

# FINANCIAL DISCLOSURE

## RUNNING AN EFFECTIVE PROGRAM

### I. REFERENCES.

#### A. General

1. Compilation of Federal Ethics Laws ([www.oge.gov/Laws-and-Regulations/Statutes/Compilation-of-Federal-Ethics-Laws/](http://www.oge.gov/Laws-and-Regulations/Statutes/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)
2. DoD 5500.7-R, Joint Ethics Regulation (JER), Chapter 7 ([www.dtic.mil/whs/directives/corres/pdf/550007r.pdf](http://www.dtic.mil/whs/directives/corres/pdf/550007r.pdf))

#### 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](http://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://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=cbc7425f9cf4949f6e219b8737e5b2b2&rqn=div5&view=text&node=5:3.0.10.10.8&idno=5>)
3. JER 7-200 to 7-209
4. Public Financial Disclosure: A Reviewer's Reference, 2<sup>nd</sup> ed (OGE 2004) ([www.oge.gov/Financial-Disclosure/Docs/Financial-Disclosure-Guide/](http://www.oge.gov/Financial-Disclosure/Docs/Financial-Disclosure-Guide/))
5. OGE materials
  - a. Helpful Resources for Public Financial Disclosure Filers ([www.oge.gov/Financial-Disclosure/Public-Financial-Disclosure-278/Helpful-Resources/Helpful-Resources-for-Public-Financial-Disclosure/](http://www.oge.gov/Financial-Disclosure/Public-Financial-Disclosure-278/Helpful-Resources/Helpful-Resources-for-Public-Financial-Disclosure/))
    - (1) Guide to Drafting Ethics Agreements for PAS Nominees ([www.oge.gov/Financial-Disclosure/Docs/PAS-Nominee-Ethics-Agreement-Guide-\(PDF\)/](http://www.oge.gov/Financial-Disclosure/Docs/PAS-Nominee-Ethics-Agreement-Guide-(PDF)/))
    - (2) Guide to Reporting Selected Financial Instruments ([www.oge.gov/Financial-Disclosure/Docs/Guide-to-Reporting-Selected-Financial-Instruments/](http://www.oge.gov/Financial-Disclosure/Docs/Guide-to-Reporting-Selected-Financial-Instruments/))

- b. OGE Form 278 software:  
([www.dod.mil/dodgc/defense\\_ethics/resource\\_library/oge\\_278\\_supervisor\\_signature\\_dec\\_2011.pdf](http://www.dod.mil/dodgc/defense_ethics/resource_library/oge_278_supervisor_signature_dec_2011.pdf)) (OGE Form 278 with supervisor's certification)

C. Confidential Financial Disclosure (OGE Form 450)

1. 5 C.F.R. § 2634.901 to 909 (<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=cbc7425f9cf4949f6e219b8737e5b2b2&rgn=div5&view=text&node=5:3.0.10.10.8&idno=5>)
2. JER 7-300 to 7-310
3. OGE materials
  - a. Guidance for Reviewers of the OGE Form 450, Part I (Assets & Income) (<http://www.oge.gov/Financial-Disclosure/Docs/Guidance-for-Reviewers-of-the-OGE-Form-450,-Part-I/>)
  - b. OGE Form 450: A Reviewers Guide (September 1996) ([http://www.usoge.gov/forms/oge450\\_pdf/450guide\\_96.pdf](http://www.usoge.gov/forms/oge450_pdf/450guide_96.pdf))

