collection of the Fee 2-16-17
Extraordinary Circumstances 2-17, 2-18
Notices to Filers 2-17
Waiver 2-18
Law Firms 6-19-25
Leaves of Absence 6-5, 6-8, 6-14
Lesbian & Gay Partners 3-15
Liabilities 3-26, 3-27, 10-2-7
Commercial Loans 10-6
Co-Signed Loans 10-4
Loans Between Employees 10-7, 10-10
Loans from Prohibited Sources 10-6
Loans vs. Gifts 10-4
Margin Accounts 10-2
Mortgages 10-2
Non-Reportable liabilities 3-26
Personal Loans 10-6
Promissory Notes 10-2
Reporting Thresholds 3-26, 10-3

Tax Liabilities 3-27
Life Insurance 7-20-22
Continuing Benefit From a Previous Employer 6-5, 6-14, 7-21
Exemptions under 18 U.S.C. § 208(b)(2) 7-22
Cash Value Insurance 7-20
Reporting as a Beneficiary 7-21
Term Insurance 7-20
Universal Life 7-20
Variable Life 7-20
Whole Life 7-20
Limited Partnerships 3-9, 6-4, 8-27-31
Contrasted with General Partnerships 8-27, 8-28
Income 3-9, 8-29
Public and Private 8-28, 8-29
Valuation 8-29
Margin Accounts 8-4, 8-11, 10-2, 16-8
Liabilities 10-2
Marriage During Reporting Period 3-14
Military Officers 2-15, 11-3
Minor Child 3-15, 5-1, 11-6, 16-8
Dependent vs. Minor Child 3-15, 6-13
Eligible for Certificates of Divestiture 5-17
Model Documents
208(b)(l) Waiver 14-15
Agency Procedures for the Collection and Review of SF 278s 14-18
Cautionary Letter 14-4
Ethics Agreement 14-6
Notification of Filing Requirement 14-2
Recusal letter 14-9
Screening Arrangements 14-12
Money Market Accounts 3-13, 3-18, 8-3
Money Market Funds 3-13, 3-18, 8-4-7
Mortgage-Backed Securities 8-16-18, 8-36-42
Collateralized Mortgage Obligations (CMOs) 8-37
Mortgage Pass-Throughs 8-37
REITs 8-37-42
Mortgages 3-27, 10-2, 16-8
Municipal Securities 8-16-17
Mutual Funds 3-17, 7-2, 8-21, 16-8
Diversified 5-17, 7-19, 7-22
Excepted Investment Funds 7-2-5
Money Market Funds 3-13, 3-18, 8-4-7
Open and Closed 8-21
Sector Funds 7-5, 8-26, 16-10

Net Distributive Share 8-10
New Entrant Reports 2-11
Applicable Schedules 3-6
Combined with Termination Reports 2-12
Due Dates 2-11, 3-2
Exclusion from Schedule B 3-19, 3-24
Reporting Periods 3-6
Nominee Reports 2-1, 2-2, 2-10-12
Applicable Schedules 3-6
Destroying SF 278s of Unconfirmed Nominees 4-15
Due Dates 2-11, 3-2
Exclusion from Schedule B 3-19, 3-24
Extension 2-14
Presidential Nomination Process 12-1-4
Public Availability 2-1, 4-15
Reporting Periods 3-6
Notification Letter (Model) 14-2
Office of Government Ethics
Certificate of Divestiture 5-15-18
Interpretive Authority 11-3
Opinions 11-1
Organizational Chart 1-5
Regulations 1-6
Reports Certified by OGE 4-16-17
Public Availability & Retention of Reports 4-13-15
OGE Form 201 ..... 4-13, 4-15, 15-1
OGE Form 202 ..... 5-22, 15-1
OGE Form 450 ..... 1-1, 2-3, 2-5
OGE Opinions 11-1
Options 8-9, 8-11, 8-13, 8-32-35, 16-8
Exercise or Expiration 3-18, 8-11, 8-32-33
Strike Price 16-10
Outside Activities & Employment 6-5, 11-20-21
Agreements for Future Employment 3-28, 4-9, 6-5, 6-8, 6-14
Former Employers 3-28, 6-5, 6-7, 6-8, 6-14, 7-21, 11-7
Continuing Outside Employment 6-18
Exceptions 3-29
Fundraising 11-21
General Partnerships 8-27, 8-28
Honorary Positions 3-29
Income from Outside Positions 6-32
Intellectual Property 8-43-45, 8-47
Joint Ventures 6-4, 6-15
Leaves of Absence 6-5, 6-8, 6-14

