

ADVANCED FINANCIAL DISCLOSURE REVIEW OF OGE FORMS 278 AND 450

I. GENERAL INFORMATION

- A. **Standard of Review** should meet the requirements of an OGE audit. Specifically, review of reports should be two-fold. First, the initial review which addresses procedural questions, including is the report complete on its face, and then substantive conflict of interest review. This strengthens programs against negative substantive findings during an OGE audit. **Best Practice (BP):** [Internal DoD program review should meet the OGE standard.](#)
- B. **STOP THE CLOCK!** Meet the Ethics Program requirements. Conduct the initial review as soon as possible upon receipt of the reports to meet the 60 day review deadline. Technical deficiency review suffices. Obtaining missing information, answering questions, and substantive review of duties against filer's interests can come later. **BP:** [consider establishing a policy to promote follow up, for example, ensure IR is not considered complete until filer is notified of follow-up questions.](#)
- C. Resource. Public Financial Disclosure, A Guide to Reporting Selected Financial Instruments http://www.usoge.gov/forms/sf278_pdf/278financialguide_08.pdf.
- D. **General Information.**
1. The report should stand-alone. Annotate all revisions, corrections, and clarifications on the form, including your initials, date, and source of information. If there are numerous corrections, place the latter information in one location, preferably at the bottom of the page, and reference with an asterisk. Use Comments box for substantive comments, such as "waiver or disqualification attached."
 2. Assist filers identify where and what information is needed. Sometimes this means providing them language for their tax consultant or financial advisor, or even talking to these agents directly. Remember, filer must give you and the agent permission to discuss interests.
 3. DoD recommends encouraging filers to use "(S)" for spouse, "(J)" for joint, and "(DC)" for dependent child. It helps the review process, as the ownership of an asset may determine whether additional information is needed for other parts of the form (e.g., salary from DoD contractor may be listed on Part I, III, and IV if filer, but only Part I if spouse's).

4. Educate filers on over-reporting. Filers often provide too much information, such as dependents' names, account numbers, or their social security number. Be careful that it is not inappropriately released.
5. If there are questions resulting from the initial review, ask the filer all at once, not piecemeal.

II. OGE FORM 450 - REVIEW THE REPORT.

A. **Procedural Information.** IR can include review of procedural information like, is the correct form used, is it signed, is it dated etc.

1. **Correct version?** The correct version is dated December 2011. Use of any other versions is prohibited as the forms are obsolete and filers must complete new report on the correct form. Be sure to distribute the correct version. Recommend downloading the form from DoD SOCO website:
www.dod.mil/dodgc/defense_ethics/resource_library/oge_450_dec_2011_edition.pdf.
2. **Signed.** If the filer has not signed the report it cannot be considered filed. Unless approved for use of electronic signatures, the ethics office must receive the report with original signatures. At DoD, Army filers must and all other may use the OGE approved e-filing system, the Army Financial Disclosure Management program (FDM), or CAC signatures may be acceptable if approval is received from organization's CIO.
3. **Reporting Status:** We must assume that the filer's report covers the reporting period for the reporting status checked. Hence, if the new entrant reporting status is checked, you must assume the report covers the prior 12 months. If the annual reporting status is checked, the report covers the preceding calendar year.
 - a. New entrant or Annual? If an annual report is the first report for a filer, check to determine if this was intended as an annual or new entrant report (*e.g.*, what reporting period did the filer use, what was the appointment date to the position). If it includes an appointment date more than 30 days from the date filed, but is marked as an annual report it will likely be an annual report, covering the reporting period January 1 to December 31. Remember a new entrant report requires information for the 365 days prior to signature, which should be made within 30 days of entry.
 - (1) If the report was intended as a new entrant, confirm with the supervisor whether the determination that the filer was in a "covered position" was within 30 days; and the report covers the correct reporting period. Annotate the report that a determination was made during the annual position review that filing is now required, and treat the annual report as

new entrant report with date of appointment as the date the determination was made that they are a filer.

- (2) If the supervisor indicates that the filer should have been previously identified as a filer, collect a new entrant report, even though it would be late. Annotate the report to correct the status, ensure that the report contains information for the 12-month period before the date of appointment, and write a note in the Comments section to explain what happened. OGE encourages a reviewer's notes on the report.

4. **Dates.** Is the report timely filed?

a. Appointment date is required for all new entrant reports.

b. Check if the report was timely filed, *i.e.*, within filing period or before extension expired.

- (1) New Entrant reports must be received within 30 days from when the filer assumed his duties, except for SGEs (and Reservists and National Guard who meet the requirements) who file prior to assuming the duties. *See* JER 7-303.a.(2).

(2) Annual reports should be filed no earlier than January 1 and no later than February 15, unless an extension is requested and granted within the filing period.

(3) Annual OGE Form 450s signed and/or filed prior to December 31 are premature. Ethics officials have two options (depending on how premature the reports are): (i) require resubmission after January 1, or (ii) require filer clarification that there are no reportable changes after January 1 and annotate the report accordingly.

c. Date of supervisor signature must be on or after date employee sign. This ensures supervisor reviewed the complete report.

- (1) Report fails to receive supervisory review. After conducting initial review, if substantive changes are required, make them first, then submit it to the supervisor for review and signature. Keep the original, so it does not get lost, and send a copy. File them together when the copy is returned. The database or tracking system needs to alert the reviewer if the supervisor does not return it in a timely manner. Annotate the report accordingly.

d. **Date Received by Agency** is the filing date and is critical to start the 60 day initial review time. Some may use the supervisory review to stop the 60 day review clock, but the supervisor must note the date received on the report.