**Warning:** Portions are superseded by changes in OGE Form 450 and implementing regulations.

- c. OGE DAEOgram 06 x 36 on Revised Confidential Financial Disclosure Regulation and OGE Form 450 ([www.usoge.gov/ethics\\_guidance/daeograms/dgr\\_files/2006/do06036.pdf](http://www.usoge.gov/ethics_guidance/daeograms/dgr_files/2006/do06036.pdf))
  - d. Helpful Resources for Confidential Financial Disclosure Filers ([www.oge.gov/Financial-Disclosure/Confidential-Financial-Disclosure-450/Helpful-Resources/Helpful-Resources-for-Confidential-Financial-Disclosure/](http://www.oge.gov/Financial-Disclosure/Confidential-Financial-Disclosure-450/Helpful-Resources/Helpful-Resources-for-Confidential-Financial-Disclosure/))
    - (1) 450 Frequently asked Questions ([www.oge.gov/Financial-Disclosure/Confidential-Financial-Disclosure-450/450-FAQ/FAQs-About-the-OGE-Form-450/](http://www.oge.gov/Financial-Disclosure/Confidential-Financial-Disclosure-450/450-FAQ/FAQs-About-the-OGE-Form-450/))
4. OGE Form 450 software:
    - a. OGE Form 450 ([www.dod.mil/dodgc/defense\\_ethics/resource\\_library/oge\\_450\\_dec\\_2011\\_edition.pdf](http://www.dod.mil/dodgc/defense_ethics/resource_library/oge_450_dec_2011_edition.pdf))
    - b. OGE Optional Form 450-A with DoD certification ([http://oge.gov/Forms-Library/OGE-Form-450-A--Confidential-Certificate-of-No-New-Interests-\(Executive-Branch\)-\(PDF\)/](http://oge.gov/Forms-Library/OGE-Form-450-A--Confidential-Certificate-of-No-New-Interests-(Executive-Branch)-(PDF)/))

## II. ROLE OF FINANCIAL DISCLOSURE.

- 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 training of filers is so important.

- B. Program requires **diligent follow through** to be effective.

## 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.
- C. **For ethics officials:** By reviewing the form, ethics officials ensure its 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 application to their particular interests, and **demonstrate** official interest in their potential conflicts of interest.
- D. The financial disclosure report provides excellent evidence of knowledge if violations occur and are prosecuted.

## IV. 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 identify conflicts of interests for those personnel most likely to have potential and actual conflicts because of their duties and responsibilities.

***NEW:*** OGE LA-11-09, dated December 22, 2011, provided updates to the Executive Branch Personnel Public Financial Disclosure Report (OGE Form 278, formerly Standard Form (SF) 278) and Confidential Financial Disclosure Report (OGE Form 450). See [www.oge.gov/OGE-Advisories/Legal-Advisories/Assets-non-searchable/LA-11-09--Revised-OGE-Form-278-and-OGE-Form-450/](http://www.oge.gov/OGE-Advisories/Legal-Advisories/Assets-non-searchable/LA-11-09--Revised-OGE-Form-278-and-OGE-Form-450/). ***Only financial disclosure forms dated 12/2011 may be used.***

- 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).
5. Political appointees (Schedule C, regardless of pay grade).
6. Civilians detailed 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.
8. Senior Mentors Highly Qualified Experts by DoD equal classification determination with concurrence of OGE. *See* <http://www.cpms.osd.mil/sespm/docs/GuidanceSeniorFinancialDisclosureRequirements.pdf>; *see also* [www.cpms.osd.mil/sespm/docs/SeniorMentorPolicy.pdf](http://www.cpms.osd.mil/sespm/docs/SeniorMentorPolicy.pdf) and [www.cpms.osd.mil/sespm/docs/UpdatedConversionGuidance.pdf](http://www.cpms.osd.mil/sespm/docs/UpdatedConversionGuidance.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 expected to work less than 61 days in a calendar year
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.
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).

**C. Filing Status.**

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

**Best Practices:**

- Work with AO & HR to get at least monthly reports of new SES promotions, new O-7 promotions (not frocking), and any new employees at the appropriate pay level.
- Notify filer of all ethics program requirements at same time— completion of incumbent and termination disclosure reports, annual ethics training, and annual post-Government employment certification (see below discussion).

