

FINANCIAL DISCLOSURE RUNNING AN EFFECTIVE PROGRAM

I. REFERENCES & RESOURCES.

A. General

1. Compilation of Federal Ethics Laws
<https://www2.oge.gov/Web/oge.nsf/Resources/Compilation+of+Federal+Ethics+Laws>:
 - a. Ethics in Government Act of 1978, 5 U.S.C. App 4 (Pub. L. 95-521)
 - b. Ethics Reform Act of 1989, 5 U.S.C. App 4 (Pub. L. 101-194)
 - c. Stop Trading on Congressional Knowledge Act (STOCK Act), Pub.L. 112-105, S. 2038, 126 Stat. 291, enacted April 4, 2012, as amended.
2. DoD 5500.07-R, Joint Ethics Regulation (JER), Chapter 7
<http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/550007r.pdf>)
3. DoD Standards of Conduct Office Website -
<https://dodsoco.ogc.osd.mil/>
4. Army Financial Disclosure Management program (FDM), Resources tab under Help & Support
<https://www.fdm.army.mil/>

B. Public Financial Disclosure (OGE Form 278)

1. 5 U.S.C., App. 4 §§ 101-111: Public financial disclosure requirements
www.gpo.gov/fdsys/pkg/USCODE-2009-title5/html/USCODE-2009-title5-app-ethicsing-titleI.htm
2. 5 C.F.R. § 2634.101 to 805
<http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=06f812f26e7ed9f364bb87944757b912&rgn=div5&view=text&node=5:3.0.10.10.8&idno=5>
3. OGE materials
 - a. Public Financial Disclosure Guide
<https://www.oge.gov/Web/278Guide.nsf>

- b. Helpful Resources for Public Financial Disclosure (Reviewers & Filers) – Includes resources and forms:
https://www.oge.gov/web/oge.nsf/ethicsofficials_financial-disc
- c. STOCK Act Periodic Transaction Report (OGE 278T) and implementing Guidance:
 - (a) Legal Advisory 12-01: Post-Employment Negotiation and Recusal Requirements under the STOCK Act
<https://www.oge.gov/Web/OGE.nsf/Resources/LA-12-01:+Post-Employment+Negotiation+and+Recusal+Requirements+under+the+STOCK+Act>
 - (b) Legal Advisory 12-02: Mortgage Reporting Requirement under the STOCK Act
<https://www.oge.gov/Web/OGE.nsf/Resources/LA-12-02:+Mortgage+Reporting+Requirement+under+the+STOCK+Act>
 - (c) Legal Advisory 12-04: Public Financial Disclosure – Periodic Transaction Reports
<https://www.oge.gov/Web/OGE.nsf/Resources/LA-12-04:+Public+Financial+Disclosure%E2%80%94Periodic+Transaction+Reports>
 - (d) Legal Advisory 13-01: Periodic Reporting of Spouse and Dependent Children Transactions
<https://www2.oge.gov/web/oge.nsf/Resources/LA-13-01:+Periodic+Reporting+of+Spouse+and+Dependent+Children+Transactions#:~:text=for%20Ethics%20Officials-.LA%2D13%2D01%3A%20Periodic%20Reporting%20of,Spouse%20and%20Dependent%20Children%20Transactions&text=This%20Legal%20Advisory%20explains%20that,in%20OGE%20LA%2D12%2D04>

C. Confidential Financial Disclosure (OGE Form 450)

- 1. 5 C.F.R. § 2634.901 to 909
<http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=06f812f26e7ed9f364bb87944757b912&rgn=div5&view=text&node=5:3.0.10.10.8&idno=5>
- 2. DoD 5500.07R, JER Sections 7-300 to 7-310
- 3. OGE materials
 - a. Helpful Resources for Public Financial Disclosure (Reviewers & Filers) – Includes resources and forms:
https://www.oge.gov/web/oge.nsf/ethicsofficials_financial-disc

II. ROLE OF FINANCIAL DISCLOSURE & ETHICS COUNSEL.

- A. Report helps to provide notice of potential conflicts of interest (18 U.S.C. § 208, 5 C.F.R. §§ 2635.402 and 502, and 5 C.F.R. § 2640).

Warning: The report is a compromise—It does not collect all the information necessary to conduct a contemporaneous and complete conflict analysis, so some potential conflicts may not be identified, which is why providing guidance and training to filers is so important. Program requires diligent follow-through to be effective.

- B. EC responsibility is to review financial disclosure reports for compliance with all applicable ethics laws and regulations and identify potential conflict of interest or impartiality concerns. EC responsibilities do not include:
1. Determining the underlying legality of a particular company's business practices.
 2. Assessing the effect of a particular holding on other Federal requirements, such as security clearances.

III. BENEFITS OF FINANCIAL DISCLOSURE – EDUCATIONAL.

- A. **For employees:** By completing the form, employees **identify** their financial interests. They may **recognize** whether these interests conflict with their official duties, and **remember** their interests if a potential conflict should arise in the future.
- B. **For supervisors:** By reviewing the form, supervisors **identify** financial interests that may conflict with their employees' official duties and can assign duties accordingly.
- C. **For ethics officials:** By reviewing the form, ethics officials ensure technical compliance and identify financial interests that may conflict with a filer's official duties. By sending warning letters, ethics officials **remind** filers of their financial interests, **educate** them about the rules applicable to their particular interests, and **demonstrate** official interest in helping them to avoid potential conflicts of interest.
- D. The financial disclosure report provides excellent evidence of knowledge if violations occur and are prosecuted.

NOTE: Unless an exception applies, DoD requires electronic filing of all financial disclosure forms using either the Financial Disclosure Management (FDM) or Integrity system. (Manual forms filed by exception must use the most current version - always check the OGE website to ensure you are using and receiving the most current version of the form as they are updated frequently).

