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Financial Disclosure: Identifying and Remediating Conflicts of Interest in the Executive Branch

When taking an official action (e.g., making decisions or recommendations), American public servants are expected to put the government's interests ahead of their own. The Ethics in Government Act of 1978 (5 U.S.C. Appendix), as amended, is based upon this principle and requires certain employees to file annual financial disclosure statements. Federal agencies use the disclosed information to identify and remediate real or perceived conflicts of interest, as necessary.

Every Federal employee serves not one but many masters.... Manifestly, the principle proscribing conflicts of interests is aimed not at these normal multiple allegiances of employee-citizens or at direct controversies between them and their employer-Government, but only at such activities as will impair the integrity of the Federal service and deprive the Government of the full performance for which it has bargained.

—House Committee on the Judiciary,
Subcommittee No. 5, March 1, 1958, p. 1.

Identifying Conflicts of Interest

Federal law (18 U.S.C. §208) prohibits government employees from participating “personally and substantially” in any covered activity in which the employee, spouse, minor child, general partner, or previous organization has a financial interest. If a covered official is negotiating future employment, they are prohibited from participating in certain activities with that organization. Pursuant to the Ethics in Government Act and regulations issued by the Office of Government Ethics (OGE), compliance with laws prohibiting financial conflicts of interest is primarily achieved with the assistance of each federal agency's Designated Agency Ethics Official (DAEO). The DAEO, a position established in the Ethics in Government Act and accompanying regulations, is tasked with, among other things, training agency staff on ethics matters; ensuring compliance with financial disclosure requirements; and reviewing, identifying, and assisting in the remediation of conflicts of interest.

Current law (5 U.S.C. Appendix) and regulations (5 C.F.R. §2634.201) require covered employees to file annual financial disclosure reports on or before May 15 each year. Newly hired covered employees must file within 30 days of appointment, and nominees must complete their forms within five days of the White House's transmission of their nomination to the Senate. Candidates for federal office

(e.g., President, Vice President, House of Representatives, and Senate) are required to file financial disclosure forms within a specified period. Generally, this is within 30 days of declaring their candidacy or May 15, whichever is later.

Once financial disclosure forms are filed with the employee's agency (the House or Senate for legislative branch employees, Members of Congress, or candidates for the House or Senate; or the Administrative Office of the Courts for the judicial branch), the DAEO reviews the filings for compliance, completeness, and to identify any real or perceived conflicts of interest. Individuals who fail to file or file false reports are subject to statutory penalties (5 U.S.C. Appendix §104).

There are two types of financial disclosure reports—public (OGE Form 278) and confidential (OGE Form 450). The requirement to file a public or confidential report largely depends on the individual's governmental role. Both public and confidential reports require the disclosure of similar information. Each filer reports information about their assets, income, employment agreements, transactions, liabilities, and gifts for themselves, their spouse, and dependent children.

Public Financial Disclosure

Public financial disclosure filings are available for public inspection. Public filers (5 C.F.R. §2634.202) include

- the President;
- the Vice President;
- executive branch employees, including Special Government Employees (SGE) who are classified above GS-15 of the General Schedule or at a “rate equal to or greater than 120% of the minimum rate of basic pay for GS-15”;
- uniformed service members paid at or in excess of O-7;
- administrative law judges;
- executive branch employees who are in a position “excepted from the competitive service by reason of being of a confidential or policy-making character”;
- the Postmaster General, the Deputy Postmaster General, each Governor of the United States Postal Service Board of Governors;
- the Director of OGE and each agency's designated agency ethics officer; and

- civilian employees employed in the Executive Office of the President and holding a commission of appointment from the President.

Public disclosure filings for the most senior officials in the executive branch—the President, Vice President, and appointees and nominees to positions classified at Level I and Level II of the Executive Schedule—are available directly from the OGE website. All other public financial disclosure statements can be accessed using OGE Form 201. For 2020, OGE reported that there were 26,889 public filers.