- a. **Report Coverage:** The reporting period for the 278 varies depending on the Schedule. Schedule A covers the prior calendar year (CY) and the current CY up to the date of filing; Schedule C, Part I covers the prior CY and the current CY up to a selected date within 30 days prior to the date of filing (need date to determine value); Schedule C, Part II is current as of the date of filing; and Schedule D covers the prior two CYs and the current CY up to the date of filing. Do not complete Schedule B.
- b. **Dates and Times: New entrants** must file **within 30 days** of assuming a new position. If it was not anticipated that an **SGE** would serve over 60 days, file **within 15 days after the 61<sup>st</sup> 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. **Nominees** must file between nomination and 5 days after transmission of the nomination to the Senate. Reports must be retained 6 years.
- (1) Air Force implemented a new policy requiring all Reserve GOs to file a 278.

**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 do a new substantive conflict review. See 5 C.F.R. § 2634.201(b)(2)(i).

- c. **Initial reviews** must be conducted **within 60 days from the date of agency receipt**. No extensions! Technical deficiency reviews—procedural review to ensure form is signed, dated, complete, and include all relevant parts, etc.—meet the requirements of an initial review and stop the 60-day clock. DoD ethics counselors are expected to conduct technical deficiency reviews within the 60 days. After that review, obtain answers to any questions that are raised, conduct the conflict of interest review, implement any required remedy, and then certify the report.

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

- d. DoD personnel who file 278s must certify annually that they are aware of the disqualification and employment restrictions, and have not violated them. DoD recommends collecting 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 Forms. *See* [www.dod.mil/dodgec/defense\\_ethics/resource\\_library/2012\\_post\\_emp\\_cert.pdf](http://www.dod.mil/dodgec/defense_ethics/resource_library/2012_post_emp_cert.pdf)
- e. Try to see new filers to give them a form and discuss the ethics rules. This is a good opportunity to meet with upper management and introduce them to the ethics office.

## 2. Incumbent (Annual) Reports -

- a. **Report Coverage:** Schedules A, B, and C, Part I, cover the prior CY; Schedules C, Part II and D, Part I should cover the prior CY and the current CY up to the date of filing. Annual filers do NOT complete Schedule D, Part II.
- b. Use the ethics office database to determine filers - All incumbent filers from prior year, minus the termination reports, plus the new entrant filers who entered prior to November 2 of the prior year. If a new entrant report was filed between November 2 and December 31 of the prior year, they do not need to file an incumbent report because they must work over 60 days in the preceding calendar year before filing is required. NOTE: The database or other system used to track filers must be able to distinguish these filers and remember to notify of the incumbent filing requirement the following year.
- c. The ethics office should directly **notify** filers, in addition to using the assistance of the individual client office Action Officers (AOs). Recommend the notice be transmitted no earlier than January, to avoid premature filing, and at least by March, so filers can fill out the reports while they complete their taxes since it involves most of the same information. Notices should also include the form, hardcopy or hyperlink, if they are not electronically filing through the Army’s Financial Disclosure Management program (FDM), and the Post-Government Employment Certification.
- d. **Dates:** Reports must be filed no later than May 15, which means they may be filed prior to that date, but not earlier than January 1. Reports must be retained 6 years.
- e. **Initial reviews** must be conducted **within 60 days from the date of agency receipt**. No extensions! Technical deficiency reviews meet the requirements of an initial review and stop the 60 day clock. DoD ethics counselors are expected to conduct technical deficiency reviews within the 60 days. After that review, obtain answers to any questions that are raised, conduct the

conflict of interest review, implement any required remedy, and then certify the report.

