United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

February 8, 2012

Mr. Michael Alexander
Staff Director
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, D.C. 20510-6250

Dear Mr. Alexander:

This responds to your letter dated February 6, 2012, requesting information about the financial disclosure filing requirements under the Ethics in Government Act (EIGA), 5 U.S.C. app. § 101 et seq., and seeking clarification about the effect on executive branch filers of amendments to EIGA pursuant to the Stop Trading on Congressional Knowledge Act (STOCK Act) (S. 2038), passed by the Senate on Thursday, February 2, 2012. The following responds to your questions (set out in **bold).**

1) Section 101 of the EIGA requires that certain federal officers or employees file financial disclosure reports, which section 105 generally requires be made publicly available. In addition, section 107 of the EIGA provides for confidential financial disclosure reports to be filed by certain additional federal officers and employees.

- **a) In total, how many federal officers or employees are currently required to file financial disclosure forms under EIGA (whether under section 101 or section 107)?**
- **b) How many federal officers and employees are currently required to file financial disclosure forms under section 101 of the EIGA?**
- **c) How many federal officers or employees are currently required to file financial disclosure forms under section 107 of the EIGA?**

There are two types of financial disclosure reports under EIGA: public financial disclosure reports (OGE Form 278) filed pursuant to section 101 of EIGA and confidential financial disclosure reports (OGE Form 450 form) filed pursuant to section 107.

The OGE Form 278 public financial disclosure report is filed by the most senior political appointees, career and non-career members of the Senior Executive Service (SES) and SES equivalent positions, as well as General and Flag officers in the uniformed services. More detailed information on who is required to file the OGE 278 is provided below in response to your other questions.

The OGE Form 450 is filed by less senior civilian employees and members of the military who serve in positions determined by their agencies to meet one or more criteria set forth in OGE's regulations found at 5 C.F.R. § 2634.904(a). As a general matter, these persons

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perform duties involving procurement, grants and benefits administration, regulation or auditing of non-federal entities, and other duties when an agency has determined the employee's decision or action could have "a direct and substantial economic effect on the interest of any non-federal entity." Additionally, a significant number of OGE Form 450 filers are special Government employees (SGEs) who are expected to serve for 60 days or less during a calendar year.[1] This group would include members of Federal Advisory Committees.

Completed OGE Form 278s and OGE Form 450s are reviewed by agency ethics officials, and in many cases supervisors, to help identify and avoid actual and potential conflicts of interest. Remedies to avoid conflicts include, but are not limited to, recusal from performing certain duties or divestiture of conflicting financial interests. Additionally, the OGE Form 278 is available to the public to promote confidence in the integrity of decisions made by the most senior officials in the executive branch.

The total number of public OGE Form 278 and confidential OGE Form 450 reports filed for 2010, including reports filed by SGEs, is set out in the chart below.[2]

OGE Form 278 Filed Pursuant to Section 101 of EIGA, 5 U.S.C. app. §101	28,019
OGE Form 450 Filed Pursuant to Section 107 of EIGA, 5 U.S.C. app. §107	363,771
Total Number of Executive Branch Financial Disclosure Reports Filed Pursuant to EIGA, 5 U.S.C. app.	391,790

[1] An SGE is an officer or employee who is retained, designated, appointed or employed to perform temporary duties, with or without compensation, for not more than 130 days during any period of 365 consecutive days. *See* 18 U.S.C. § 202. Congress created the SGE category in 1962 when it revised the criminal conflict of interest statutes in recognition of the need to balance application of appropriate conflict of interest restrictions to experts, consultants, and other advisers who serve the Government on a temporary basis with the Government's ability to obtain the expertise it needs for such temporary services. Since 1962, the SGE category has been used in a number of statutes and regulations as a means of tailoring the applicability of some restrictions.

[2] These numbers generally correlate to the number of positions subject to sections 101 and 107 of EIGA. In any point in time a position may not be filled. It is also possible a filer may file more than one report in a calendar year, as in the case of a filer who submits an annual report in May but later resigns and files a termination report in November in the same calendar year. In addition, a filer who serves in a filing position for not more than 60 days in a calendar year will be required to file a new entrant report but will not be required to file an annual report the following May, unless the filer served in another filing position for a total of more than 60 days in that calendar year.

2) Of those federal officers or employees who are required to file financial disclosure reports under section 101 of the EIGA:

a) What is the range of salaries (in dollars) and salary schedule levels (whether executive schedule, general schedule or something else) of those employees?

While the vast majority of OGE Form 278 filers earn more than $100,000 per year, the salary range for Executive Branch public filers is from $27,431 (GS-5, Step 1) to $199,700 (Executive Level I) or more.

