

# PUBLIC FINANCIAL DISCLOSURE PROGRAM

## Standard Operating Procedures

**Purpose.** This Standard Operating Procedure (SOP) provides guidance for the Management of the Public Financial Disclosure Report Program and sets forth procedures for reviews, filing and maintenance of OGE 278 Public Financial Disclosure Reports (OGE 278) and OGE 278-T Periodic Monthly Transactions reports (OGE 278-T).

**Applicability/Scope.** This SOP applies to ethics counselors and their support staff, supervisors and OGE 278 “public filers” working in [*insert command/agency/organization*]. The term “public filer” is defined under 5 C.F.R. Part 2634.202.

**Overview.** Timely filing and review of OGE 278 reports is a significant tool in the prevention of conflicts of interest and forms the foundation of an effective and efficient ethics program. This SOP establishes roles, responsibilities and procedures for OGE 278 program implementation. This SOP is subordinate to and should be read consistent with all applicable statutes, regulations, Office of Government Ethics issuances, and DoD Standards of Conduct Office issuances. Updates will be made as needed.

### References & Websites:

- a. Ethics in Government Act of 1978, 5 U.S.C. App 4 (Pub. L. 95-521)
- b. Stop Trading on Congressional Knowledge Act (STOCK Act), Pub.L. 112- 105
- c. 5 C.F.R. Part 2634
- d. DoD 5500.7-R, Joint Ethics Regulation (JER)
- e. OGE Legal Advisory 12-04, Public Financial Disclosure – Periodic Transaction Reports.
- f. DEPSECDEF Memorandum Subj: Mandatory Electronic Filing of Public Financial Disclosure Reports, dated 11/25/15
- g. SOCO Director’s Memo, Supervisory Review of Designated Agency Ethics Officials (DAEO) Public Financial Disclosure Reports
- h. Standards of Conduct Office website  
[http://www.dod.gov/dodgc/defense\\_ethics](http://www.dod.gov/dodgc/defense_ethics)
- i. Website: Office of Government Ethics (OGE)  
<http://www.oge.gov>
- j. OGE Public Financial Disclosure Guide  
<https://www.oge.gov/Web/278eGuide.nsf>
- k. Financial Disclosure Management (FDM) system website:
  - a. <https://www.fdm.army.mil>
- l. Integrity system website:
  - a. <https://Integrity.gov>

## **Mandatory Electronic Filing.**

Per Reference f., all OGE 278 financial disclosure filers are required to submit their reports electronically. Electronic submission will be via either the Financial Disclosure Management (FDM) system, or via OGE's Integrity system, as directed by the cognizant ethics office. All Presidentially Appointed Senate confirmed (PAS) officials and all Designated Agency Ethics Officials (DAEOs) must use Integrity. **Note:** OGE 278-T reports are not available for filing in FDM, and therefore, must be filed manually, however, digitally signed .pdf versions are acceptable. Integrity filers must submit OGE 278-T reports in Integrity.

Submission of reports in both the FDM and Integrity systems automatically includes submission of the required Post-Government Employment Certifications as part of the electronic signature process.

**Roles & Responsibilities.** The below outlines the various categories of personnel supporting the ethics program. Note that for purposes of this SOP, the terms DAEO, Certifier, and Ethics Counselor below refer to those individuals appointed to or designated as having that position or status and the associated authority to take certain actions. This should be distinguished from roles assigned in electronic filing systems, which often use the same terms. Assignment of a role to an individual in a given filing system does not confer authority to take any action in the system beyond that individual's actual authority outside the system (e.g., a paralegal given a 450 Certifier EC role in FDM does not have authority to certify an OGE 450 report).