The risks include losing control over knowing when filers may be late, and ensuring that the date is entered accurately. Most use the date the report is filed at the ethics office, which gives that office control over the 60 day review. The risks include losing control over supervisors, who may hold the report, and risk a late filing date.

BEST PRACTICE: DoD recommends putting initial review (IR) date on the form, in the database, and preferably both to document completion of 60 day review deadline for auditors.

5. **Did filer properly complete all Steps on cover page?** Usually, the problem arises: **Is Step 2 complete?** All statements must be answered "yes" or "no," corresponding to whether there are reportable items on Parts I-V of the report. Check to make sure all required statements are answered and correctly reflect reported information in Parts I-V. Remember, if there is nothing to report for all parts, only the first page needs to be kept for six years.

B. Part I - Assets and Income.

1. Reportable assets: (i) Assets that had a fair market value of more than \$1,000 at the close of the reporting period; OR (ii) assets that produced over \$200 in income during the reporting period, regardless of asset value. Fair market value may be determined by purchase price, good faith estimate, recent appraisal, adjusted assessed value, and year-end book value.
 - a. Report earned income of spouses only if it exceeds \$1,000.
 - b. Don't report earned income of dependent children.
2. **Partnerships**, closely held corporations, and small business ventures (not publicly traded) – Filers need to include name, location, and nature of business. Remember that the goal is to collect information necessary to conduct a conflict review, and it is usually difficult to find public information on these types of entities.
3. **Pensions** – Make sure you ask about pensions for new entrants, filer spouses, and SGE; or anywhere the filer reports a salary. If not reported, inquire. Usually they are either a defined benefit plan, which is a corporate obligation, or a defined contribution plan, which generally allows the filer to choose the investments in the plan.
 - a. **Defined Benefit Plan** - Report name of company and include a parenthetical that it is a "(defined benefit plan)." In a defined benefit plan, the company guarantees a set amount, usually based on actuarial calculations, and makes monthly payments based on these calculations, similar to the civil service retirement system.

- b. **Defined Contribution Plan** - If the filer chooses the investments in the plan, such as selecting mutual funds or stocks, report the assets of the plan, which will be the options selected. This is a defined **contribution** plan, in which the employee receives whatever the investment portfolio has earned with no guarantee, like the TSP.
 - (1) **401(k)** is a type of defined contribution plan. Identify the underlying assets by identifying any sector mutual funds, specific assets such as the company's stock, or by naming the independent manager and the type of investment option selected, such as fixed, aggressive growth, etc. If the assets are all not reportable (such as non-sector, diversified mutual funds), you are not required to report 401(k)s; but it may be preferable to retain this information for future disclosures to ensure that reportable information is not later acquired.
- 4. **Investment Accounts (e.g., IRA)** – Filers need to identify all reportable underlying assets. If the assets are all not reportable, either because they are below the reporting thresholds or are not reportable assets, you should annotate this in a parenthetical next to the IRA entry (e.g., “(all non-sector, diversified mutual funds).” Please note where assets are all not reportable (e.g., all diversified mutual funds), you are not required to report the IRA at all, but it may be preferable to retain this information for future disclosures to ensure that reportable information is not later acquired.
- 5. **Mutual funds** –
 - a. Diversified, non-sector, mutual funds are not required to be reported. *See* 5 C.F.R. § 2634.907, http://edocket.access.gpo.gov/cfr_2008/janqtr/pdf/5cfr2634.907.pdf
 - b. Excepted investment funds (EIFs) are not reported. EIFs are funds that are widely held and either publicly traded or widely diversified with an inability of the investor to exercise control over the financial interests. *See* 5 C.F.R. § 2634.310(c), http://edocket.access.gpo.gov/cfr_2008/janqtr/pdf/5cfr2634.310.pdf.
 - c. Sector funds are reportable – Ensure the full family and fund name. *See* 5 C.F.R. §§ 2640.201(b) and 202 (rules governing disqualification of sector fund holdings); and OGE Advisory Opinion 00 x 8 (DO-00-030) (www.oge.gov/DisplayTemplates/ModelSub.aspx?id=2309) (explanation and assistance in distinguishing sector funds). Remember, OGE sector fund is limited to funds concentrated in a particular industry, business, single country other than the US, or bonds of a single State (e.g., Fidelity Advisor Emerging Asia is not a sector fund for disclosure purposes but a diversified mutual fund (not reportable); however, it is a “sector” fund in investment world terminology).

BP: Always ensure full asset name is reported and when possible include the ticker symbol, not just the family name which may indicate one of several different types of holdings: 1) stock in entity; 2) a mutual fund of the entity; 3) an investment account with the entity; or 4) annuity/insurance (e.g., Prudential).

6. **Managed stock/brokerage account** –

a. Many employees claim that they don't control the account or know what is in the account, so they shouldn't have to report assets. Even if they give day-to-day control to a broker, they still retain ultimate control. Any reputable broker provides monthly or quarterly reports, so the employee has knowledge, even if he doesn't read the reports. Employees may attach statements that meet the regulatory requirements (indicate reportable assets sold during the year, *see* OGE DAEOgram 00-007 (www.oge.gov/DisplayTemplates/ModelSub.aspx?id=1993) and white-out values and account numbers.