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

- f. General and Flag Officers assigned outside of their Military Department (for example, at an OSD component) file their report with their Service DAEO but the current component should conduct the initial review since it is in the best position to identify conflicts. *See* 5 C.F.R. § 2634.602. The Service DAEO should have the official copy of the report. For the time being, an FDM filer report should be filed with the component where they are assigned, and a copy of the completed report should be sent to the Military Department as the official copy.
- g. All DoD personnel who file 278s must certify annually that they are aware of the disqualification and employment restrictions and have not violated them. DoD recommends collecting the certifications with the annual 278. JER 8-400. A model certification, **Post-Employment Certification**, which also constitutes the required notice to senior officials of the “cooling-off” period, is on the DoD SOCO website at [www.dod.mil/dodgc/defense\\_ethics/resource\\_library/2012\\_post\\_emp\\_cert.pdf](http://www.dod.mil/dodgc/defense_ethics/resource_library/2012_post_emp_cert.pdf)
- h. Recommend sending reminder in early May, alerting filers again of the \$200 late filing fee if the original notice does not include this information, and of the possibility of making a written request for a good cause extension prior to expiration of the filing deadline.

### 3. Termination Reports -

- a. **Report Coverage:** Schedules A, B, C and D, Part I cover the period between the date covered by the prior filing and the termination date.
- b. **Dates:** 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 14. 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. Reports must be retained 6 years.

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

- D. **Filing Extensions** – DAEO (or authorized designee) may grant good cause extensions up to 45 days, and DoD DAEOs or designees may grant an additional 45 days in writing. The second extension must be documented, which may be done by email. Check your Ethics Counselor delegations to determine if they are broad enough to include the designee authority. There is an automatic 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) ([www.oge.gov/Laws-and-Regulations/Statutes/Compilation-of-Federal-Ethics-Laws/](http://www.oge.gov/Laws-and-Regulations/Statutes/Compilation-of-Federal-Ethics-Laws/)). This extension is different from those granted to confidential filers.
- E. **Final Review** – After the initial, technical deficiency review, conduct the final substantive conflict of interest review. Compare current report to last report and determine basis for any differences. If you have questions or someone on the report requires clarification, contact the filer for answers and only with the filer’s express permission annotate the report accordingly. Review ethics guidance folders to determine if there are reportable gifts, outside activities, etc. Be persistent and use a tickler system for follow up.
1. Check for potentially conflicting financial interests such as publically traded stock interests or sector funds. *See* OGE Advisory Opinion 00 x 8 ([www.oge.gov/DisplayTemplates/ModelSub.aspx?id=2309](http://www.oge.gov/DisplayTemplates/ModelSub.aspx?id=2309)) to help distinguish between diversified and sector mutual funds. If your organization has a list of contractors or prohibited sources, you may want to use that to identify possible conflicts. SOCO Deputy DAEOs are required to compare reports against the DoD \$25K list; all others must consult with their DAEOs to determine the correct procedure for their components. But the substantive review does not end there.
  2. Familiarize yourself with the filer’s duties and office’s projects and activities. A contractor list is on the start. 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. Finally, when all information is contained on the form, review the report against the filer’s duties to identify possible conflicts.
  3. When done, and if no conflicts are found, certify the report. If a conflict is uncovered, only after you *resolve the conflict* should you certify the report.

***Best Practice:*** Recommend sending filers periodic letters of warning or caution reinstating the law and potential exemptions, identifying potential conflicts, and providing general ethics guidance on outside activities—customized to their individual interests. Letters of warning or caution may be distributed electronically with a copy to the filer’s supervisor. OGE has identified DoD’s use of these letters as a best practice.

F. 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 at [www.defenselink.mil/dodgc/defense\\_ethics/resource\\_library/tracking\\_system.xls](http://www.defenselink.mil/dodgc/defense_ethics/resource_library/tracking_system.xls).
2. What is the date of receipt? It is the date of delivery to the 1<sup>st</sup> reviewing office, which starts the 60-day review clock. DoD recommends that the Ethics Office enter the date received in its office in the Agency Use Only box. Ethics programs may however decide to make this the date the supervisor receives the report for review. This will however start the 60 day clock and ethics officials will lose control of ensuring timely certification of reports where supervisors delay review or transmission to the ethics office.
3. Retain reports for six (6) years.