- a. Designated Agency Ethics Official (DAEO) – The individual with ultimate responsibility for the Department/Agency's ethics program. The DAEO may delegate day-to-day management of the ethics program to an Alternate DAEO or Deputy DAEO(s). The \_\_\_\_\_ is the DAEO for this command/agency.
- b. Alternate DAEO (ADAEO): As authorized by the DAEO, the ADAEO may re-delegate all or some authorities for ethics program management to one or more Deputy DAEOs. The \_\_\_\_\_ is the ADAEO for this command/agency.
- c. Deputy DAEO (DDAEO). As authorized by the DAEO/ADAEO, DDAEOs may appoint ethics counselors who are authorized to perform delegable duties related to ethics program management. The \_\_\_\_\_ is/are designated as DDAEO(s) for this command/agency.
- d. Ethics Counselors (EC). Attorneys designated as an ethics counselor by a DAEO/ADAEO/DDAEO. Delegations letters should be in writing and maintained as part of the ethics program system of records. Only ECs may certify financial disclosure reports, authorize the granting of filing extensions, or waive late filing fees.
- e. Administrative Staff. Includes paralegals, administrative assistants, interns, etc. While only an ethics counselor can certify reports, ethics offices may designate administrative staff to conduct initial technical reviews and work with filers to obtain clarifications or amendments prior to ethics official review and certification.

- f. Personnel Offices. The Directors of personnel offices are responsible for providing the following information to their DoD Component DAEOs or designees: 1) Immediately upon the appointment of covered employees – the employee’s name, position, organization and entrance-on-duty date/sworn-in date.
- g. Administrative Officers. Each principle organization within a command or agency will designate an Administrative Officer (AO) who is the ethics POC for that organization. The AO is the individual responsible for the administrative management of personnel within a unit or office, including assistance with in- and out-processing, systems access, training, travel, or personnel actions for individuals within that unit or office. The AO notifies ethics counsel of arriving, departing, and moving employees and assists in keeping filer records up to date. The AO also serves as a liaison between the ethics office and their organization for purposes of tracking ethics requirements and disseminating information to the organization’s leadership and members, as necessary and appropriate. The AO should be given FDM POC roles in FDM.

**Report Types & Due Dates.** There are five types of Public Financial Disclosure Reports, which are listed below. For new entrant and termination reports, it is almost always necessary to override the due date to enter the correct legal due date in FDM. Additionally, ethics counsel may grant extensions *sua sponte* where delays in communication or systems access severely truncate the amount of time the filer will have to complete the report after assignment in the system:

- a. New Entrant – Due within 30 days after appointment to a filing position or 15 days after the 61<sup>st</sup> day of serving in an acting or detailed capacity to a filing position. Transferees from another executive branch filing position with less than 30 days break in service do not file, but should provide a copy of their prior report to their supervisor.
- b. Periodic Transaction – Due within 30 or 45 days of a covered transaction, whichever is earlier. Filers must report each purchase, sale, or exchange of a stock, bond, commodity or other individually held security that exceeds \$1,000. Does not include transactions in mutual or exchange traded funds (see Financial Disclosure Deskbook Chapter for full list of exempt transactions). FDM does not currently permit electronic submission, however, Integrity does.
- c. Annual – Due May 15<sup>th</sup> (or next business day) of each year for any filer serving in a covered position for more than 60 days during the preceding calendar year. (Filers appointed on or after November 2<sup>nd</sup> will not owe an Annual report in the following year).
- d. Combination Annual/Termination – Departing filers with termination dates between May 15<sup>th</sup> and August 13<sup>th</sup> may file a Combination report, however, the report may not be submitted after August 13<sup>th</sup>. A Combination Report represents an extension of the deadline for filing the Annual report to permit combining that report with the filer’s Termination report.

- e. Termination – Due within 30 days of the filer’s termination date and may be submitted no earlier than 15 days prior to the termination date. Filers transferring to another filing position within the executive branch with less than 30 days break in service do not owe a Termination report. Note Regarding FDM Filers: Because FDM requires a CAC, Combination and Termination reports may be received manually, with a copy uploaded as an attachment to the assigned report in FDM. The FDM report can then be “completed w/o signatures” in FDM.

TIP: Set up monthly recurring calendar invite to 278 filers reminding them of their OGE 278-T filing requirement.

FDM TIP – DUE DATES: When establishing due dates in FDM, it is imperative to use the correct functions so that FDM will generate accurate data for the annual OGE Questionnaire.