7. **Variable** annuities or life insurance –List the holdings, which may be invested in diversified unit investment trusts. Always ask to identify the type of annuity or insurance.

8. **Property** – identify the type of property (rental property, undeveloped land), and the city and state.

9. **Trusts** – if a trust is reported, determine whether filer is beneficiary or just a trustee. If they are a beneficiary, the reportable underlying assets of the trust must be reported. If they are the trustee only, report the trust only if they receive fees in excess of \$200 (report on Part I as other income). Remember the outside position would be reportable on Part III.

C. **Over/Under-Reporting.**

1. Over-Reporting –If you have the time, follow-up by informing the individual of the over-reporting.

BP: Put “NR” (“Not reportable”) or “OR” (“Over-reported”) or similar notation on the report.

a. Do not report income from the Federal Government (e.g., salary or benefits), dollar amounts, account numbers, cash accounts in financial institutions, money market funds, CDs, EIFs etc.

b. Do not report the personal residence unless it is income producing (e.g., a portion is rented out)

c. Do not report the mortgage on your personal residence.

- d. Do not report gifts of travel accepted by the Government in accordance with 31 U.S.C. § 1353. Make sure you have information on the travel for your travel report, but it should not be reported here!

2. Under-Reporting –

BP: for new entrants, and periodically thereafter, asks the filer to confirm there is no missing reportable information (*e.g.*, filer isn't married, doesn't have minor children, or life insurance etc.) and annotate report accordingly. This is also a good time to remind new entrants of their other annual ethics requirements, namely to complete an annual report and one hour of ethics training.

- a. If filer thought the report was a new entrant, but it is really annual, need to determine if there are any gifts/travel to be reported. Vice-versa, if it is a new entrant, but travel reported, indicate NR or OR.
- b. Inadvertently omitted information. Most often this is seen with spousal income and investments of spouses and dependent children. Without independent knowledge, this may be hard to determine.

D. **Cross-Pollination** – Ensure the parts of the report are consistent.

1. Make sure Step 2 statements are consistent with other parts of the report.
2. Part II – Liabilities - 2007 changes to the reporting requirements should make it extremely rare that liabilities will need to be reported.
3. Part III - Outside Positions - Reports fail to list outside positions, especially when uncompensated. Ask whether the position reported on Part III is compensated? If yes and compensation is more than \$200, is it reported in Part I? If income for a position is reported in Part I, be sure that the position is also reported in Part III. This one is hard – without independent knowledge, or development during questioning on other problems, it may be impossible.

BP: annotate the entry with “(paid)” or “(unpaid).”

4. Part IV – Agreements and Arrangements – Does filer continue to participate in a pension or benefit plan maintained by a former employer? Check assets listed on Part I and Part III. This is usually arises for IPA and SGE appointees.

BP: review any ethics advice the filer may have received during the reporting period for any other reportable information.

E. **Substantive Review** - After conducting the initial review, get answers to any questions before proceeding to substantive conflict of interest review. You may need to contact the filer's supervisor or review a description of his office's mission.

BP: ask filer for his position description or a brief paragraph regarding his duties.

BP: ask filer for his position description or a brief paragraph regarding his duties.

1. Check the filer's interests against any available local list for DoD contractors, or alternatively the \$25K list on the DoD SOCO website (www.dod.mil/dodgc/defense_ethics/resource_library/contractor_list.pdf), if appropriate. As the list is generally updated annually, check that you have the most up-to-date version. Remember that ***the list is not a comprehensive list*** of possible prohibited sources. For example, many universities are prohibited sources but are not listed on the contractor list.
2. DoD SOCO recommends a more expansive review be performed. It is misleading to only look at the \$25K list for prohibited sources. Ethics officials need to know their filer's duties and current activities.
3. Besides investment assets, substantive conflicts of interest most often arise from: (a) former employers during the filer's first year at DoD; (b) spousal employment; and (c) outside positions. Check also that filer is not accepting gifts from prohibited sources, or at least accepted them after receiving ethics guidance.
4. If an actual or possible conflict arises (*e.g.*, filer holds stock in a DoD contractor), the filer should receive a letter of warning (LOW), with a copy to their supervisor, which identifies any conflicts of interests, recites the legal standards, and reminds of any required recusals, as well as reminding them of their interests that may be or become possible conflicts of interest. OGE has cited letters of warning as a best practice in its Program Review Guide. The LOW should be kept with the report, but not attached directly to the report.

BP: where filer has significant changes/revisions to their report, consider attaching the edited report with any LOW. This can assist them in future reporting.

5. If an actual or potential conflict is revealed, ensure filer takes required remedial steps, like completing a written disqualification statement. Annotate the report with any information about action taken (*e.g.*, LOW sent). Finally, the reviewer certifies the report.

III. OGE FORM 278 - REVIEW THE REPORT.

A. **Review Standard** – The same as for the 450 reports.

1. This section discusses and highlights differences between the 450 and 278 reports. Except where noted, the 450 section is applicable to the 278 reports. Assets and income that are more complex are discussed in the 278 section, although such discussion is applicable to the 450 reports.
2. **STOP THE CLOCK!** – The same as for the 450 reports.

3. *Must* compare the current 278 with the prior one. There should be a seamless flow from one year to the next. It is recommended for 450 review, but mandatory here. Also recommend using a worksheet to help compare and record questions.