Confidential Financial Disclosure

Confidential financial disclosure filings are not available for public inspection. Confidential filers (5 C.F.R. §2634.904) are largely determined by level of pay, type of work done, and level of responsibility. Covered employees file confidential disclosure reports with their agency. Confidential financial disclosure filers

- are classified at or below GS-15 or do not meet the pay or classification threshold for public filing;
- participate in certain government activities related to contracting; procurement; or administering or monitoring grants, subsidies, licenses, or other federally conferred financial or operational benefits; and
- engage in certain activities related to decisionmaking or the approval of decisions, making recommendations, conducting investigations or audits, or rendering advice or opinions.

Special government employees (SGEs; 18 U.S.C. §202) are generally required to file confidential financial disclosure reports (5 C.F.R. §2634.901).

For 2020, OGE reported that there were 396,867 confidential filers.

Periodic Transaction Reporting

In 2012, the STOCK Act (P.L. 112-105) required the “prompt reporting of financial transactions.” The law requires both public and confidential filers to report financial transactions (e.g., stocks, bonds, commodity futures, and other securities) that exceeded \$1,000 within 45 days of making the transaction. Periodic transaction reports are filed with the employee’s agency, the same as annual financial disclosure.

Remediating Conflicts of Interest

Once a covered employee files a public or confidential financial disclosure report with the agency, the DAEO reviews the filing to ensure its completeness and to identify holdings or liabilities that might violate or appear to violate federal law, executive orders, or agency-specific statutes or regulations (5 C.F.R. §2634.605). The DAEO must complete the review within 60 days.

Following the review, the DAEO will certify the filing. If the DAEO does not believe they have enough information to certify the filing or if the filing is incomplete, they can ask the filer for additional information. For certain

individuals, (e.g., the DAEO, nominees and appointments requiring presidential appointment and Senate confirmation, and employees of the Executive Office of the President) filings are forwarded by the agency to OGE for final certification.

If upon review the DAEO determines a conflict of interest exists, they can, if necessary, negotiate with the filer to remedy the conflict. There are several remediation options (5 C.F.R. §2634.605(b)(6)), including recusal, divestiture, resignation, waiver, or the establishment of a qualified blind or diversified trust (5 C.F.R. §2634.802(a)). Remediation efforts can culminate in a written ethics agreement.

Disqualification (Recusal)

Because government decisionmaking generally requires impartiality (5 C.F.R. §2635.501), an identified conflict of interest may be remediated through recusal. In this case, the filer would not participate in a “particular matter” involving specific parties that would affect the financial interests of the filer or a member of their household (spouse or dependent child).

Divestiture

If recusal is not reasonable in a given circumstance, a filer also has an option to divest (e.g., sell) the asset that puts the filer in conflict with their governmental function. Often, divestiture can occur without financial harm. In limited cases, the filer can request a *certificate of divestiture* under 5 C.F.R. §2634, Subpart J to “minimize the burden that would result from paying capital gains tax on the sale of assets to comply with conflict of interest requirements.”

Waivers

In certain situations, waivers can be granted for conflicts of interest. Federal law (18 U.S.C. §208(b)) and regulation (5 C.F.R. §2640) provide conditions when waivers might be given. For example, individuals might receive a waiver for “financial interests which are too remote or too inconsequential to affect the integrity ... of the employee.”

Blind or Diversified Trusts

In some circumstances, employees may use a qualified blind trust or a qualified diversified trust “to reduce real or apparent conflicts of interest” (5 C.F.R. §2634.401). In these cases, an independent trustee or similar individual is appointed “to administer the trust and to manage trust assets without participation by, or the knowledge of, any interested party or any representative of an interested party.”

Reassignment/Resignation

If a conflict of interest cannot be remediated or if the filer does not want to recuse or divest, and a waiver is not available, the employee could request a transfer, a reassignment, or a limitation of duties, or resign.

For more information about executive branch ethics financial disclosure, see CRS In Focus IF10634, *Office of Government Ethics: A Primer*.

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