1. Override due date – ONLY use this when you are making the due date EARLIER than the AUTOMATIC FDM DUE DATE. Ex: Filer started June 1 but agency received notification and assigned a report June 30 – FDM will set July 30 as the due date so you must override to make FDM reflect July 1 as the actual due date, and enter the EOD date in the reasons box.
2. Record Extension – ONLY use this when you are making the due date LATER than the REGULATORY/STATUTORY DUE DATE. Ex: Using the above example, since the filer would have 1 day to file, you will also need to record an extension to allow the filer sufficient time to file. Enter the number of days for the extension and the reason (in the above situation), typically, check the “Other” box and say “Late Notice of EOD.”
3. Tip: Recommend recording all extensions such that due dates fall on either the 1st or the 15th of the month. This will enable you to calendar reminders and track since you will know exactly when the next batch of extended reports are due, vice having to track multiple ad hoc due dates.

### **Late Fees & Penalties.**

- a. Late Fees: Any OGE 278 and/or OGE 278T report filed more than 30 days after the due date (including extensions) is subject to a late filing fee of \$200.
  1. Ethics officials may waive late filing fees under “extraordinary circumstances.” Waiver requests must be in writing (e-mail suffices) and detail the circumstances justifying the waiver.
  2. Extraordinary circumstances may include the agency’s failure to notify a New Entrant, filer of the requirement to file the public financial disclosure report, 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 –

such as assignment of the wrong report), and emergency duties of an employee's office (e.g., employee involved in emergency response conducted by the agency).

3. In determining whether circumstances are extraordinary, consider the following: 1) the position of filer (a filer might be held to a higher standard because they are an agency head or in a similar position; 2) whether the filer requested any extensions, indicating a good-faith effort to file; and 3) the timeliness of the employee's previous report.
- b. Penalties: Filers should also be made aware that under federal statute, willful failure to file or falsification of report data triggers mandatory referral to DOJ and carries civil penalties that may be more than \$50,000. Referrals must be reported to the DAEO and to OGE.

### **Using FDM.**

- a. Registering Filers: E-mail addresses - FDM registers filers by pulling from the Global Address Book. Occasionally, FDM will pull an old e-mail address from the Global (e.g. @ AF.mil), vice the employee's current enterprise email addresses (e.g., @ mail.mil). In such instances, just verify which e-mail address is or was associated with the filer you are trying to register and select the filer with that e-mail address to register. Once the filer is registered, they can go in and update to their current e-mail address. If there are multiple options for filers with the same name, you can verify by: a) asking the filer which e-mail address is or used to belong to the filer; or b) have them send you a digitally signed e-mail – this will capture the accurate CAC email address that FDM recognizes. If neither works, you may need to contact the FDM help desk for assistance.
- b. Assigning Reports: Once a New Entrant Report is assigned, be sure to notify the filer. If FDM had the correct enterprise e-mail address, you can use the FDM notification (however the text should be replaced almost entirely with your own tailored language). If FDM had the incorrect e-mail address, send a separate e-mail to the filer directly, with a copy to the AO/FDM POC and the filer's supervisor, to notify the filer of the report assignment and the due date and provide them with instructions on accessing FDM. In the notification, be sure to advise the filer to update their email address under the "My Info" tab.
- c. Technical Issues: Filers/supervisors will need to contact the FDM helpdesk at 443-861-8247.

### **Filing & Review Procedures**

- a. Preparation for Filing Season.