B. Preliminary Information.

1. **Correct version?** If it is not dated 12/2011, filer *must* redo the report. Be sure to distribute the *new* version. Prior versions cannot be used. Recommend downloading the form from the DoD SOCO website (www.dod.mil/dodgc/defense_ethics/resource_library/oge_278_supervisor_signature_dec_2011.pdf).
2. *Must* collect reports for each requirement – new entrant, annual and termination.
3. Appointment date is included on new entrant reports and termination date is included on termination reports. It is advisable to include the appointment date on each report.
4. Filer should include the calendar year which covers the interests reported for all incumbent reports. *E.g.*, a 2012 incumbent report covers calendar year 2011 (the reporting period), so the calendar year should say 2011 not 2012. If the calendar year is wrong, you should verify with filer that the report covers the correct reporting period and annotate the report accordingly.
5. Signature of filer should be dated after January 1 and no later than May15, or if later, an extension should be annotated in the comment box. If not the report is late. Likewise, the supervisor’s signature should be dated on or after the date the filer signs the report.
6. If the report does not have the required supervisor certification label, located in the comments box (automatically included on the version on the DoD SOCO website version), supervisors should sign in as “Other Reviewer.” Supervisory review is not required for termination reports (JER 7-206.a). This box may also be used to annotate the date of initial reviewer.
7. **Date received** – There is no box on the report, but this date is critical to start the 60 day review time. Recommend putting it in the “Agency Use Only” box.
8. Put initial review (IR) date on the form, in the database, or both to make it easy to document for auditors that the 60 day review deadline is met (JER 7-206(c)(7)).
9. OGE Form 278s require DoD DAEO or Deputy DAEO certification, unlike a 450, where an Ethics Counselor may sign.

C. Schedule A, Assets and Income.

1. Reportable information for an OGE Form 278 is more detailed than a 450. It requires reporting the value of the asset by range, as well as the type and range of income. Also, more information is reportable on the OGE Form 278. For example, a diversified mutual fund that meets the reporting thresholds must be reported as an asset on a 278 even though it is not required to be reported on a 450. Otherwise, the discussion in the 450 section on how to correctly report assets generally applies here.
2. Check that each reported asset has an entry in one of the blocks in B, value range, and C, type and amount of income ranges. Reportable asset thresholds are the same as for the 450.
 - a. If asset is an Excepted Investment Fund (EIF), and the EIF box is checked (between blocks B and C), filer need not identify type of income received.
 - b. If “None (or less than \$201)” is checked for the income amount, the type of income need not be identified.
 - c. If filer, spouse and/or dependent child have the same security, aggregate all value and income to determine if they meet the reporting threshold. *E.g.*, if filer has \$800 in X stock, and spouse has \$300, these amounts would be aggregated and X stock would be reportable.
 - d. Aggregate different types of income from securities to determine if they meet the reporting threshold. *E.g.*, if Y stock, valued at \$800, earned both dividends (\$175) and capital gains (\$215), these amounts would be added to determine if it exceeded \$200 as reportable income.
 - e. Filer must indicate the actual amount of any of his non-investment reportable income in “Other Income” block in Block C, instead of providing a range. Most common examples of this include salary from former or outside employer, partnership income, or honoraria. Report benefits and severance separately from salary.
 - f. Spousal income does not require reporting of actual amounts in Block B or C, however, the entry should annotate “spousal salary” either in Block A or under “Other Income” in Block C.
 - g. Spouses and dependent children may use the “Over \$1,000,000” category for their sole assets that meet the category, but the filer must use whichever of the higher categories applies.

- h. Check changes to value and income. Where values jump more than one value or income range, reviewer should check for a transaction or obtain an explanation. *See* Reviewer Assumptions (p. 4-6) of Public Financial Disclosure: A Reviewer's Reference (www.oge.gov/Financial-Disclosure/Docs/Financial-Disclosure-Guide/).
3. Unlike the 450, filer must report **cash accounts**, if they aggregate more than \$5,000 in one financial institution. These include certificates of deposit, money market accounts, or other forms of deposit in banks, credit unions or similar financial institutions.
4. If stock that produced more than \$200 income during the reporting period is completely sold, report value as "None (or less than \$1,001)" and include capital gains in the type of income, if applicable.

BP: include a parenthetical in block A to record sales, *e.g.*, "(sold)" for complete sales or "(partial sale)."

5. **Stock Options** – are tricky and reviewers should refer to OGE guidance. *See* "Guide to Reporting Selected Financial Instruments" (www.oge.gov/Financial-Disclosure/Docs/Guide-to-Reporting-Selected-Financial-Instruments/, page 12) For example, options that are exercised and immediately sold are usually considered ordinary income and not capital gain, and therefore actual amount realized should be reported in "Other Income" box.
6. **Retirement Assets and Income.**
 - a. The interest/dividends earned by **IRAs** must be reported, even if not taxable.
 - b. Detailed disclosure of reportable underlying assets in a personal IRA is required, so show the value of the underlying assets, as well as interest/dividends/capital gains.
 - c. **Defined benefit pensions** – The shorthand method of reporting for the 450 does not apply to the 278 report. Report the name of the employer, and the category of value (cash surrender) or if the value cannot be determined include a parenthetical noting "(value not readily ascertainable)." Do not complete block C type and amount of income. For block C, provide a description of the benefit to be received in "Other Income" box (*e.g.*, "at age 65, \$3,750/monthly"). If filer receives payments, this is actual income, and the actual amount received must be reported in "Other Income" box.
 - d. **Defined contribution plans** - Report the name of the employer, type of plan (*e.g.*, 401K, 403B, SEPs, Keogh or TIA-CREFF) and all reportable underlying assets as separate entries. Income from these assets is not ordinary income to the filer, so complete type and amount of income boxes in block C. Where

the interests are in boutique funds, OGE recommends evaluating whether the independently managed investment might qualify as an EIF before requiring reporting of all underlying assets.