G. 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. Be available to answer questions for filers preparing their report, including on-line (email) assistance, and train your office program staff on the same.
3. Consider offering training on how to complete the report. See e.g., OGE's "How to file a 278" online training module: [www.oge.gov/Education/Education-Resources-for-Federal-Employees/How-to-file-the-Public-Financial-Disclosure-Report-\(OGE-form-278\)/](http://www.oge.gov/Education/Education-Resources-for-Federal-Employees/How-to-file-the-Public-Financial-Disclosure-Report-(OGE-form-278)/).

**NOTE:** This online training module is good as a refresher for reviewers too.

4. Offer available software and resources. *See* [www.dod.mil/dodgc/defense\\_ethics/resource\\_library/oge\\_278\\_supervisor\\_signature\\_dec\\_2011.pdf](http://www.dod.mil/dodgc/defense_ethics/resource_library/oge_278_supervisor_signature_dec_2011.pdf); *see also* OGE's 278 FAQ: [www.oge.gov/Financial-Disclosure/Public-Financial-Disclosure-278/278-FAQ/278-FAQ/](http://www.oge.gov/Financial-Disclosure/Public-Financial-Disclosure-278/278-FAQ/278-FAQ/).

**NOTE:** Army and several other DoD Agency require mandatory use of FDM. Check if you are unsure.

5. When requested, provide copy of previous 278. DoD recommends that filing instructions remind employees to make a copy before filing the current year's report. Consider sending filers a copy of the final, correct form for their records, in electronic format if possible.

**Best Practice:** DoD encourages electronic filing whenever possible.

6. Recommend 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 before forwarding, correct simple errors, and forward as soon as possible. Ask the reviewer to contact you if there are questions.
  8. View the exercise as an opportunity to reconnect with senior clients to discuss their person obligations as well as discuss ethics issues.
- H. Confidentiality of the Process – Although the final report may be released, it is not publically available without compliance with OGE’s systems of record requirements. *See* 5 C.F.R. § 2634.603(c). Remember drafts and reports still within the first 30 days after submission are *not* releasable. Even then, requestors must complete the OGE Form 201 before a report can be released, because reports are not covered by FOIA.

**Best Practice:** As a courtesy to filers, notify them of any anticipated release including the requirements for release.

I. Collection/Enforcement –

1. **Notify Filers.** *See* 5 C.F.R. § 2634.703(c). Filers have a 30 day grace period after missing the filing deadline or after any granted extension expires, whichever is later. Once late, ethics officials should notify filers immediately of the grace period to assist them avoid the late filing fee; and *must* notify filers of the application of the fee (and the opportunity to request a waiver) once they are more than 30 days late.

**Best Practice:** Ethics counselors should annotate the reports that come in late (e.g., late but within grace period or late and late filing fee paid/waived).

2. **Late Filing Fee.** 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. 5 C.F.R. § 2634.704. The check must be made out to the “U.S. Treasury,” and deposited as miscellaneous receipts through the appropriate financial office. Filers may submit a written request for waiver of payment to their DAEO or designee for extraordinary circumstances. OGE will audit collection of late filing fees and whether waivers granted were in accordance with the regulations. 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. 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.

3. Willful failure to file a report or information required in the report, or falsifying information on the report, can result in greater penalties, including referral to the Department of Justice for civil and criminal action (up to a \$11,000 fine), as well as administrative action at DoD. *See* 5 C.F.R. § 2634.701.

## V. CONFIDENTIAL FINANCIAL DISCLOSURE PROGRAM (OGE FORM 450, OGE OPTION FORM 450A OR ALTERNATIVE 450 FORM).

The confidential financial disclosure report and program was created by the U.S. Office of Government Ethics (OGE) by regulation 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 for conflicts of interest. DoD Ethics Counselors manage the financial disclosure program, which may constitute the bulk of work in the ethics area.