IV. COMMON REQUIREMENTS FOR ALL FINANCIAL DISCLOSURE REPORTS

A. Electronic Filing Required.

1. All financial disclosure reports are required to be filed using the appropriate electronic filing system. OGE’s Integrity system for public reports and Army Financial Disclosure Management (FDM) system for confidential reports. (*see* DSD Memorandum “Mandatory Electronic Filing of Public Financial Disclosure Reports”, November 25, 2015 and DSD Memorandum “Mandatory Electronic Filing of Confidential Financial Disclosure Reports”, July 19, 2016. Exceptions can be granted by DAEOs or designees for confidential reports where electronic filing is not feasible (e.g., personnel without CAC access).
2. Reports must be completed in the system. Filers must include all information in the appropriate report sections within the electronic filing system. Filers may not include substantive data in comments or attachments, unless necessary to provide supplemental or explanatory information. *Statements may NOT be attached in lieu of properly completing the required form fields.*

B. Filing Extensions. The DAEO (or designee) may grant extensions for good cause up to 90 days past the filing deadline. 5 C.F.R. § 2634.201(g) and 2634.903(d). Check your Ethics Counselor delegations to determine if they are broad enough to include this authority. Except as discussed below for Combat Zone Extensions, no filer can receive an extension of more than 90-days.

1. Procedural Requirements.

- a. Any requests for extensions must be in writing (email suffices) and set forth specific reasons why such additional extension of time is necessary (show good cause). Requests should address why filing could not be completed during the March through May timeframe – not just as of the due date.
- b. Denial or approval of the additional extension must be in writing and retained as part of the report file. FDM provides this functionality by requiring entry of a reason when granting extensions.
- c. DAEO (or designee) may grant *sua sponte* extensions for delays caused by outside factors such as extended system wide outages or failure to timely identify and assign a report to a new entrant filer and must document the basis for such extensions in the filing system.

2. **New Entrant Reports.** New employees are more likely to have potential

conflicts or impartiality issues relating to former non-Federal employment and are likely to be less familiar with Federal ethics restrictions. To ensure that an ethics review is conducted as soon as possible, extensions for New Entrant reports should be rare and kept to the minimum amount of time necessary to enable accurate filing. If extensions are necessary, consider using a general cautionary notice handout as part of the extension grant to put the filer on notice of their responsibilities concerning conflicts of interest and impartiality issues.

3. **Combat Extensions.**

- a. OGE 278 - There is a statutory extension for anyone serving in support of the Armed Forces in areas designated as combat zones. Reports are due 180 days after the last day of service in such an area or after the last day of hospitalization resulting from such service. 5 U.S.C. App 4 section 101(g)(2)(A). Though the extension is “automatically” granted by operation of law, it must still be recorded in the appropriate filing system for tracking and reporting purposes.
- b. OGE 450 - For personnel away from permanent duty station following a Presidential declaration of a national emergency (combat zone), up to 90 days from the date of return to a permanent duty station may be granted. 5 C.F.R. § 2634.903(d)(2).

C. **Filing Requirements & Contents.**

1. **Definition of “Spouse.”** Following nullification by the Supreme Court in *United States v. Windsor*, 133 S. Ct. 2675 (June 26, 2013), of portions of the Defense of Marriage Act, OGE interprets the terms “marriage” and “spouse” to include a same-sex marriage and a same-sex spouse where those terms appear in federal ethics provisions, regardless of the employee’s state of residency, so long as the marriage is valid in a State. OGE now similarly interprets the term “relative” to include a same-sex spouse when used in federal ethics provisions. (*see* OGE LA 13-10). For example, OGE now construes 18 U.S.C. § 208, the primary criminal conflict of interest statute, to impute the financial interests of a federal employee’s same-sex spouse to the employee. Likewise, OGE deems a federal employee’s same-sex spouse to be an “eligible person” with regard to the issuance of a Certificate of Divestiture. 5 C.F.R. § 2634.1003. This does not apply in the same manner to employees in domestic partnerships or civil unions.
2. **Detailees.**
 - a. **Temporary Detailees.** These are individuals assigned to work outside of their home organization who are expected to return to their home organization following the detail. Temporary detailees continue to file with their home organization, however, supervisory review should be conducted by the a higher level reviewer at the detail organization to ensure proper conflicts review can be conducted. In most cases, the home organization can simply establish an org unit group for filers detailed to a given activity and assign a higher level reviewer for all individuals detailed to that activity. 5 C.F.R. § 2634.602
 - b. **Permanent Detailees.** These are individuals who technically show on the books of their home organization as being detailed elsewhere, but who are permanently assigned to the detail organization. Permanent detailees file with

the detail organization as their duties, and thus their potential conflicts, will solely lie with that organization.

- c. **General and Flag Officers.** GO/FOs assigned outside of their Military Department (for example, at a Combatant Command or Defense Agency) file their report through their assigned organization, with the Military Department DAEO maintaining official custody and oversight.
 - (1) The Military Services will structure their electronic filing system organizational groups to include each joint duty assignment (JDA) location in DoD where the Service has or may have General/Flag officer(s) assigned, with primary group staff/reviewer roles assigned to appropriate personnel at the JDA location.
 - (2) JDA ethics counsel will ensure that General/Flag officers assigned to their JDA organization are assigned appropriate financial disclosure reports and that proper supervisory review and final certification are completed at the JDA location.
 - (3) DAEO Agency Reporting Data: Compliance data for General/Flag officers assigned to joint duty assignments will be reported by the cognizant DAEO Agency for the office providing ethics advice and support to that General/Flag officer for the time period in question. For personnel transferring during a given year, this may mean that some data is reported by the losing organization and some is reported by the gaining organization.

D. Supervisory Review.

- 1. At DoD, part of the review chain requires that the filer's supervisor review and sign the report confirming that there is no conflict of interest between reported financial interests and reporting individual's current and anticipated official duties. See 5 C.F.R. 2634.605(b). Supervisors can and should provide the reviewer with additional information or data, including comments on the existence of actual or apparent conflicts of interest. Supervisor comments serve as an explanation or caveat to the supervisor's signature.
- 2. Supervisory review need only be completed by an individual above the filer in the organizational chain of command – it need not be the filer's immediate supervisor. In fact, it is often prudent to establish supervisory review at the 2nd or 3rd tier to maintain an efficient organizational group structure in the electronic filing systems and avoid multiple organizational groups with only one or very few filers.

NOTE: Supervisory review is ***required*** by DoD regulation for all New Entrant & Annual reports. Supervisory review is not required for OGE 278 Combination or Termination Reports and is recommended but not required for OGE 278-T reports. Supervisors are in the best position to know whether conflicts exist or are likely to arise. Since the premise is that the supervisor can help identify the potential conflicts, ethics counselors should ***not*** certify the report before supervisory review is complete; although an ethics counselor may review a report for completeness even before the supervisor signs (to avoid having to have them resign an amended report). However, final certification must occur ***after*** supervisory review.