1. Steps should begin in late August/early September prior to upcoming filing season. Request AOs to review and update filer lists for upcoming filing season and ensure that filers are properly aligned to their correct supervisor.
    - i. Remember, this may not be the immediate supervisor – for financial disclosure purposes it just needs to be someone in the filer’s chain of command.
    - ii. For very senior leaders, recommend that only their Chief of Staff or Deputy be aligned under them as supervisor with all others aligned under the Chief of Staff or Deputy for review.
  2. It is imperative filers and supervisors make sure their email addresses are current in FDM; otherwise, notifications sent via FDM as well as the reports flowing properly through the system will not be received. Failure to receive notifications is NOT grounds for extension and does not excuse late filing/review under OGE policy.
- b. Report Receipt & Tracking
1. Workflow - FDM and Integrity provide computer generated emails advising when filers submit and when supervisors have signed.
  2. Management Reports – Frequent and proper utilization of these reports is the ONLY way to maintain oversight of your program. Review screens may not provide complete and accurate status data.
    - i. FDM/Integrity Disclosure Reports – this is the ONLY complete picture of your reporting program. Shows all filers, reporting status, submission dates, supervisory review status, and certification status.
    - ii. Due Date & Extension Tracking Reports – these will enable you to track New Entrant due dates and due dates for filers with extensions.
- c. Review and Final Certification
1. Reports must be certified within 60 days from filer’s submission, unless additional information or amendment is required and is actively being pursued.
  2. Annual Reports. Compare the report with the prior report in file. Accept the report at face value unless there are noticeable omissions or there is independent knowledge of items not listed. The “Compare” functions allows for easy identification of changes and possible discrepancies.
  3. New Entrant Reports. More extensive questions typically asked of New Entrant filers. While reviewers are technically permitted to rely on “face value” of report – given the significant consequences to filer and agency should a conflict not be identified and remedied, it is prudent to ask new filers to verify that they understand the requirement and that negative responses are intentional vice an inadvertent omission. For example, if a filer fails to identify spousal employment, the reviewer may want to verify that the filer truly has none to report. (Do NOT ask if the filer is

married – just verify that the filer understands the requirement and truly had nothing to report.)

4. Clarifications & Amendments. Where report data is incomplete, ambiguous, or raises a potential conflict of interest:
  - i. Amendments – If the information required to correct is substantive (e.g., failure to report several underlying assets in a retirement account), the filer should be required to amend the report
  - ii. Clarifications – If information required to correct/clarify is minimal (e.g., failure to name the state sponsor and/or underlying assets of a 529 plan/retirement plan), the reviewer may use the comment function in FDM to make an “of record” clarification based upon written information provided by the filer. The filer’s written clarification should be uploaded as an attachment and the filer must correct in the next report. Clarifications via comments of record may also be used to address apparent conflicts that are not actual conflicts (e.g., filer works in CIO and owns Microsoft stock, but does not actually work on any matters relating to Microsoft and is not likely to do so).

#### 5. Technical (Initial) Review Process

- i. Part 1. (Filer’s Position Held Outside United States Government). Disclose position(s) that filer held at any time during the reporting period, regardless of whether compensated or not.
- ii. Part 2. (Filer’s Employment Assets and Income). Report all non-investment income of the filer totaling more than \$200 during the reporting period.
- iii. Part 3. (Filer’s Employment Agreements and Arrangements). Filer discloses any agreements or arrangements that they had during the reporting period, to include continued participation in any retirement plan with a former employer. When reviewing Termination reports, ensure any future employment is properly identified.
- iv. Part 4. (Filer’s Sources of Compensation Exceeding \$5,000 in a Year). Filer discloses sources outside the Federal Government. For New Entrant filers, they should properly identify any salary/income from a former employer (to include clients of a former employer to whom they personally provided services for which the employer billed more than \$5,000).
- v. Part 5. (Spouse’s Employment Assets and Income). Sources of earned income (excluding honoraria) for filer’s spouse totaling more than \$1,000 during the reporting period; sources of honoraria greater than \$200; any assets related to the filer’s spouse’s employment.
- vi. Part 6. (Other Assets and Income). All other assets not already reported on Parts 2 and 5 (not related to employment).

- vii. Part 7. (Transactions). Any purchase, sale or exchange of stocks, bonds, mutual funds, etc., in excess of \$1,000 or generated in excess of \$200 of income. Check to see if there is corresponding OGE 278-T reports reflected in file. Note: New Entrants do not complete Part 7 – they will as incumbent filers.
- viii. Part 8. (Liabilities). Liabilities over \$10,000 that of filer, filer’s spouse or dependent children during the reporting period. PAS and military O-7 and above) are also required to identify a mortgage on a home/personal residence, as well as a mortgage on a home that is used as an investment.
- ix. Part 9. (Gifts and Travel Reimbursements). Gifts meeting the reporting threshold that the filer, filer’s spouse and dependent children received from any one source. Note: New Entrant filers are not required to complete Part 9 – they will as incumbent filers.