***NEW:*** OGE LA-11-09, dated December 22, 2011, provided updates to the Executive Branch Personnel Public Financial Disclosure Report (OGE Form 278, formerly Standard Form (SF) 278) and Confidential Financial Disclosure Report (OGE Form 450). *See* [www.oge.gov/OGE-Advisories/Legal-Advisories/Assets-non-searchable/LA-11-09--Revised-OGE-Form-278-and-OGE-Form-450/](http://www.oge.gov/OGE-Advisories/Legal-Advisories/Assets-non-searchable/LA-11-09--Revised-OGE-Form-278-and-OGE-Form-450/). ***Only financial disclosure forms dated 12/2011 may be used.***

- A. **Who files?** – DoD recommends that Ethics Counselors maintain collaborative relationships with Administrative Officers (AOs), or their equivalent, and review Position Descriptions (PDs). Are too many employees filing? Can some positions be exempted? If the number of filers can be reduced, this will also reduce the overall workload. This is a large time investment up front, but it pays off over the years.
  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, 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 O-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 final action or decision in a particular matter, not the individual's action, 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. Because the definition of who files changed in 2007, this may be a good opportunity to review and scrub your "covered positions" lists.

***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.

***TIP:*** Check out OGE's "Determining Which Positions Should File a Confidential Financial Disclosure Report: A Worksheet" at [www.oge.gov/Education/Education-Resources-for-Ethics-Officials/Resources/Determining-Which-Positions-Should-File-A-Confidential-Financial-Disclosure-Report--A-Worksheet/](http://www.oge.gov/Education/Education-Resources-for-Ethics-Officials/Resources/Determining-Which-Positions-Should-File-A-Confidential-Financial-Disclosure-Report--A-Worksheet/).

## 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. DoD agencies that have DAEOs are identified at JER 1-201. The Department of the Army has not delegated this authority; however, the DoD 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 card holders and micro-purchasers (the threshold for which is \$3,000) with authority up to the simplified acquisition threshold, currently \$150,000.
- (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).
- (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.
- (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) Navy General Counsel Memorandums, subj: Determination Concerning Exclusions of Reservists from Filing the Confidential Financial Disclosure Report, dated Nov. 18, 2011.

(b) DoD DAEO Memorandum of Dec. 2, 2011, subj: Exclusion of Reservists from Filing the Confidential Financial Disclosure Report.

c. Personnel who file OGE Optional Form (OF) 450-A, Certificate of No New Interests are excluded from filing an OGE Form 450, *but not from filing*.

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, filers using the Army's electronic Financial Disclosure Management program (FDM).

**NOTE: Army and several other DoD Agency require mandatory use of FDM. Check if you are unsure.**

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.

#### B. New Entrant Reports – OGE Form 450

1. **Identify.** Ethics counselors must identify, with assistance from Human Resources (HR) offices and/or AOs, new employees who must file. OGE concentrates on new entrant filing in its audits. OGE will not be satisfied by 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 to get at least monthly, preferably bi-weekly, reports of new employees, SGEs, and changes to covered positions.

b. Provide live initial ethics orientation training to provide information and identify filers, as well as give potential new filers forms.

c. If a determination as to filing needs to be made, afterward notify HR to update the notation on official rolls.

- d. 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 do a new substantive conflict review. See 5 C.F.R. § 2634.903(a)(2)(i).

- e. Ensure that there is a system in place to identify personnel whose duties change, e.g., when an employee becomes a contracting technical representative. 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.

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

- f. Develop a relationship with HR so they inform the ethics office of new PDs with a filing requirement. Encourage the office to seek assistance on new PDs to determine if there should be a filing requirement.
  - g. 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 which make them a filer. With a written request (including email), ethics counselors may grant **extensions** up to 90 days, or, for personnel deployed or sent to a combat zone or required to perform services away from his permanent duty station following a Presidential declaration of a national emergency, up to 90 days from the date of return to a permanent duty station. *See* 5 C.F.R. § 2634.903(d)(2). Document any granted extensions. Reports must be retained for 6 years.
5. **Initial reviews (IRs)** must be conducted **within 60 days from the date of agency receipt**. No extensions! Technical deficiency reviews—procedural review to ensure form is signed, dated, complete, and include all relevant parts, etc.—meet the requirements of an initial review and stop the 60-day clock. Ethics counselors are expected to conduct technical deficiency reviews within the 60 days. After that review, obtain answers to any questions that are raised and conduct the conflict of interest review, then sign the report.
6. **DoD SGEs** (and 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 by 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 on 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 specifically requires filing. Procurement commands and other similar organizations should consider such a requirement.