- E. **Ethics Review & Certification.** Reports must be certified within 60-days of agency receipt unless the reports require additional information or remedial action. (5 C.F.R. § 2634.605)

Best Practice: OGE program reviews look for 30-day completion of initial review, or better yet, certification.

1. **Technical deficiency reviews**—Procedural review to ensure form is signed, dated, complete, and include all relevant parts, etc.—Technical review alone will ***not*** meet the requirements of an initial review and stop the 60-day clock.
 - a. If no additional information is required, the reviewer should immediately implement any required remedy or provide guidance, and move to final certification of the report.
 - b. If the report cannot be certified as filed, initial review is not complete until the reviewer transmits questions back to the filer. This may toll the 60-day certification requirement if prompt follow-up is sought.
 - (1) Use a tickler system to ensure prompt follow up. The 60 days is not tolled indefinitely.
 - (2) Ethics counselors must use filing system functions to record events that “end initial review” by requesting additional information or requesting amendment.
 - (3) If changes to the report are required, determine whether they are minor and thus, can be made on behalf of the filer with filer authorization or whether they are significant and thus, the report should be returned to filer for amendment. Changes should **ONLY** be made with express written authorization of filer (email suffices) and upload a copy of the authorization in the filing system.
 - c. Reports should stand alone – make sure substantive information is in the report or documented in a manner that is part of the report (“of record” or “public” comments or end notes).

2. **Final Review & Certification** – After the technical deficiency and any initial review are completed, ethics counsel conducts the final substantive conflict of interest review.
 - a. **Comparison of current report to last report & verification of completeness.** (This may be done as part of initial technical review.) Determine any differences. Review ethics advice folders to determine if there are reportable gifts, outside activities, etc. If you have questions or something on the report requires clarification, follow the procedures discussed above under ending initial review.
 - b. **Identify interests in prohibited sources.** Check for potentially conflicting financial interests such as publically traded stock interests or sector funds.
 - (1) *See* OGE Legal Advisory 15-09, Diversified and Sector Real Estate Funds for discussion of exemption under 5 C.F.R. § 2640.201 and help distinguish between diversified and sector mutual funds.
 - (2) If your organization has a list of contractors or prohibited sources, you may want to use that to identify possible conflicts. SOCO Deputy DAEOs and Ethics Counselors minimally should compare reports against the DoD \$25K list found on the SOCO website. All others must consult with their DAEOs to determine the correct procedure for their components. But the substantive review does not end there.
 - c. **Determine likelihood of a conflict arising with filer’s duties.** Familiarize yourself with the filer’s duties and office’s projects and activities, or talk to the filer’s supervisor if you have concerns that a potential entry may pose a conflict with his position’s duties. Look to see if filer is engaged in “particular matters” (either involving specific parties or of general applicability). This can include such activities as grants, CRADAs, Tech Transfer and policies directed at a discrete group, such as funding Federally-Funded Research and Development Centers. *See* as a resource USASpending.gov. Finally, when all information is contained on the form, review the report against the filer’s duties to identify possible conflicts.
 - d. **Resolve any conflicts and educate filer.**
 - (1) If no actual or potential conflicts are found, certify the report.

Best Practice: Recommend sending filers periodic reminder guidance: restate the law, identify potentially applicable exemptions, exemplify how potential conflicts might arise, and provide general ethics guidance, e.g., for outside activities—customized to their individual interests. Emails suffice, preferably with a copy to the filer’s supervisor. OGE has identified this DoD practice as a best practice.
 - (2) If an actual or potential conflict is found, the report should be certified only after or simultaneous with resolution or provision of prudential advice.

3. **Documentation.** Develop a good tracking system that can alert you to impending deadlines, such as review date of 60 days from date of filing, and late filings. See sample tracking system in Excel on the DoD SOCO website under the heading Financial Disclosure Report Tracking System.
 4. **Date of agency receipt.** This is the date the filer submits a report in the electronic filing system. This is the start of 60 day review clock.
- F. **Time Management.** Make the process work more quickly and smoothly, and educate staff and filers on how to correctly report information to reduce delay in certification. Consider investigating how to expand filer accuracy, including:
1. Creating a sample with correct entries and putting it on an Internet site, and providing filers with a tip sheet on common errors or inadvertent omissions.
 2. Being available to answer questions for filers preparing their report, including on-line (email) assistance, and train your office program staff on the same.
 3. Offering training on how to complete the report and supervisory review of reports. Tools and samples are available on the OGE websites listed above.
 4. Offering available software and resources.
 5. DoD recommends that filing instructions remind employees to print/save a copy of their report for their records.
 6. Establishing written procedures, so new personnel in the ethics office can pick up the system easily.
 7. If you are not the final reviewing office, review promptly, correct simple errors, and utilize system functions such as comments and attachments to provide context. Ask the final reviewer to contact you if there are questions.
- G. **Retention.** All financial disclosure reports must be retained 6 years and should be purged from the applicable filing system following expiration of this period, unless retention is required for other reasons (e.g., litigation, investigation).

V. PUBLIC FINANCIAL DISCLOSURE PROGRAM (OGE FORM 278)

The public financial disclosure report and program was created by the Ethics in Government Act, and implemented by Office of Government Ethics (OGE) by regulation, to assist in identifying conflicts of interests for those personnel most likely to have potential and actual conflicts because of their duties and responsibilities.

OGE has updated their Public Financial Disclosure Regulations to incorporate the Stop Trading on Congressional Knowledge (STOCK) Act (Pub. L. No. 112-105, 126 Stat. 291 (2012) and to reflect policies and interpretations previously issued in OGE Advisories. (See LA 18-10)

A. **Who Files?** There is a specific list based on position and pay.

1. Generals and Admirals (O-7's and above). Does not include “frocked” O-7s, who wear the rank but do not receive the pay.
2. Senior Executive Service (SES, career and non-career).
3. Civilian employees, including SGEs and people serving in established and classified positions, including those serving pursuant to the Intergovernmental Personnel Act, 5 U.S.C. § 3371-3376, or under other similar authorities, when the position’s rate of basic pay is equal to or greater than 120% of GS 15, step 1.
4. Political Appointees with the advice and consent of the Senate (PAS)(regardless of pay grade) and Designated Agency Ethics Officials (DAEOs).
5. Other Political appointees (e.g., PA, Schedule C, regardless of pay grade) **Note: As of January 1, 2019 – Agency DAEOs may categorical exempt non-policy making employees paid at the GS-13 level or below without further OGE approval. See 83 Fed. Reg. 33980 (July 18, 2018).**
6. Civilians formally detailed or temporarily promoted to positions mentioned in 2, 3, and 5, above.
7. Reserve and National Guard officers (O-7's and above) if they served on active duty more than 60 days in a calendar year. NOTE: AF requires all reserve GOs to file regardless of days served.
8. Senior Mentor Highly Qualified Experts by DoD equal classification determination with concurrence of OGE. See <http://www.acq.osd.mil/dpap/dars/docs/SeniorMentorPolicy.pdf>.