7. **Limited Partnerships** – If publicly traded, they are usually EIFs, so simply identify the name and values. If they are not publicly traded, report the name, location and describe the trade or business. If it is an investment LP that does not meet the criteria for an EIF, the reportable underlying holdings must be reported. The types of income and amounts should match the information provided by a broker or on a K-1 schedule (of IRS Form 1065).
 8. **Managed Accounts** – Where a new entrant filer identifies a managed account, notify them that each transaction (sale or purchase) over \$1,000 will be reportable on Schedule B, even if they do not make the decision.
 9. **Use of Brokerage Statements** – Filers should not be attaching brokerage statements or the like, as they usually are not in the required format, fail to cover the required period of time, or are overly onerous for reviewers. Remember, filers are obligated to complete the form rather than attach a brokerage statement or tax forms, except in very rare instances. *See* DO-00-007 (www.oge.gov/DisplayTemplates/ModelSub.aspx?id=1993).
- D. **Schedule B, Part I, Transactions.** This is not required on the 450. This section helps to explain changes from year to year concerning Schedule A assets.
1. Report a transaction of real property, stocks, bonds, EIF shares or other securities when it exceeds \$1,000. This section provides most of the explanation of changes that appear on Schedule A from one year to the next. Reviewers should check transactions against Schedule A, to ensure all new or sold assets are properly captured and reported.
 2. Be sure that the filer provides the month, day, year, and value range of each transaction.
 3. Report transactions made by non-public businesses or investment pools in which there is a direct proprietary or general partnership interest.
 4. Remember, assets reported as sold on Schedule A may not be reportable on Schedule B, Part I, where transaction does not meet reporting threshold, but where capital gains are reportable (e.g., X stock sold with capital gains/dividends in excess of \$200, but value was less than \$1,000). Likewise, sold assets, may not meet reporting thresholds on Schedule A (e.g., where sold at a loss). Where there is a new asset on Schedule A and no corresponding transaction, confirm whether this new asset was previously held but newly reportable, inherited, or gifted. For each of the above scenarios, reviewer should annotate the explanation on the report.

5. Exchanges are rare. This transaction type should be used for stock re-issuances (e.g., Company X acquires Company Y, and Y stock is reissued as X stock), or where filer sells and purchases stock from the same fund family (e.g., Vanguard High-Yield to Vanguard Emerging Markets).
- E. **Schedule B, Part II** – Gifts, Reimbursements, and Travel Expenses – Review material in the 450 section.
- F. **Schedule C, Part I** – Liabilities – More items are reportable on the OGE Form 278 than the 450. For example, a mortgage on a rental property is required to be reported as a liability on a 278 even though it is not required to be reported on a 450, even if the mortgage is from a financial institution on terms generally available to the public.
1. Credit card debt in excess of \$10,000 at the end of the reporting period is reportable, but filer need not otherwise report credit card debt which exceeded \$10,000 during the reporting period.
 2. Be sure that the filer provides the date, interest rate, term and value (the highest amount owed during the reporting period) of the liability. The date for credit cards is "continuing," and the term is "until paid."
- G. **Schedule C, Part II** – Agreements and Arrangements – The most common reportable items in this section are retirement plans, sabbaticals, and arrangements for post-government employment, usually on new entrant and termination reports.
- H. **Schedule D, Part I** – Outside Positions – The most common positions reported are fiduciary positions as officers, employees, or representative, such as trustee, limited or general partnerships, and professional associations. Make sure that the filer received supervisor approval for positions that appear to relate to his official duties, and the proper recusal is implemented where appropriate.
- I. **Schedule D, Part II** – Compensation in Excess of \$5,000 – This is not required on the 450. It is only for nominees and new entrants. Filers must provide the names of clients and customers for whom they provide direct, personal services requiring a fee of over \$5,000, even when paid to the filer's employer. When paid directly, there should be a corresponding entry on Schedule A.
- J. **Under/Over-reporting** - Remind filers that this is a public report and educate them on their mistakes to reduce over-reporting. Under-reporting can also be an issue like with the 450s.
1. Income from the Federal Government, social security numbers, and account numbers should NOT be reported. This information should not be released to the public.
 2. Where spousal assets are listed, but no employer, make sure to ask.

3. If filer has dependent children, verify they do not have a college savings account.
 4. Filers often fail to include insurance as an asset. Remember to ask if they have any life insurance, other than term, and if so report.
- K. **Cross-Pollination** – Ensure that the Schedules are consistent, as discussed above and in the Cross-Pollination material in the 450 section.
- L. **Substantive Review:** Determine if there is a conflict between duties and reported items. Unlike the 450's this should be easier to identify because we have more information on the interest, e.g., estimated value or details about non-Federal position.
1. Disqualification – If a conflict is likely, remember to immediately have filer recuse until you have had time to assess.
 2. Ethics Agreement – Can be a good practice where conflict is complicated.
 3. Letters of Warning – *See* 450 section for application to 278 Report. You may want to explain whether an exemption might apply.
 4. Other?