#### C. **Annual Reports** – OGE Form 450, Optional Form 450-A, or alternate form

1. Work with HR to scrub the list of annual filers before the beginning of the annual filing season. Remind HR that the report now covers the calendar year, so filers should be identified no later than mid-December but preferable earlier. Update the ethics database, FDM, 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 if they needed to file since becoming a new employee or assuming new duties. In some cases this will require collection of a new entrant report, even if it is late, 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 of appointment as 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. Ethics counselors may grant individual extensions as needed. With a written request, ethics counselors may grant extensions up to 90 days from February 15 or, 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. See 5 C.F.R. § 2634.903(d)(2). Document any granted extensions. Reports must be retained 6 years

**NOTE:** The 450 combat zone extension only requires that filers not be at their permanent duty station. It is also not automatic like the 278 combat zone extension.

5. **Notifications:** After AOs collect updated information, they should notify the covered employees that filing is required and provide the correct forms—for 450's that the newest version, dated December 2011. See [www.dod.mil/dodgc/defense\\_ethics/resource\\_library/oge\\_450\\_dec\\_2011\\_edition.pdf](http://www.dod.mil/dodgc/defense_ethics/resource_library/oge_450_dec_2011_edition.pdf). The ethics office has the option of providing notification. Email is a preferred method of notification. We recommend sending the first late notice by late February; the second, copied to their supervisor, in mid-March. The last one should be addressed to head of division, with list of employees in division who still have not filed. 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. **Initial reviews** must be conducted **within 60 days from the date of agency receipt**. No extensions! Technical deficiency reviews—procedural review to ensure form is signed, dated, complete, and include all relevant parts, etc.—meet the requirements of an initial review and stop the 60-day clock. DoD ethics counselors are expected to conduct technical deficiency reviews within the 60 days. After that review, obtain answers to any questions that are raised and conduct the conflict of interest review, then sign the report.
7. **Timelines:** Ensure that there is sufficient time from position review, to employee notification, to filing, to review.
8. Annual filers may file **OGE OF 450-A**, instead of the 450, if they have no new interests to report since the last report, and if they do not have a new PD or

significantly changed duties. Every 4<sup>th</sup> year, starting in 2000, annual filers must file the full 450. DoD requires that the most recent 450, which does not have to be the ethics counselor-approved version, be attached. Only the DoD-authorized version of the form may be used. Download it from OGE's web site:

[www.oge.gov/Forms-Library/OGE-Form-450-A---Confidential-Certificate-of-No-New-Interests-\(Executive-Branch\)/](http://www.oge.gov/Forms-Library/OGE-Form-450-A---Confidential-Certificate-of-No-New-Interests-(Executive-Branch)/).

9. Notify HR 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 at [http://www.defenselink.mil/dodgc/defense\\_ethics/resource\\_library/tracking\\_system.xls](http://www.defenselink.mil/dodgc/defense_ethics/resource_library/tracking_system.xls).
  2. What is the date of receipt? It is the date written in the Date Received by Agency box. DoD recommends that the Ethics Office enter the date, which starts the 60-day review clock. This ensures that the ethics office controls the written entry and the time lines, but the risk is that some forms may be filed late if the supervisor holds reports. An alternative is to have supervisors enter the date and give them 60 days to review. The ethics office loses control, but some may be able to do it, if the supervisors can be counted on to enter the date and conduct a review within 60 days.
  3. Make sure that everyone files - reconcile lists from HR, lists from position review, 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.
  4. Retain reports for six (6) years.
- E. **Final Review** – After the initial, technical deficiency review, conduct the final substantive conflict of interest review. Compare current report to last report and determine basis for any differences. If you have questions or someone on the report requires clarification, contact the filer for answers and only with the filer's express permission annotate the report accordingly. Review ethics guidance folders to

determine if there are reportable gifts, outside activities, etc. Be persistent and use a tickler system for follow up.