B. **Filing Exclusions/Exceptions.** Consult 5 C.F.R., Part 2534, Subpart B for specifics:

1. New entrants serving in one of the above positions, who are expected to work

- less than 61 days in a calendar year. 5 C.F.R. § 2634.204.
2. Special Government Employees (18 U.S.C. § 202—who are part-time intermittent employees who are expected to work for less than 130 days), who receive a waiver from the Director of the U.S. Office of Government Ethics. 5 C.F.R. § 2634.205(a).
 3. Upon agency request, OGE at its sole discretion may grant exclusion from filing for certain Schedule C appointees who are engaged in non-policy-making duties (e.g., confidential assistant). 5 C.F.R. § 2634.205. As of January 2019, DAEOs may grant a blanket exclusion for individuals at or below the GS-13 level, or equivalent, upon making certain findings. (5 C.F.R. §2634.203).

C. Filing Requirements. Consult 5 C.F.R., Part 2534, Subpart B for specifics.

1. **New Entrant/Nominee Reports** – Ethics counselors must identify, notify, and collect reports from new filers/nominees. JER 7-202.

Best Practices:

- Work with the client office action officers (AOs) & HR to get reports of new SES promotions, new O-7 promotions (not frocking), and any new employees at the appropriate pay level. *See* JER 1-414 and 7-202.
- Notify filer of all ethics program requirements at same time—completion of annual and termination disclosure reports, annual ethics training, and annual post-Government employment certification (see below discussion).

- a. **Report Coverage:** *See* front page of instructions. Part 1(Filer’s positions held outside US Govt) and Part 4 (Filer’s sources of compensation exceeding \$5,000 in a year) preceding two calendar years and current year to filing date; Part 2 (Filer’s employment assets and income), Part 5 (Spouse’s employment assets and income), Part 6 (Other assets and income), Part 8 (Liabilities) preceding calendar year and current year to filing date; Part 3 (Filer’s employment agreements and arrangements) as of date of filing. New entrant filers do NOT need to complete Part 7 (Transactions) or Part 9 (Gifts and Travel Reimbursements). *See generally*, 5 C.F.R. § 2634.308.
- b. **Dates and Times: New entrants** must file **within 30 days** of assuming a new position, unless an extension is granted.

TIP: Try not to provide extensions to new entrants, as these filers are unaware of possible conflicts and are in the most need of review of their possible conflicts. Likewise, if an extension or other clarification is required, recommend you provide the filer general conflict of interest and impartiality guidance pending receipt and certification of their report.

- (1) **Nominees** must file between nomination and 5 days after transmission of the nomination to the Senate.
- (2) **SGE.** SGE’s are always New Entrants. If it was not anticipated that an SGE would serve over 60 days, file within 15 days after the 61st day of

duty. This means that some SGEs may file both the 450 and the 278 in the same year. Alternatively, they could file a 278 at the start. Especially for Reserve/NG Generals, in appropriate circumstances, after they first file a new entrant 278, they may file an annual 278 if the need arises again.

- (3) **Air Force policy** requires all Reserve and National Guard GOs to file a 278. See Air Force General Counsel memorandum, “Federal Recognition Standards and Ethics Reporting for Air National Guard and Air Force Reserve General Officers,” dated May 10, 2011.

Best Practice: If there is less than a 30-day gap in service, get a copy of a transferring filer’s most recent report to avoid them having to complete a new report, but remember you must obtain his new supervisor’s review, complete a new substantive conflict review, and certify the report. See 5 C.F.R. §§ 2634.201(b)(2)(i); 2634.902(b)(2)(i).

TIP: For new entrant reports, ensure filer receives a checklist of common omissions or errors, or meet with them in person. Better yet, ask probing questions after receiving the new entrant report to ensure it is complete and is a good base-line for moving forward.

- c. **Notices & Reminders.** Recommend sending reminder within two weeks of deadline, alerting filers of the \$200 late filing fee, the statutory penalties for willful failure to file, and the possibility of requesting a written request for a good cause extension prior to expiration of the filing deadline. 5 C.F.R. § 2634.704.

Best Practice: Ensure new entrant reports are complete. Ask filer questions about common omissions, such as former non-Federal employer benefits.
The better the new entrant report, the better the subsequent reports will be.

2. Annual Reports -

- a. **Report Coverage:** See front page of instructions. Parts 1 and 3 - preceding calendar year and current year to filing date; Part 2, Part 5, Part 6, Part 7, Part 8, and Part 9 preceding calendar year. Annual filers do NOT complete Part 4. See generally, 5 C.F.R. § 2634.308.
- b. **Identify Filers.** Use the ethics office database to determine who are filers - All annual filers from prior year, minus the termination reports, plus the new entrant filers who entered prior to November 2 of the prior year and any transferred 278 filers. If a new entrant report was filed between November 2 and December 31 of the prior year, the filer does not need to file an annual report because they must work over 60 days in the preceding calendar year before filing is required.

- c. **Notifications:** Ethics counsel can use Integrity functionality to notify filers. SOCO recommends sending notifications to OGE 278 filers in March to minimize volume during OGE 450 season. Notifications should include information on accessing reports, late filing fees, and penalties for non-compliance, as well as how to request extensions. Notices should also include a link to the OGE Public Financial Disclosure Guide (see references above). The ethics office should use the assistance of the individual client office Action Officers (AOs) to ensure filers receive notice. See JER 1- 414 and 7-202.
- d. **Dates:** Reports must be filed no earlier than January 1 and no later than May 15, unless an extension is granted. Recommend sending final reminder in early May, alerting filers to the \$200 late filing fee, statutory penalties for willful failure to file, and the possibility of requesting a written request for a good cause extension prior to expiration of the filing deadline. 5 C.F.R. § 2634.704.