Misuse of Government Time or Property 6-18
Negotiation for Future Employment 6-5, 6-8, 6-14
Outside Positions 6-18, 11-20-21, 6-32-37
Political Positions 3-29
Positions with Religious, Social, or Fraternal Organizations 3-29, 6-32
Restrictions on PAS Employees 5-14, 6-18, 11-20-21, 11-25
Restrictions on Senior Noncareer Employees 5-14, 6-18, 6-23, 6-28, 8-47, 11-20, 11-21, 11-24
Practice of Law 6-19
Seeking Employment 11-18
Severance Payments 6-5, 6-7, 6-9, 6-12
Spouse's Outside Positions 3-29, 6-13
Trusteeship 3-29
PAS Employees 2-5, 12-1, 16-8
60-Day Filing Threshold 2-3, 4-17
Certification 4-12, 4-16
Destroying SF 278s of Unconfirmed Nominees 4-15
Ethics Agreements 5-2-5
Exemption from Filing 2-3
Expedited Review Process for Nominees 12-1
Nominee Reports 1-1, 2-1, 2-2, 2-5, 2-11
Part-Time or Short Term Nominees 12-3
Public Availability of Reports 4-14, 4-15
Restrictions on Holding Outside Positions ..... *See Senior Noncareer Employee Restrictions*
Patents 8-43-45, 8-47
Penalties
Civil Penalties 2-20, 11-9, 11-24
Criminal Penalties 2-20, 5-22, 11-9
Filing Penalties 2-16, 2-20, 4-3
Standards of Conduct Violations 5-22, 11-11
Pensions 3-7, 7-6-14
Defined Benefit Plans 7-6, 7-11-14
Defined Contribution Plans 7-6-10, 7-12-14
Keogh Plans 7-7
Simplified Employee Pensions 7-7
Spousal Pensions 7-12
State and Local Government Pensions 7-6, 7-14
Vested vs. Non-Vested 7-6
Permitted Property 5-17
Personal Hospitality 3-22, 16-8
Personal Residence 3-13, 3-18, 3-27, 8-38, 10-2, 16-9
Political Positions 3-29
Post-Employment Restrictions 11-8, 11-23

Precious Metals 8-43-47
Preferred Stock (See also *Stock*) 8-8
Prepaid Tuition Plans 7-33
Presidential Nominee Process 12-1-4
Principal 8-3, 10-1, 16-9
Prizes 3-10
Pro Bono Representation 6-23, 11-5
Procedures for the Collection and Review of SF 278s (Model) 14-18-28
Processing Ethics Violations 5-22, 11-1
Professional Corporations 6-19
Profit-Sharing Plans 6-5, 7-8
Prohibited Holdings 8-14
Prohibited Source 9-4, 9-5, 9-12, 9-13, 10-6, 10-9, 11-12, 16-9
Public Availability of 18 U.S.C. § 208 Waivers 4-15, 5-10, 15-1
Public Availability of SF 278s 2-1, 2-5-6, 4-13-15, 15-1
    Fees 4-13
    Client's Names 3-31
    Documents Released with the Report 4-15
    Ethics Agreements 12-2
    Exemptions from Release 4-14
    Notifying Filers of Requests for their Reports 4-15
    Request for Copies of SF 278s 4-13, 15-1
    Restrictions on the Public Use of SF 278s 4-14
    Retention of Reports 4-15
    Storing Publicly Available Documents 4-4
    Timeframe for Public Availability 4-13
    Where to Obtain Reports 4-14
Public Filers 2-2-9
    Additional Designations 2-4
    Detailees 2-8
    Exclusions 2-4
    Serving 60 days or less 2-3
    SGE's 2-5-6
Public Financial Disclosure
    Purpose 1-1, 1-7, 9-1
Qualified Trusts 5-2, 5-3, 5-18, 7-31, 16-9
    Public Availability of Waivers 4-15
    Blind Trusts 5-19-20, 7-31
    Diversified Trusts 5- 19-20
    Qualifying Previously Established Trusts 5-20
Rare Books 8-43
Rate of Basic Pay 2-2, 2-4
Real Estate 8-36, 8-38-41
Real Estate Investment Trusts (REITs) 8-36-40, 8-42