In addition to the President and the Vice President, employees and officers who file the public financial disclosure report under section 101 of EIGA include non-career and career employees paid at the higher levels of the various federal pay scales, such as the Executive Schedule, Levels V through I (salary range from $145,700 to $199,700); Senior Executive Service and similar pay systems (salary range from $119,554 to $179,700); employees paid at levels above GS-15 of the General Schedule or employees in comparable non-GS pay systems with a salary of $119,553.60 or more (120% of the minimum rate of basic pay for a GS-15)[3]; and administrative law judges appointed pursuant to 5 U.S.C. § 3105, at levels AL-3/A to AL-1 (base salary range from $103,900 to $155,500). Also included are Schedule C employees, whose grade levels and base salaries currently range from GS-5, step 1 ($27,431) to GS-15, step 10 ($129,517).[4]

Section 101 also covers the Postmaster General, the Deputy Postmaster General, each Governor of the Board of Governors of the Postal Service, and each officer or employee of the Postal Service or the Postal Regulatory Commission who is paid $119,553.60 or more (120% of the minimum rate of basic pay for a GS-15).

In the uniformed services, General and Flag officers serving in pay grades O-7 through O-10 are subject to section 101 of EIGA. While pay and allowances vary with grade and years of service, an O-7 with 20 years of service would receive annual base pay, not including allowances, of $140,706. An O-10 with 34 years of service would receive annual base pay, not including allowances, of $179,700.

b) What are representative examples of the types of positions held by these individuals, including both those who are higher ranking and those who are lower ranking?

Examples of high ranking filers of executive branch public financial disclosure reports are the approximately 1200 Senate confirmed presidential appointees in the executive branch. These positions would include members of the Cabinet, other agency heads, and many agency senior leaders, all United States ambassadors, United States Attorneys, and United States Marshalls.

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[3]This figure is calculated from the base salary for GS-15, step 1 and does not include locality pay, which will vary across the country.

[4] A Schedule C position may be exempted from the public reporting requirements by the OGE Director pursuant to 5 C.F.R. § 2634.203. In such a case, an agency would then evaluate the position to determine whether the incumbent is subject to confidential financial reporting requirements under section 107 of EIGA.

Career and non-career members of the SES also file the OGE Form 278. These individuals might serve as Deputy Assistant Secretaries in large agencies, Deputy General Counsels, managers of major acquisition or other programs, and heads of field components for large agencies. Similarly, career officials serving in SES-like pay systems at financial or other regulatory agencies, such as the Federal Reserve Board and the Securities and Exchange Commission, would file OGE Form 278 reports.

Examples of lower ranking public financial disclosure report filers would include Schedule C appointees paid under the General Schedule, such as confidential assistants, speech writers or other lower level political appointees who work for PAS officials, but who have some policy related duties.

3) Of those federal officers or employees who are required to file financial disclosure reports under section 107 of the EIGA:

a) What is the range of salaries (in dollars) and salary schedule levels (whether executive schedule, general schedule or something else) of those employees?

Under the general schedule, the pay cap for confidential filers is the top level of GS-15 step 10. There are, however, non-GS pay systems under which a confidential filer could be paid at a higher rate. There is no pay level floor for confidential filers. Because the requirement to file an OGE Form 450 is triggered by an employee's duties measured against standards set out at 5 C.F.R. § 2634.904(a), most full-time confidential filers fall into the pay range of GS-13 to GS-15. A relatively small number of non-policy related Schedule C positions may fall at the lower end of the GS pay grades, such as GS-5 or GS-7. The current rates of basic pay for GS-5 through G-15 are from $27,431 (GS-5, step 1) to $129,517 (GS-15, step 10).[5]

b) What are representative examples of the types of positions held by these individuals, including both those who are higher ranking and those who are lower ranking?

As noted above, the determination of which positions are subject to the confidential financial disclosure report filing requirements is based on the duties of position within the discretion of the employing agency, in consultation with the agency's ethics office. Examples of high to mid-level confidential filers would be: Auditors (GS-13); Contract/Procurement Specialists (GS-13); Economists (Department of Transportation), Budget Analysts (Department of Transportation); Human Resources Specialists; Security Officers (NLRB); and Attorneys (GS-9 to GS-15). Lower ranking confidential filers might include Schedule C political appointees who occupy lower-graded positions that have been exempted from the public filing requirements by the Director of OGE. Examples of such positions include GS-5 and GS-7 Staff Assistants (Department of State).

[5] These ranges represent salary rates under the General Schedule base pay table. However, most Schedule C employees are employed in the Washington, D.C. area, and would be paid at a higher rate that includes locality pay.

4) For those federal officers or employees who are required to file financial disclosure reports under section 101 of the EIGA, section 105 provides for certain exemptions from public disclosure of those reports.

a) Please describe the categories of individuals whose reports are exempt from disclosure under section 105 of the EIGA.

Section 105 does not require public availability of certain reports filed by employees in the intelligence community. The President has exempted reports filed by employees of the Central Intelligence Agency from public disclosure except for the reports filed by the Director, the General Counsel, and the Inspector General. More specific information is classified.

b) How many individuals' reports are exempt from public disclosure under section 105?

This information is also classified.

I trust the information provided above is helpful and responsive to your questions and concerns. Please do not hesitate to contact Shelley Finlayson, Associate Director for Legislative Affairs, at (202) 482-9314, or me if OGE can be of further assistance.

Sincerely,

Don W. Fox
Principal Deputy Director