3. Termination Reports:

- a. **Report Coverage:** Parts 1-3 and 5-9 cover end of period covered by last prior filing up to the termination date. Termination filers do NOT complete Part 4. *See generally*, 5 C.F.R. § 2634.308.
- b. **Dates:**
 - (1) Due Date - Reports must be filed no later than 30 days after termination and no earlier than their last day. This requirement does not apply to individuals who assume another covered position within 30 days. With creative use of annual and termination extensions, an employee could possibly file a combination annual/termination report if the termination is prior to August 13, however, the latest a combination can be filed is August 13th (90 days after Annual reports are due).
 - (2) DoD recommends notifying filers of this requirement as part of their post-government employment briefing, and requesting contact information from them to allow for courtesy follow-up notices should they fail to file within 30 days after termination.
 - (3) Early Submission –OGE permits submission of reports up to 15 days PRIOR to termination, provided that certain requirements are meant, including that the filer agrees in writing to update the information to reflect any changes occurring between filing and termination date. (5 C.F.R. § 2634.201(e))

NOTE: Termination is the last date in Federal status, this means after expiration of all permissive and terminal leave for military personnel.

- (4) Particular attention should be given to Part 3, Filer’s employment agreements and arrangements, where the filer should list the terms of any arrangements for post-Government employment.
- (5) Try to remind filer within two weeks of due date.

D. Post-Government Employment (PGE) Certification. DoD personnel who file the OGE 278 must certify annually that they are aware of the disqualification and employment restrictions, and have not violated them. FDM and Integrity include as part

of e-signature process – no separate certification need be collected. If paper reports are filed by exception, collect certifications with the disclosure filing requirement. JER 8-400. A model Post-Government Employment Certification, which also constitutes the required notice to senior officials of the “cooling-off” period per 5 C.F.R. § 730.104, is on the DoD SOCO website, under the post-Government employment section.

- E. **Confidentiality of the Process and Public Posting of Reports.** OGE 278 reports must be released, if requested, 30-days after agency receipt. For those reports which are also certified by OGE, reports will be requested through the OGE website after completion of the OGE electronic form 201. Access to the reports requires compliance with OGE’s systems of record requirements. See 5 C.F.R. § 2634.603(c) and (d). Remember drafts and reports still within the first 30 days after submission are *not* releasable.

Best Practice: It is essential that ethics programs properly record extensions in the filing system and maintain records of extension requests to ensure that statutory and regulatory requirements are met

NOTE: STOCK Act, as amended, requires that certain high-level filer reports (those occupying positions at Level I and II of the Executive Schedule) be posted or electronically released on OGE’s website.

1. **Over-reporting.** Reviewers should ensure that all over-reporting is eliminated from reports to protect the privacy interests of the filer. This includes items like but not limited to: spouse or dependent child names, street addresses, account number, actual value or number of shares. However, ultimately, it is the responsibility of the filer to ensure that only reportable information appears on the report.
2. **Intelligence Exemption.** At this time, DoD agencies do not have any applicable Ethics in Government Act Section 205, intelligence exemption to withhold OGE 278s; however, certain information may be redacted under specific statutory authority, such as [10 U.S.C. § 424](#) (Disclosure of Organizational and Personnel information: Exempt for Specified Intelligence Agencies).

F. **Collection/Enforcement –**

1. **Notify Filers.** Ethics officials should make every effort to remind filers to file their report, and notify them of the potential for a late filing penalty and statutory penalties for willful failure to file. See 5 C.F.R. § 2634.704 However, failure to receive notifications does not justify waiver of any late filing penalties, except in the case of New Entrants.

<https://www.oge.gov/Web/278eGuide.nsf/Content/For+Ethics+Officials+Document~1.05:+Late+Filing+Fees#:~:text=US%20OGE&text=An%20official%20who%20files%20any,a%20%24200%20late%20filing%20fee.>

2. **Late Filing Fee.**

- a. If a report is filed more than 30 days late, ethics officials *must* notify the filer of application of the late filing penalty (and the option of requesting a waiver but

only for extraordinary circumstances), and collect the fee or grant a waiver.

- b. Filers are personally accountable for untimely filed reports. If a report is more than 30 days late, the filer must personally remit a \$200 late filing fee (they may not seek reimbursement from DoD). 5 C.F.R. § 2634.704. Late filing fees are deposited as miscellaneous receipts through the appropriate financial office. Check with your local finance office concerning proper payment procedures as many now require online payment and may not accept manual payment.

Best Practice: Ethics counselors should retain records showing receipt and appropriate remittance of any late filing penalty.

- c. Filers may submit a written request, with supporting documentation, detailing the extraordinary circumstances warranting waiver of the late filing penalty, to their DAEO or designee.
- d. OGE will audit collection of late filing fees and whether waivers granted were in accordance with the regulations, so ethics officials **must** annotate the report to indicate whether a fee was collected or a waiver granted in the comments section of the report. 5 C.F.R. §§ 2634.605(a) and 2634.704(c).
- e. Remember, the late filing fee is not the exclusive remedy. The late filing fee is in addition to other sanctions, which may be imposed for late filing. See 5 C.F.R. §§ 2634.701 and 2634.704(c) (e.g., filer will be subject to agency debt collection procedures). Do not accept or certify the report until the fee is received or waiver determination granted.

Best Practice: Ethics counselors should make clear that a late report is not considered filed unless accompanied by the late filing fee or an appropriate request for waiver and the waiver is granted.

3. **Criminal and Civil Penalties.** Willful failure to file a report or information required in the report, or falsifying information on the report, will result in greater penalties, including referral to the Department of Justice for civil and criminal action (up to a \$50,000 fine), as well as administrative action at DoD. See 5 C.F.R. § 2634.701. Ethics officials must refer these cases to the DoD component DAEO for review and, as appropriate, referral to the Department of Justice (Office of Federal Programs).