#### 6. Substantive (Certifier) Review Process

- i. Ethics official will conduct their review for final certification of the report in FDM/Integrity.
- ii. Ethics officials provide guidance and recommendations to assist filers and supervisors resolve any actual or apparent conflicts of interest in a filer’s performance of official duties revealed during the review of a report. If the review of the report shows financial interests or positions with some nexus to DoD business but low risk of an actual conflict arising, the review should send a cautionary notice of the Filer identifying the potential conflict. If the review shows financial interests or positions with a nexus to the filer’s duties/responsibilities such that an actual risk of conflicts exists, then a disqualification statement is appropriate. Disqualifications are to be in written form.

#### **Filer Categories:**

- a. Political Appointees Confirmed by the Senate (PAS): Ensure PAS filers comply with their ethics agreements. Final Certification of PAS reports is performed by OGE. Note: All PAS employees file in the Integrity system – not FDM.
- b. Political Appointees/Non-careers SES (Non-PAS). Their filing requirements are the same as a Career-SES; although political appointed – they are not confirmed by the Senate. Their OGE 278 reports are not certified by OGE.
- c. Temporary Promotees: Individuals temporarily detailed to or acting in a covered position for more than 60 days are required to file a report.
- d. Highly Qualified Experts (HQE): Most HQEs file an OGE 450. However, Senior Mentors and HQE’s serving in Public Filing positions (e.g., positions previously held by a public filer) must file an OGE 278.



- e. Intergovernmental Personnel Act (IPA) – New Entrant Filers: Individuals appointed under the Intergovernmental Personnel Act, State or local governments, institutions of higher education or other eligible organizations will file either an OGE 450 or an OGE 278e. Reference: OGE Memo dated October 19, 2006 from then-Director Robert Cusick. It is the position, not the salary that determines if the IPA will file an OGE 278e or OGE 450 report.

### **Release of Public Reports.**

- a. Agencies are required to provide a copy of an OGE 278 report to the public upon written request, beginning 30 days after its receipt whether it is certified/complete or not.
- b. Requestors must use the OGE Form 201 to request reports. The form is available on the OGE web site at <http://www.usoge.gov>.

### **Records Management.**

- a. Retention Period. Reports are retained for six years from the date of the filer's eSignature in FDM/Integrity. Files may be retained longer if required for an investigation. At the end of the six-year period, the data and any printed report (PDF version of an OGE 278) will be destroyed. All OGE 278 reports that a filer has eSigned (or paper outside of FDM/Integrity) will be kept for six years from the date the filer eSigned/ink signed. Reports eFiled in FDM/Integrity are automatically marked for retention for six years when the DAEO, DDAEO, or designees, eSigns and completes the OGE 278 report.
- b. The OGE 278 report is a public report; releasable to the public. (See 5 U.S.C. § 552a and the OGE/GOVT-2 (GOVT-2 applies to 278 reports) Privacy Act system of records (and any applicable agency system); 5 U.S.C. app. (Ethics in Government Act of 1978, section 107(a)); sections 201(d) and 502(b) of Executive Order 12674, as modified by Executive Order 12731; and §2634.901(d).
- c. In FDM, DAEOs, and their ECs can manage and permanently delete OGE 278 reports that are expired; unless a report is part of an investigation or a Qualified Trust Attachment on the Review Status page of the report. Per the record retention rules in the Code of Federal Regulations, reports expire six years after the Filer filed (eSigned by the Filer) the report. Reference 5 CFR 2634.604(a) and (b) Custody of and denial of public access to confidential reports for the Code of Federal Regulations directives regarding deleting reports.
  - 1. Important! Once a report is Purged (deleted), it cannot be recovered. Review the Expired Reports list first to determine if any report should be retained. An OGE 278 report will display on the Expired Reports page if it does NOT include a Qualified Trust Agreement, and six (6) years have passed since the report was filed.