Real Estate Mortgage Investment Conduits (REMICs) 8-37
Reasonable Person Standard 6-15
Reassignment 5-3, 5- 13
Receipt of Reports 2-1
Receivables ..... See *Funds Receivable*
Records Systems 4-13
  Referring to Reports 2-13
  Tracking System 2-9
Recusal 5-3-5, 7-14, 11-16, 16-9
  Appearance Standard 11-17
  Elements 5-4
  Following an Extraordinary Payment 6-17
  Model Recusal Letter 14-9-11
  Public Availability 4-15
  Screening Mechanisms 5-4, 14-10-11
  When Seeking Employment 11-18
Referring to Reports 2-13
Reimbursements ..... See *Gifts and Reimbursements*
Relative
  Defined 16-10
  Gifts from 3-22, 9-2
Remainder Interests 7-28-30
Rent 8-36-39, 10-4
Reporting Periods 3-6
Reporting Thresholds
  Assets 3-8
  Bank Accounts 3-8
  Funds Receivable 10-8
  Gifts and Reimbursements 3-21, 9-2, 9-8-14
  Income 3-8, 3-9
  Liabilities 3-26, 10-3
  Spouse's Earned Income 3-10
  Transactions 3-17
Residual Interests 6-16
Resignation 5-3, 5- 14
Retention of Reports 4-13, 4-15
Retirement Accounts (See also *Pensions*) 7-15-16
  Defined Benefit Plans 7-6, 7-11-14
  Defined Contribution Plans 7-6-10, 7-12-14
  IRAs 7-15-16
  Keogh Plans 7-7
  Simplified Employee Pensions 7-7
  Spouse's Accounts 7-12
  TIAA-CREF 7-9

Retirement Benefits 3-9, 3-13, 3-28
Revenue Bonds 8-16
Review Procedures 4-1-4
Amending Reports 4-11
Case Study Exercises 13-2-29
Cautionary Letters 14-4
Certifying Reports 2-1, 4-12
Extension of the Filing Due Date ..... See *Extension of the Filing Due Date*
Filing Penalties 2-16, 2-20
Forwarding Reports to OGE 2-1, 4-16
Model Written Procedures 14-18-24
Notification of Filing Requirement 2-1, 14-2
Processing Ethics Violations 5-22, 11-1
Public Release of Reports 2-1
Referral for Prosecution 4-3, 5-22
Review Assumptions 4-6-8
Review Checklist 14-25-28
Review Timeframes 2-1, 4-3
Reviewing Official 16-10
Seeking Additional Information 4-5, 4-10-11, 8-31
Supervisor's Review 4-12
Termination Review 4-9
Tools of Review 4-4
Tracking System 2-9
Reviewing Official 16-10
Roll-over 5-17, 7-15
Royalties 8-43, 8-45
S Corporations 6-4, 6-6
Salary 2-2, 3-9, 3-10
Savings Accounts 3-13, 8-3
Savings Bonds 3-9, 3-18
Schedule A: Assets and Income 3-7-16
Schedule B, Part I: Transactions 3-17-20
Schedule B, Part II: Gifts, Reimbursements, and Travel 3-21-25
Schedule C Positions 2-2, 2-4, 5-14, 11-24, 16-10
Schedule C, Part I: Liabilities 3-26-27
Schedule C, Part II: Agreements or Arrangements 3-28
Schedule D, Part I: Positions Held Outside U.S. Government 3-29-30
Schedule D, Part II: Compensation in Excess of $5,000 3-31
Scholarships 3-10
Screening Arrangements (Model) 14-12
Sector Funds 5-11, 7-5, 8-26, 16-10
Securities 5-11, 8-1