VI. PERIODIC TRANSACTION REPORTS (OGE FORM 278T)

The Stop Trading on Congressional Knowledge (STOCK) Act, which amended the Ethics in Government Act, requires public filers to submit a report of certain transactions with 30 days after the transactions. Filers must use the form OGE 278T, Periodic Transaction Report (or PTR) to report transactions that meet the reporting requirements. ***Note that DoD requires that transactions reported on an OGE 278T also be reported in Part 7 of the filer's next OGE 278e. See also OGE's Legal Advisory (LA-12-04)***

- A. **Who Files?** All OGE 278 filers. (Nominees to Presidential Appointments confirmed with the advice and consent of the Senate do not file until after confirmation and appointment).
- B. **When does the filing requirement start and end?** Requirement applies as of the first day of service in covered position and continues until the last day of service in a covered position.
- C. **What must be reported?** Filers must report each individual transaction of covered securities that exceeds \$1,000 occurring within the covered reporting period. Negative reports are not required, so if a filer has no reportable transaction, no OGE 278T need be filed.
1. **Covered Securities Include:** Any purchase, sale, or exchange of stocks, bonds, commodities or other securities owned or acquired by the filer. This includes *spouse or dependent child* transactions on or after January 18, 2013. See OGE LA-13-01
 2. **Excludes:**
 - a. Non-securities and Excepted Investment Funds (EIF), such as: (1) real property; (2) mutual and exchange traded funds; (3) underlying holdings of an EIF, a qualified blind or diversified trust, or an excepted trust; (4) Treasuries; (5) life insurance and annuities; (6) cash accounts; (7) assets in a retirement system under Title 5 of the U.S. Code; (8) assets in any other retirement system maintained by the U.S. Government for officers or employees.
 - b. The maturing of bonds is not a transaction.
 - c. Receipt of securities by gift, inheritance, or transfer is not a transaction and does not require the filing of a 278T.

NOTE: OGE's Integrity system includes 278-Ts and permits pre-population of Part 7 of the filer's next OGE 278 form with data from previous OGE 278-Ts filed in Integrity. Filers may **NOT** include other transactions that are not required to be reported on the OGE 278T as this skews annual compliance data and creates additional burden on the system. However, filers with numerous transactions that are not reportable on an OGE 278T, but are reportable on their next OGE 278, may use the upload spreadsheet available on the Integrity OGE 278T data entry page to track these non-reportable transactions throughout the year and save them for later entry.

- D. **When is it due?** By the earlier of: (a) 45 days after the transaction or (b) 30 days after notification of the transaction. First day to be counted is the first full day after the date of the triggering event.

Example: If you receive a statement from a trust on August 10 regarding a transaction that occurred on July 31, the reporting deadline is September 9. If, instead, the August 10 statement indicates the transaction occurred on July 1, the deadline is August 15.

Best Practice: Establish a calendar invite for Periodic Transaction Reports for the first of each month (mark as “all day” and “free”) and invite all OGE 278 filers. Include instructions. Have filers with frequent reportable transactions establish a system to file by the 10th of each month for the previous month’s transactions.

Best Practice: Ethics counselors should make clear that a late report is not considered filed unless accompanied by the late filing fee or an appropriate request for waiver that is then granted.

- E. **Collection & Enforcement.** *Same as other OGE 278 forms.*
- F. **Late Filing Fee.** *Same as other OGE 278 forms.*
- G. **Public Posting of Reports.** *Same as other OGE 278 forms.*
- H. **Extensions.** *Same as other OGE 278 forms, except may be granted after the due date.*

VII. CONFIDENTIAL FINANCIAL DISCLOSURE PROGRAM (OGE FORM 450 OR ALTERNATIVE 450 FORM).

The U.S. Office of Government Ethics (OGE) created the confidential financial disclosure report and program to mirror the Public Financial Disclosure Report, OGE Form 278. The confidential program applies to employees below the level of SES/0-7/or comparable pay level under other authority (such as NSPS). The OGE Form 450 does not require the collection of as much detailed information as the OGE Form 278. These filers hold positions where they exercise discretion warranting a review of their interests for any potential conflicts of interest. DoD Ethics Counselors manage the financial disclosure program.

- A. **Who files?** DoD recommends that Ethics Counselors maintain collaborative relationships with Human Resources and organizational Administrative Officers (AOs), or their equivalent. AO’s should be the individual within an organization responsible for in- and out-processing personnel within that organization (e.g., ensuring that employees receive/turn in equipment, identification cards, etc.). AO’s should be set up in the Financial Disclosure Management (FDM) system as “POCs” and can assist ethics counsel in keeping FDM org units up to date. Ethics Counselors may want to periodically review Position Descriptions (PDs) to ensure that only those personnel meeting the regulatory criteria are designated as filers. Are too many employees filing? Can some positions be exempted or excluded? If the number of filers can be reduced, this will also reduce the overall workload. This may require a time investment up front, but it pays off over time.

TIP: Consider providing AOs or supervisors DoD’s customized “Determination Worksheet” to determine if personnel are filers, which can be found on the SOCO website under the financial disclosure section.

1. Personnel in “**Covered Positions:**” (including personnel detailed to these positions.)
 - a. Commanding officers, heads, deputy heads, and executive officers of: Navy shore installations with 500 or more employees; and all Army, Air Force, and Marine Corps installations, bases, air stations or activities. *See* JER 7- 300(a)(1).
 - b. Special Government Employees (SGEs).
 - (1) SGEs are defined at 18 U.S.C. § 202(a): Generally, employees performing temporary duty for 130 days or less in any 365 day period, including Reserve and National Guard officers while on active duty solely for training, or while serving involuntarily. While section 202(a) does not include enlisted members as SGEs, the JER, at section 1-227, applies the definition to enlisted members the same as it applies to officers.
 - (2) Unless excluded from filing or an OGE Form 278 filer, all SGEs must file an OGE Form 450. *See* 5 C.F.R. § 2634.904(b); *see also* JER 7- 300(a)(2) (exceptions). For example, DoD excludes reservists on active duty for less than 30 consecutive days in a calendar year, or reserve and national guard officers on active duty for training or while serving involuntarily unless the supervisor determines that the duties of the position otherwise require the individual to file.
 - c. Civilian employees at grade GS-15 and below (or comparable pay level under other authority, e.g. NSPS), and military members below grade 0-7 when:
 - (1) they participate **personally and substantially**, through decision or exercise of **significant judgment**, and **without substantial supervision and review**, in taking an official action for:
 - (a) contracting or procurement,
 - (b) administering or monitoring grants, subsidies, licenses, or other Federal benefits,
 - (c) regulating or auditing any non-Federal entity, or
 - (d) other activities in which the **final decision** may have a **direct and substantial economic impact** on the interests of any non-Federal entity (catch-all). Note that it is the impact that the particular matter has on the non-federal entity, not the individual's action in that matter, which triggers the filing requirement.
 - (2) determined by the supervisor. DoD strongly recommends that DoD ethics counselors require supervisors to review whether their subordinates' positions require filing every year prior to providing notice of the annual filing requirement. This ensures that the list of filers is kept current, deleting those

no longer required to file, such as those who left, and adding those who need to file.