FINANCIAL DISCLOSURE - 450 - QUESTION

You are the Deputy SJA and Ethics Counselor at your command. It is your pleasant task to review all the financial disclosure reports. You have just finished reviewing for accuracy a 450 filed by John Doe, a contract specialist. You're pretty sure you finally have all the interests reported, and the entries are complete. You proudly know that you could survive any DoD or OGE audit. Now what do you do? Breathe a great sigh of relief, sign it, and put it in the Ready for Filing pile? Nice try. You're just beginning to explore the real purpose of reporting the information!

You know that he's a contract specialist, so there is the potential for working on particular matters, but you don't know exactly what contracts he may deal with. His supervisor reviewed and signed the report, and he's the one in the know, so there couldn't be any significant problems, could there? Well, you know that he is a new employee, and you assume that his most recent employer was GE because of the pension and continuing ties. GE is a DoD contractor. But you don't really know when he left his previous employment, or whether it even was GE. Besides a possible past employment relationship, he also has a pension, stock, and consulting fees from GE. You could call him, but you have 900 more reports to review.

1. What action do you recommend taking?

You also note that he is a tax consultant, but you don't know who his clients are.

2. Do you see any problems? What do you recommend?

After checking your local contractor list, you know that some of the companies that he either has stock in, or is receiving compensation from (IBM, Boeing, Merck, and Lockheed), are all on the list.

3. What do you recommend doing?

Your command has had some problems with employees trying to represent organizations that they belong to. You see that he has spoken at the national conference of NCMA. He didn't report being an officer or active participant in Part III, but he may be a member.

4. What do you recommend doing?

You send your letter, now heave a sigh of great relief, sign the report and happily toss it into the To Be Filed pile. Three days later, you get a call from John Doe, asking you what you meant when you said he shouldn't work on matters concerning GE because he was just offered an opportunity to serve on a source selection committee and GE is expected to be one of the bidders. He'd really like to do it, so how can that be done?

5. Now what do you have to do?

FINANCIAL DISCLOSURE - 278 - QUESTION

You are the Deputy SJA and Ethics Counselor at your command. It is your pleasant task to review all the financial disclosure reports. You have just finished reviewing for accuracy a 278 filed by Jane Doe, the Director of your Information Management Division. You're pretty sure you finally have all the interests reported, and that the entries are complete. You proudly know that you could survive any DoD or OGE audit. Now what do you do? Breathe a great sigh of relief, sign it, and put it in the Ready for Filing pile? Nice try.

You think back to last year when she came on board. She had to make a decision to award a very important IT contract and IBM had been one of the bidders. You had to help the Commander make a 502 determination regarding her recent IBM employment and grant a 208(b)(1) waiver for her IBM pension. The really fun part was telling her she had to sell her IBM options and that she couldn't get a Certificate of Divestiture for it. She was really thrilled by that.

Now you see that she bought into that capital venture outfit with the proceeds. It shouldn't be a problem though, since neither of the investments is a DoD contractor. Of course, they are both in the IT business and they are both working on state-of-the-art technology that DoD may be interested in. And boy, had it been hard getting that information, as the General Partner in a non-publicly traded limited partnership does not have to divulge that information. Hmm. What about this new extra job she has teaching an IT course? Wasn't there something about not accepting compensation if teaching related to your official duties?

1. So what do you recommend doing?

Guess what! Remember the old saying, no good turn goes unpunished? Well, your helpful phone call has resulted in a return call. She doesn't think this will be a problem, but now she's concerned about it. She has been asked by DoD NII to sit on a special task force to develop new DoD policy in the form of a Directive that will affect the ability of IT companies to compete for DoD IT contracts. The only interests she has in the area are as a limited partner in the capital venture's two interests, and they aren't even DoD contractors. So there's no problem, right?

2. How do you advise Ms. Doe?

FINANCIAL DISCLOSURE - 450 - ANSWER

You are the Deputy SJA and Ethics Counselor at your command. It is your pleasant task to review all the financial disclosure reports. You have just finished reviewing for accuracy a 450 filed by John Doe, a contract specialist. You're pretty sure you finally have all the interests reported, and the entries are complete. You proudly know that you could survive any DoD or OGE audit. Now what do you do? Breathe a great sigh of relief, sign it, and put it in the Ready for Filing pile? Nice try. You're just beginning to explore the real purpose of reporting the information!

You know that he's a contract specialist, so there is the potential for working on particular matters, but you don't know exactly what contracts he may deal with. His supervisor reviewed and signed the report, and he's the one in the know, so there couldn't be any significant problems, could there? Well, you know that he is a new employee, and you assume that his most recent employer was GE because of the pension and continuing ties. GE is a DoD contractor. But you don't really know when he left his previous employment, or whether it even was GE. Besides a possible past employment relationship, he also has a pension, stock, and consulting fees from GE. You could call him, but you have 900 more reports to review.

1. What action do you recommend taking?

A. You could ask for a disqualification statement, but you have no reason to believe that there is any risk of his ever handling a GE matter; after all, his supervisor did sign the report. Out of an abundance of caution, you could send him a sample disqualification and ask him to sign one. Another option is to send a letter of warning, in which you advise him that he has a financial interest in GE, so he should not participate in matters concerning GE if any arise, and that he may check with his supervisor or ethics counselor if he has any questions. You decide to send him a letter of warning.