1. Check for potentially conflicting financial interests such as publically traded stock interests or sector funds. See OGE Advisory Opinion 00 x 8 ([www.oge.gov/DisplayTemplates/ModelSub.aspx?id=2309](http://www.oge.gov/DisplayTemplates/ModelSub.aspx?id=2309)) to help distinguish between diversified and sector mutual funds. If your organization has a list of contractors or prohibited sources, you may want to use that to identify possible conflicts. SOCO Deputy DAEOs are required to compare reports against the DoD \$25K list; all others must consult with their DAEOs to determine the correct procedure for their components. But the substantive review does not end there.
2. Familiarize yourself with the filer's duties and office's projects and activities. A contractor list is on the start. 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. Finally, when all information is contained on the form, review the report against the filer's duties to identify possible conflicts.
3. When done, and if no conflicts are found, certify the report. If a conflict is uncovered, only after you *resolve the conflict* should you certify the report.

***Best Practice:*** Recommend sending filers periodic letters of warning or caution reinstating the law and potential exemptions, identifying potential conflicts, and providing general ethics guidance on outside activities—customized to their individual interests. Letters of warning or caution may be distributed electronically with a copy to the filer's supervisor. OGE has identified DoD's use of these letters as a best practice.

- 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. Be available to answer questions for filers preparing their report, including on-line (email) assistance, and train your office program staff on the same.
  3. Consider offering training on how to complete the report. E.g., OGE's online training module: [www.oge.gov/Education/Education-Resources-for-Federal-Employees/How-to-file-an-OGE-Confidential-Financial-Disclosure-Form-\(OGE-form-450\)/](http://www.oge.gov/Education/Education-Resources-for-Federal-Employees/How-to-file-an-OGE-Confidential-Financial-Disclosure-Form-(OGE-form-450)/).

4. Offer available software and resources. *See* [www.dod.mil/dodgc/defense\\_ethics/resource\\_library/forms\\_software.htm](http://www.dod.mil/dodgc/defense_ethics/resource_library/forms_software.htm); [www.oge.gov/Financial-Disclosure/Confidential-Financial-Disclosure-450/OGE-Form-450/](http://www.oge.gov/Financial-Disclosure/Confidential-Financial-Disclosure-450/OGE-Form-450/); *see also* OGE Form 450 FAQ website at [www.oge.gov/Financial-Disclosure/Confidential-Financial-Disclosure-450/450-FAQ/FAQs-About-the-OGE-Form-450/](http://www.oge.gov/Financial-Disclosure/Confidential-Financial-Disclosure-450/450-FAQ/FAQs-About-the-OGE-Form-450/).
  5. When requested, provide copy of previous OGE Form 450. DoD recommends that filing instructions should remind employees to make a copy before filing the current year's report.

**Best Practice:** DoD encourages the use of electronic filing whenever possible.
  6. Recommend establishing written procedures, so new personnel in the ethics office can pick up the system easily.
- G. Confidentiality of the Process - Protect confidentiality of the filers and the substance of their reports. Remember AOs should not be seeing the substance of the reports if they are assisting in the collection of reports. Instruct supervisors to put reviewed reports in sealed envelopes addressed to the AO or ethics office.
- H. Collection/Enforcement
1. Unlike OGE Form 278, there is no \$200 late filing fee.
  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 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.

I. 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. DoD SOCO and SAF/GCA are discontinuing the report.***

**VI. RESOURCES**

- A. General - Army Financial Disclosure Management program (FDM), Resources tab under Help & Support <https://www.fdm.army.mil/>