Best practice: To reduce unnecessary filings, scrub these lists yearly. You may also request supervisors make an initial determination of whether a new employee should be a filer.

- d. Personnel serving under the **Intergovernmental Personnel Act** (IPA) (5 U.S.C. § 3371-3376) and **Highly Qualified Experts** (HQEs) (5 U.S.C. § 9903), unless otherwise required to file an OGE Form 278 (e.g., Senior Mentors), serving in a position requiring filing under c, directly above.
- e. Contracting Officer's Representative (CORs). Pursuant to DoD Instruction 5000.72, the CO may determine that a COR's duties meet the criteria detailed in paragraph (c) above, even if their regular duties are not a "covered position." See <http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/500072p.pdf>. This does not mean all CORs are filers.

Note:

- Where COR duties are ad hoc "additional duties" tied to the term of the contract, it is not necessary to amend the individual's position description to indicate they are filers.
- 450 filing status should only be included in a PD where it is clear that the permanent duties will make the position a covered position.
- While organizations may determine that certain categories of personnel are filers because all individuals in that category meet the criteria, there is no authority to require that "all personnel" in an organization file simply in order to "err on the side of caution." An individual may only be required to file where a determination is made that the individual's duties meet the criteria.

2. Who Is **Excluded**?

- a. Authority to Exclude: Generally, a DoD Agency head or designee may exclude positions from filing because the duties are such that the possibility that the employee will be involved in a real or apparent conflict of interest is remote. The Department of the Army has not delegated this authority; however, the DoD remainder component, Department of the Navy and Department of the Air Force have delegated the authority of the agency head to their General Counsels.
- b. Specific Exclusions:
 - (1) Personnel not employed in contracting or procurement who have authority to make purchases less than \$2,500 per purchase and less than \$20,000 cumulatively per year. See JER 7-300(b)(2).

NOTE: This provision is subsumed by the exclusion at (2).

- (2) The Army, Navy, Air Force and OSD made separate determinations under a., above, to exclude from filing Government purchase cardholders and micro-purchasers whose cumulative annual purchases do not exceed the simplified acquisition threshold.
 - (a) SECARMY Memorandum of Oct. 11, 2001, subj: Exclusion from OGE Form 450 Filing Requirement. The Army presumptively excluded additional categories of employees from the filing requirement (officers O-3 and below, enlisted E-6 and below, and civilian GS-6 and below; volunteers providing gratuitous services under 10 U.S.C. § 1588; intermittent employees who work 120 days or less; and members of the Center for Military History Board/Department of the Army Historical Advisory Sub- Committee).
 - (b) Air Force General Counsel Memorandum of Sep. 5, 2007, subj: Exemption of Certain Government Purchase Card Users from Requirement to File OGE Form 450, Confidential Financial Disclosure Report.
 - (c) Navy General Counsel Memorandums, subj: Determination Concerning Exclusions from Filing the Confidential Financial Disclosure Report, dated Sep. 28, 1999, and Dec 14, 2006 (added an exclusion for certifying officers of micro purchasers totaling less than \$150,000).
 - (d) DoD DAEO Memorandum of Jan. 20, 2010, subj: Exclusion from Confidential Financial Disclosure Report Requirement for Certain Government Purchase Card Holders.
- (3) The Army, Navy, and OSD made separate determinations under a., above, to exclude from filing reservists unless a supervisor determines that their duties trigger the filing requirement under 5 C.F.R. 2634.904(a).
 - (a) SECARMY Memorandum of Oct. 11, 2001, subj: Exclusion from OGE Form 450 Filing Requirement.
 - (b) Navy General Counsel Memorandums, subj: Determination Concerning Exclusions of Reservists from Filing the Confidential Financial Disclosure Report, dated Nov. 18, 2011.
 - (c) DoD DAEO Memorandum of Dec. 2, 2011, subj: Exclusion of Reservists from Filing the Confidential Financial Disclosure Report.
- c. OGE Optional Form (OF) 450-A, Certificate of No New Interests. With the requirement to file electronically and ability to pre-populate forms from prior year data, the OGE Form 450-A is obsolete.
- d. Alternate Forms. Filers who are authorized to file alternative forms with OGE approval file these forms in lieu of a 450. 5 C.F.R. § 2634.905. For example, many FACA members.

NOTE: OGE 450s filed in FDM are considered to be OGE approved "Alternate" forms.

3. Finality of Determination: An agency head or designee decides who shall file. 5 C.F.R. § 2634.906. There is no right to appeal this designation beyond the agency head.

B. New Entrant Reports – OGE Form 450

1. **Identify Filers.** Ethics counselors must identify, with assistance from Human Resources (HR) offices and/or AOs, new employees who must file. There must be more than the mere existence of standard operating procedures for identification of new entrants, if they are not being systematically identified. Ethics Counselors should seek innovative solutions for identifying new entrant filers.
 - a. Work with HR/AOs to get at least monthly, preferably bi-weekly, reports of new employees, SGEs, and changes to covered positions (e.g., new acquisition duties).
 - b. Include filer determination worksheets for supervisors to complete as part of in-processing packages. (See form on the SOCO website under Financial Disclosures.)
 - c. Provide live initial ethics orientation training to provide information and identify filers, as well as give potential new filers forms.
 - d. If a determination as to filing needs to be made, afterward notify HR to update the notation on official rolls.
 - e. Ensure that there is a system in place to identify individuals who transfer into your organization and who filed an OGE Form 450 with their former organization.

Best Practice: If there is less than a 30-day gap in service, get a copy of a transferring filer's most recent report to avoid them having to complete a new report, but remember you must obtain his new supervisor's review and complete a new substantive conflict review. See 5 C.F.R. § 2634.903(a)(2)(i).