You also note that he is currently a tax consultant, but you don't know who his clients are.

2. Do you see any problems? What do you recommend?

A. Since he files a financial disclosure report, the JER, at section 2-206, requires that he get written approval from his supervisor before engaging in any business activity or employment relationship with a DoD contractor. Since he is also a new employee, he may not be vividly aware of the requirement. You may want to add it to the letter of warning.

Also, since he's new, he may not be aware that his government employment now prevents him from representing those clients before any government agency, including the IRS. 18 U.S.C. §§ 203 and 205. You may also want to include this in the warning letter.

After checking your local contractor list, you know that some of the companies that he either has stock in, or is receiving compensation from (IBM, Boeing, Merck, and Lockheed), are all on the list.

3. What do you recommend doing?

A. Add to the letter of warning that he has financial interests in these companies, so he should not participate in matters concerning them, and that he may check with his supervisor or ethics counselor if he has any questions. Alternatively, you may send a letter listing all the assets, or attaching a copy of the edited report.

Your command has had some problems with employees trying to represent organizations that they belong to. You see that he has spoken at the national conference of NCMA. He didn't report being an officer or active participant in Part III, but he may be a member.

4. What do you recommend doing?

A. Since he is a new employee and you're not sure if he is aware of the requirement, you may want to add to the letter of warning that if he is a member of NCMA, he is not allowed to represent it to any part of the Government under 18 U.S.C. §§ 203 and 205. Also, if he is an active participant (and just forgot to list it in Part III), he has a covered relationship with NCMA under 5 C.F.R. 2635.502 and should not participate in matters in which they are a party, and that he may check with his supervisor or ethics counselor if he has any questions.

You send your letter, now heave a sigh of great relief, sign the report and happily toss it into the To Be Filed pile. Three days later, you get a call from John Doe, asking you what you meant when you said he shouldn't work on matters concerning GE because he was just offered an opportunity to serve on a source selection committee and GE is expected to be one of the bidders. He'd really like to do it, so how can that be done?

5. Now what do you have to do?

A. After silently groaning, tell him that you believe that as of this moment he is disqualified from participating in the source selection, but that you need a lot of information to determine if there is a way to overcome the disqualification. What do you want to know? Review the interests separately so you don't go nuts.

First, the consultancy. Is there an 18 U.S.C. § 208 problem? Although DoJ has prosecuted cases that involved negotiating for an independent contractor relationship, OLC (the Office of Legal Counsel, DoJ) has declined to discuss whether an employment relationship under 208 includes independent contractors or consultants. OGE has recommended that it is prudent to consider that 208 applies and seek a waiver in appropriate circumstances. (94x16) What is the extent of the consultancy? What type of work is involved? What is the value of the fees? Would he be willing to give it up? This

would be a divestment of the interest. If not, and the consultant work is not related to the source selection, would you be willing to recommend a waiver? It may depend on all the answers. What about 5 C.F.R. 502? There is also a 502 concern here, but for simplicity's sake (!), we will discuss 502 at the next item.

Second, concerning his prior employment with GE, when did he leave GE? If it is less than a year, there is definitely a 5 C.F.R. 502 problem, which establishes a covered relationship with an employer from whom he departed within one year. But don't breathe too easily if it's over a year, because the catch-all provision might still cover him. It would depend on his position with GE, his length of service, the type of work he did, etc. Depending on the answers to these questions, and on whether or not he retains his consultancy, you may also need a 502 determination. You need to talk to the supervisor about whether he would be willing to make the required written determination, that the Government's interests in John Doe's participating on the source selection committee outweighed any concern that a reasonable person might question the integrity of the selection process. Review the factors under 502 with him.

Third, as to the stock, what is its value? If it's under \$15,000, there is the exemption at 5 C.F.R. 2640.202. If it's over that amount, see if it's possible for the employee to sell some of the stock to get under the de minimus value. Don't forget to remind him not to sell before getting a Certificate of Divestiture. The stock in the 401k probably cannot be sold. If the value is still over \$15,000, only a waiver under 18 U.S.C. § 208(b) would allow him to work on GE matters. You would need to find out his total net worth to determine the percentage of GE interest. A ballpark figure is 5% or less. That will give you a clue whether a waiver is even possible.

Fourth, there is his GE pension. During your review, you determined that it is a defined benefit plan. He would not be able to participate in matters that would affect GE's ability to fund the pension or make the pension payments. If you decide that you need a waiver, and that it is feasible to grant one, try to add the pension interest to be on the safe side.

With all this, good luck. Maybe it could be done, but do you really want to?

FINANCIAL DISCLOSURE - 278 - ANSWER

You are the Deputy SJA and Ethics Counselor at your command. It is your pleasant task to review all the financial disclosure reports. You have just finished reviewing for accuracy a 278 filed by Jane Doe, the Director of your Information Management Division. You're pretty sure you finally have all the interests reported, and that the entries are complete. You proudly know that you could survive any DoD or OGE audit. Now what do you do? Breathe a great sigh of relief, sign it, and put it in the Ready for Filing pile? Nice try.

You think back to last year when she came on board. She had to make a decision to award a very important IT contract and IBM had been one of the bidders. You had to help the Commander make a 502 determination regarding her recent IBM employment and grant a 208(b)(1) waiver for her IBM pension. The really fun part was telling her she had to sell her IBM options and that she couldn't get a Certificate of Divestiture for it. She was really thrilled by that.