Senate Committees 2-3, 4-17, 5-3, 5-5, 12-4
Senior Executive Service 11-24
Senior Noncareer Employee Restrictions 5-14, 6-28, 11-20, 11-21, 11-24, 11-25
Separation from a Spouse 3-13-14
Severance Payments 3-28, 6-5, 6-7, 6-9, 6-12, 6-14, 6-16, 6-17, 6-24
  Established Past Practice or Written Plan 6-16, 6-24
  Extraordinary Payments 6-12, 6-17, 11-17
  Waiver of Recusal Requirement 6-17
SF 278 ..... 2-10, 4-15, 15-1
Simplified Employee Pensions 7-7
Sole Proprietorships 6-4, 6-7, 6-25
Special Government Employees 2-5, 11-2, 11-4-7, 16-10
  60-Day Filing Threshold 2-3, 2-5, 2-7
  Day Counting Rules 2-3, 2-5
  Exemption from Filing 2-3
  Exemptions from Public Release of SF 278s 4-14
  Filing of Reports 2-3, 2-5, 2-12
  Not Eligible for Certificates of Divestiture 5-17
  Public Release of Reports 2-5-7, 4-14
  Standards of Conduct 11-10, 11-21
  Waivers 5-6, 11-6
Spouse 3-7, 3-15
  Aggregation 3-8, 3-22, 8-9, 8-17, 8-22, 8-28, 8-32, 8-38, 8-44
  Assets 3-7, 3-14
  Business Interests 6-5, 6-13
  Covered Relationship 6-15
  Earned Income 3-10, 6-5, 6-7
  Exclusions 3-23, 3-29, 3-31
  Honoraria 6-29-30
  Interests Imputed to the Filer 3-7, 5-1, 6-13, 11-6, 11-16
  Pension Interests 7-12
  Reporting Threshold 3-8, 3-10, 6-5, 6-7
  Separateness of Spousal Interests 3-14, 3-18, 3-26
  Separation & Divorce 3-13, 3-14
  Spouse's Law Practice 6-19
  Trusts & Estates 7-28-29
Stamp Collections 8-43
Standards of Conduct 11-10
  Appearance Standard ..... See *Appearance Standard*
  Conflicting Financial Interests 11-16
  Covered Relationship 6-15
  Ethics Agreements ..... See *Ethics Agreements*
  Expert Witnesses 11-21
  Extraordinary Payments 6-12, 6-17, 6-24, 11-17

Fulfilling Just Financial Obligations 10-7
Fundraising 11-21
Gifts Between Employees 10-7, 10-10, 11-15
Gifts from Outside Sources 11-12-14
Misuse of Government Time or Property 6-18, 11-19
Misuse of Nonpublic Information 11-19
Misuse of Position 9-4, 11-19
Outside Activities & Employment 6-18, 6-19, 11-20
Principles of Ethical Conduct 11-10
Prohibited Source ..... See *Prohibited Source*
Seeking Employment 11-18
Severance Payments 6-12
Special Government Employees 11-10, 11-21
Teaching, Speaking, and Writing 6-29, 6-31, 8-45, 11-21, 11-22, 11-24
Use of Public Office for Private Gain 9-5, 11-19
Violations 5-22, 11-11
State or Local Governments
General Obligation Bonds 8-16
Industrial Development Bonds 8-17
Municipal Securities 8-15-18, 8-20
Pensions 7-6, 7-14
Revenue Bonds 8-16
Stock 3-17, 8-8-14, 8-21
Common 8-8
Day Trading 3-17
Mutual Funds ..... See *Mutual Funds*
Non-public 8-9
Options 8-8, 8-9, 8-11, 8-13
Preferred 8-8
Stock Bonus Plans 7-8
Stock Splits 3-18
Stock Options 6-14, 8-8-11, 8-13, 8-32-35
Exercise or Expiration 3-18, 8-11, 8-32-33
Strike Price 16-10
Strike Price 16-10
STRIPS 8-15, 8-20
Supplemental Regulations 1-6, 5-14, 8-14, 11-16, 11-20
Taxes
Certificates of Divestiture ..... See *Certificates of Divestiture*
Fulfillment of Tax Liabilities 10-7
Income Reportable on SF 278 versus Taxable Income 3-9
Income Tax Deficiencies 10-4
IRS Form 1099 ..... 3-9, 8-5, 8-10, 8-18, 8-23, 8-39
Joint Tax Returns 3-14