- f. Ensure that there is a system in place to identify personnel whose duties change in a manner that triggers filing (e.g., an employee becomes a contracting officer representative and the contracting officer determines filing is required). If the new duties require filing, ensure that they file a new entrant report within 30 days of assuming the new duties.

NOTE: Date of appointment is the date they assumed the new duties that made them a filer. E.g., when new COR duties are assigned or when supervisor makes determination, and not necessarily when they assumed duties where not already a covered position.

Best Practice: Consider including this in any required new or refresher supervisory training.

- g. Develop a relationship with HR so they inform the ethics office of new arrivals and of new/changed PDs requiring a filing status determination. Encourage

the HR office to seek assistance on new PDs to determine if there should be a filing requirement.

- h. There are a couple other opportunities to find new filers who were missed, when they are identified as part of the annual review cycle or during your annual scrub of the 450 filer lists.
2. **Notify.** Ethics counselors must notify new employees of their filing requirement as soon as possible. If feasible, try to send filers courtesy reminders, e.g., a week before their deadline comes due, copying their supervisor.
3. **Collect.** Ethics counselors must collect reports within 30 days of entry on duty (or assumed duties that required filing). If filer fails to file within deadline or after expiration of any extensions, follow up with supervisor to ensure compliance.
4. **Dates and Times:** The report must cover **the 12-month period prior to signature**. It must be **filed within 30 days** of assuming the duties that make them a filer.
5. **DoD SGEs** (including reservists and National Guard who meet the requirements) must **file prior** to assuming duties – see JER 7-303(a)(2). This is very difficult to accomplish, but OGE will review. IRs must be conducted within 60 days, but DoD recommends that supervisor and ethics counselor reviews be conducted as soon as possible.

Best Practice: Ensure review is complete before appointment to ensure conflicts do not preclude them from performing the duties for which they are being appointed.

SGEs must also file *new entrant* reports prior to their anniversary or re-appointment date. Reservists and national guard personnel on active duty for less than 30 consecutive days are SGEs, but are exempted from filing unless their supervisor requires filing because of their specific duties. Procurement commands and other similar organizations should consider such a requirement.

C. Annual Reports – OGE Form 450

1. Work with HR/AOs to scrub the list of annual filers before the beginning of the annual filing season – should be done in fall of the prior year. Remind HR/AOs that the report covers the calendar year, so filers should be identified no later than mid-December but preferable earlier. Update the ethics database, FDM, and/or other filing tracking system.
2. **Annual Position Review:** Notify AOs to require supervisors to review positions on the updated list and provide corrections. If new employees who have not filed a new entrant report are identified, determine with the supervisor whether their duties required filing immediately upon appointment or at some later date. In some cases this may mean collection of a late new entrant report, as well as an annual report. If the supervisor just determined them to require filing, make the report a new entrant report, and annotate the date the supervisor determined them to be filers.
3. **Filing not required:** If employees start a covered position between November 2 and December 31, they do not need to file an annual report because they must work over 60 days in the preceding period before an annual report is required. A new entrant report must be collected. Remember to annotate in the database or other tracking

system (FDM automatically does this) that filer will not need to file until the following filing season.

4. **Dates and Times:** The report covers the preceding calendar year, or any portion thereof not covered by a new entrant report, with information current as of December 31 of that year. OGE **filing deadline** is **February 15 (or next business day)**.
5. **Notifications:** After AOs collect updated information, they should notify the covered employees that filing is required and provide the filer's information to the ethics office to enable the filer to be added and assigned a report in FDM. The ethics office has the option of providing notification via direct e-mail or via FDM notification functionality. We recommend sending the first late notice on the next business day after reports are due, with copy to the filer's supervisor. Subsequent notices should be sent weekly, absent special circumstances (e.g., information is provided that the filer is on extended medical leave until a certain date). After two notices, delinquencies should be progressively escalated up the chain of command. On April 15, request supervisor take administrative action on those who fail to comply and those who file late. Remember to track administrative actions for the OGE annual questionnaire.
6. **Timelines:** Ensure that there is sufficient time from position review, to employee notification, to filing, to review.
7. Notify HR/AOs of any changes in filing status so it can update their records.

D. Documentation.

1. Develop a good tracking system that can alert you to impending deadlines, such as review date of 60 days from date of filing, and late filings. There is a simple tracking system in Excel on the SOCO website at the Resources page.
2. Make sure that everyone files - reconcile lists from HR/AOs, lists from position reviews, and ethics office database. Document why employees were dropped. Ensure that a new entrant report for each first time annual filer is received, and if not, document that the filing determination was made by the supervisor during the annual position review, or that the employee transferred into your agency from another covered position. In OGE program reviews, they may want to talk to the HR staff that generates the lists to determine how they fit into the system and the accuracy of the data.

- E. **Confidentiality of the Process** - Protect confidentiality of the filers' data and the substance of their reports. AOs/FDM POCs cannot see the substance of the reports and should not be able to see the data if they are assisting in the collection of paper reports. Any paper reports should be placed in sealed envelopes addressed to the AO or ethics office, and AO's/supervisors should not to retain copies (they can request information or a subsequent review from Ethics Counsel when necessary).

F. Collection/Enforcement.

1. Unlike OGE Form 278, there is no \$200 late filing fee, nor are there civil or criminal penalties for willful failure to file.

2. Ultimate threat – disciplinary action and/or reassignment/removal. 5 C.F.R. § 2634.909(b). First be sure the position requires filing. If so, and the employee refuses to file, he or she is failing to meet the requirements of the position, and so must be reassigned to a position that does not require filing. If no position is available, removal may be the only option.
 3. If a report is late, request the supervisor to take administrative action and inform you of the result. 5 C.F.R. § 2634.701(d). Enforcement is one of OGE’s top priorities and they will examine it during a Program Review. In an audit, OGE will want to talk to supervisors and the Inspector General personnel to assess whether appropriate administrative action has been taken for violations.
 4. Get Command Support - Supervisors must be willing to discipline employees for late or non-filing.
- G. Status Report – JER 7-309: NOTE: Until the JER rewrite is completed, each DoD DAEO should determine whether to continue the report in JER section 7-309 and inform respective commands and installations of a new date, or just discontinue the report. Most of the required information can be obtained through the electronic filing systems and the information will be required to be provided to the DAEO in January of each year in order to facilitate completion of the OGE Annual Agency Questionnaire.