Now you see that she bought into that capital venture outfit with the proceeds. It shouldn't be a problem though, since neither of the investments is a DoD contractor. Of course, they are both in the IT business and they are both working on state-of-the-art technology that DoD may be interested in. And boy, had it been hard getting that information, as the General Partner in a non-publicly traded limited partnership does not have to divulge that information. Hmm. What about this new extra job she has teaching an IT course? Wasn't there something about not accepting compensation if teaching related to your official duties?

1. So what do you recommend doing?

A. First, there is 5 C.F.R. 2635.804 and 5 C.F.R. 2636.301, which limits the amount of outside earned income of noncareer SES officials to 15% of the basic pay of Executive Level II. Ah, but she is career, so they won't apply. So, will 5 C.F.R. 2635.807 affect her ability to teach the course, and more importantly, accept compensation for it?

Section 807 forbids government employees from receiving compensation from a non-Government source for teaching that relates to their official duties. Of course there are the usual definitions and exceptions. Schedule C of Ms. Doe's 278 reported that the subject of her course was Information Technology (IT), so it may relate to her duties as Director of Information Management at your agency. You immediately find the exception at (a)(3) for a course at an institution of higher education. Of course, that only applies to a few of the definitions, so you still have to plow through them.

That exception applies only to two subparts, (B) and (E), of the definition "relates to official duties" at (a)(2)(i). As the teaching is not part of her official duties, (A) won't apply. You don't know if (C) will apply because you don't know if the offer to teach the course was extended directly or indirectly by someone who has interests that can be affected by how Ms. Doe does her job. Finally, (D) forbids the use of non-public information.

So, you call Ms. Doe and find out that the offer was extended by the Dean of the Computer School at George Mason, and that the university will not be affected by Ms. Doe's division. In fact, the offer was made because of her reputation in the field. Whew! You remind her about the prohibition on substantial use of non-public information. But isn't there something else? Of course! The JER. Section 2-207 provides that if an employee permits the use of her government position to identify her in connection with her teaching, she must make a disclaimer if the subject deals in significant part with any ongoing or announced policy, program or operation of the DoD agency involved. The disclaimer merely states that views presented are those of the speaker, not DoD. It should be made at the beginning of the course, and it wouldn't hurt to include it in any written material describing the course, with a reminder from time to time.

Guess what! Remember the old saying, no good turn goes unpunished? Well, your helpful phone call has resulted in a return call. She doesn't think this will be a problem, but now she's concerned about it. She has been asked by DoD NII to sit on a special task force to develop new DoD policy in the form of a Directive that will affect the ability of IT companies to compete for DoD IT contracts. The only interests she has in the area are as a limited partner in the capital venture's two interests, and they aren't even DoD contractors. So there's no problem, right?

2. How do you advise Ms. Doe?

A. First, this is obviously not a particular matter that involves specific parties, but that doesn't quite answer the question. Is this a particular matter of general applicability? The OGE regulation granting generic exemptions, at 5 C.F.R. 2640.102, defines it as a "particular matter that is focused on the interests of a discrete and identifiable class of persons, but does not involve specific parties." Helpful? Well, you can't stop there, because there are also definitions in 2640.103! Subsection (a)(1) states that a "particular matter" covers policy matters that are "narrowly focused" on the class mentioned above, but does not cover "broad policy options directed to the interests of a large and diverse group of persons." Crystal clear. Example 3 provides that a published agency regulation that applied only to companies operating meat packing plant is a particular matter. Close. Don't ask, the regulation at 5 C.F.R. 2635.402 doesn't address this issue. [And if it did? OGE has orally stated that 2640 has precedence in case of conflict.] Where did this come from? The preamble to the proposed 2640 regulation, 60 Fed. Reg. 47208, 47210 (September 11, 1995), states that it comes from other conflict of interest statutes, such as 18 U.S.C. § 207. Don't laugh – OGE includes very important information in the preambles, even in the preambles of the proposed regulations. If you will be making ethics an important part of your credentials, you may want to collect preambles as you go.

So, does the regulation under 18 U.S.C. § 207 help? It is 5 C.F.R. § 2637, which applies only to employees who left the Federal Government prior to 1991. OGE is still working on one that will apply to those who left afterwards, but at least it may help shed light on the interpretation of our troubling language. Subsection 204(d) provides that

“proposed adoption of a regulation or interpretive ruling” are included as particular matters of general applicability. These are terms of art under the Administrative Procedure Act, but are probably close enough to the situation here, considering a policy change to a DoD rule that will affect the ability of all companies in the information technology area to compete for DoD contracts. We may want to consider this a matter of general applicability.

Does the de minimus exemption for matters of general applicability help? After all that work, not really! First, it appears that the two together are worth more than \$50,000, but you don’t know how much more. Could she sell enough to get below that threshold? As a limited partner in a non-publicly traded LP, it is difficult. Ah, there’s the other problem. The exemption requires that the securities be publicly traded, and neither has gone public yet. So, unless she can sell her interests entirely to the general partner or the other limited partners, she can’t participate in the task force.

Just in case she can sell those interests, are you done? Think hard. She already has a waiver for the IBM defined benefit pension, and she left IBM over one year ago. There don’t seem to be any other related financial interests. What about that waiver? It applied to the particular matter of the decision to award a contract. This is a different particular matter, and yes, according to OGE, you would have to grant a new waiver.

We’re done!