Roll-Over of Tax-Deferred Assets 7-15
Tax Liabilities 3-27
Tax-Deferred Accounts 7-7, 7-8
Tax-Deferred Income 7-10, 8-5, 8-18, 8-23, 8-29, 8-39
Taxable Status 7-15, 8-18
Teaching, Speaking, and Writing 6-29, 6-31, 8-45, 11-21, 11-22, 11-24
Termination Reports 2-12
Applicable Schedules 3-6
Combined Reports 2-12
Due Dates 2-11, 2-12, 3-2
Review Standards 4-9
Third Party Guarantors 5-21, 7-14
Thrift Savings Plan 3-13, 5-11, 7-6, 7-8, 10-2
TIAA-CREF 7-9
TIGRs 8-15
Timeshares 3-13
Tools of Review 4-4
Tracking System 2-9
Transactions 3-17, 8-11
Aggregating 3-17
Bond Calls or Maturity 8-11
Day Trading 3-18
Dividend Reinvestment 3-17
Exceptions 3-18
Exchanges 3-19
Exercise or Expiration of Options 8-11
Redemption of UIT Units 8-22
Reporting Thresholds 3-17
Splits 8-11
Travel 3-21-22, 3-24, 9-8-14
Accepted by the Agency 3-24, 9-11
Government Employees Training Act 9-5, 9-10, 9-11, 11-7
GSA Travel Authority 9-11
Political Trips 3-22, 9-13
Reporting Reimbursements Incident to Receipt of Honoraria 6-30
Treasuries 3-18, 5-17, 8-15, 16-10
CATS 8-15, 8-20
Savings Bonds 8-15
STRIPS 8-15
T-Bills 8-15
TIGRs 8-15
Treasury Bonds 8-15
Treasury Notes 8-15
Trustees 6-33, 7-29-31

Eligibility for Certificates of Divestiture 5-17, 5-18
Trustee Fees 6-33, 7-30
Trusts 5-18, 7-27, 7-29-33
Blind Trusts 7-31
Certificates of Divestiture 5-18
Charitable Trusts 7-29
Contingent or Conditional Interests 7-30
Excepted Trusts 7-31
Generation-Skipping Trusts 7-29
Living Trusts 7-29
Qualified Blind Trusts 5-19
Qualified Diversified Trusts 5-19
Remainder Interests 7-30
Reporting Thresholds 7-30
Vested Beneficial Interests 7-27
Tuition
Prepaid Tuition Plans 7-33
Scholarships 3-10
U.S. Attorneys
Access to SF 278s 4-15
Referral of Violations 4-3, 5-22
U.S. Savings Bonds 3-9, 5-17, 8-15
Unemployment Benefits 3-9, 3-13
Unit Investment Trusts (UITs) 5-11, 8-21-22
Vacation Homes 3-13
Vested Interests 7-6, 7-27
Veterans' Benefits 3-9, 3-13
Waivers 5-6-10
Exemption from Filing 2-3, 2-4
Exemptions from Public Release 2-6-7
Late Filing Fee 2-18
Model 18 U.S.C. § 208(b)(l) Waiver 14-15-17
Public Availability of § 208 Waivers 4-15, 5-10, 15-1
Reporting of Personal Gifts 3-25
Substantiality Test for § 208 Waivers 5-9
Under 18 U.S.C. § 208 ..... 5-3, 5-6-10, 7-26, 11-6, 14-15-17, 16-11
Waivers for Native American/Alaskan Birthrights 5-6
Widely Diversified 5-11, 5-19, 7-2, 16-11
Widely Held 7-2
Wills 7-28
Zero Coupon Bonds 8-8, 8-18