



Guidance for Reviewers of the OGE Form 450, Part I (Assets & Income)

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Introduction

This guide was produced by the Office of Government Ethics (OGE) as a supplemental reference for use in reviewing Part I of the OGE Form 450. To help you get started, this introduction explains the scope and limitations of the guide and points you to some additional resources for help with the review process.

Objectives

In this guide, you will learn:

- how to analyze entries for any conflicts with the filer's official duties as well as for any other statutory or regulatory concerns.
- how to determine whether an entry meets the technical reporting requirements for that type of interest.

The guide consists of two sections. Section 1 outlines the review process for Part I of the OGE Form 450 and offers some general guidance that is applicable to all types of entries. Section 2 provides more detailed guidance for specific assets and sources of income.

Intended Audience

Anyone in the executive branch of the Federal Government who is responsible for reviewing OGE Form 450 reports.

Limitations

This guide is neither a comprehensive reference tool nor a general introduction to the confidential financial disclosure process. At minimum, you will also need the following resources:

- the regulations for the confidential financial disclosure process (5 CFR part 2634, subpart I);
- the statutes that are applicable to analyzing asset and income entries (18 U.S.C. §§ 201, 203, 205, 208, and 209);
- the regulations that are applicable to analyzing asset and income entries (5 CFR parts 2635, 2636, and 2640);
- any agency supplemental regulations and procedures related to the confidential financial disclosure process; and
- any supplemental standards of conduct regulations issued by your agency, which will include any prohibited holdings and any requirement for pre-approval of outside employment.

Other materials that could prove useful are discussed in Section 1 of this guide. Please note that the statutes and regulations cited here and

elsewhere throughout the guide serve as the ultimate authorities for the confidential financial disclosure process. In the event of any discrepancies between the guidance provided in this document and those authorities, you must follow the statutes and regulations.

**Additional
Resources**

For a general introduction to the review process, you are encouraged to attend the “Certifying 450 Reports” course that is offered by OGE. You may also consult the following resources that are available on the OGE web site (www.usoge.gov):

- “Public Financial Disclosure: A Reviewer’s Reference,” (Second Edition, 2004);
- “OGE 450 FAQs”; and
- OGE DAEOgrams and advisory opinions.

Section 1: General Guidance for Reviewers

This section briefly explains how to review entries for potential conflicts of interest, recommend appropriate remedies for any issues identified, and ensure that the filer's disclosures meet the technical reporting requirements. The information presented here will help you use the more detailed, entry-specific guidance offered in Section 2.

Conflict of Interest Analysis

Purpose The conflict of interest analysis is the focal point of the review process. It is the basis for your conclusion that filers are or are not complying with the conflict of interest statutes, the standards of conduct, and any agency-specific laws and regulations that may apply.

Primary Considerations Although you will consider a variety of statutory and regulatory provisions in your analysis, the primary considerations for most entries are whether they create potential conflicts under 18 U.S.C. § 208 or impartiality concerns under 5 CFR part 2635, subpart E.

§ 208 Conflicts 18 U.S.C. § 208 is a criminal statute that prohibits employees from participating personally and substantially in a particular matter that would have a direct and predictable effect on their financial interests or on interests that are imputed to them.

Imputed Interests: The interests of the following individuals and organizations are imputed to the employee under § 208:

- the employee's spouse;
- the employee's minor children;
- the employee's general partners;
- any organization in which the employee serves as an officer, director, trustee, general partner or employee; and
- any person or organization with which the employee is negotiating or has an arrangement for prospective employment.

OGE first published implementing regulations for 18 U.S.C § 208 at 5 CFR part 2635, subpart D. More comprehensive guidance was later published at 5 CFR part 2640, and part 2640 is now the primary regulation to use in analyzing § 208. *See DAEOgram DO-06-029 for additional help interpreting the term "particular matter."*

Impartiality Concerns

Even if an employee does not have a conflict under § 208, the employee may appear to have a conflict. Therefore, the next step in your analysis is to check whether any entries raise impartiality concerns, using the standards at 5 CFR part 2635, subpart E.

There are two impartiality standards:

- personal and business relationships (§ 2635.502) and
- extraordinary payments from former employers (§ 2635.503).

Personal and Business Relationships: According to this rule, an employee should not participate in:

- a specific party matter
- that would affect the financial interest of a member of his household or in which someone with whom he has a “covered relationship” is or represents a party
- if the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter.

Employees are deemed to have a “covered relationship” with:

- a person with whom the employee has or seeks a business, contractual, or other financial relationship that involves other than a routine consumer transaction (*This definition does not include a prospective employer described in 5 CFR § 2635.603. An employee seeking employment shall comply with 5 CFR part 2635, subpart F instead.*);
- a person who is a member of the employee’s household;
- a relative with whom the employee has a close personal relationship;
- a person for whom the employee’s spouse, parent, or dependent child is, to the employee’s knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee;
- any person for whom the employee has, within the last year, served as officer, trustee, general partner, employee, agent, attorney, consultant or contractor; or

- an organization, other than a political party, in which the employee is an active participant.

Other Impartiality Concerns under § 2635.502: There may be situations that do not fit one of the circumstances listed above but that would still lead a reasonable person with knowledge of the relevant facts to question the filer's impartiality. If you suspect that an entry would create such a situation, you should bring the issue to the employee's attention and suggest a remedy.

Extraordinary Payments: An extraordinary payment is:

- any item, including cash or an investment interest, with a value of more than \$10,000,
- which is paid on the basis of a determination made by the former employer after it becomes known that the employee will serve in Government, and
- which is not made pursuant to the employer's established compensation plan.

For a period of two years following the receipt of such payments, individuals may not participate in any particular matter in which the former employer is a party or represents a party.

Additional Considerations

In addition to checking for potential conflicts and the appearance of conflicts, you should:

- check whether there are any statutes or regulations that prohibit your agency's employees from having the reported interest;
- check whether the interest involves a contractor, grantee, licensee, or other prohibited source for your agency (5 CFR part 2635, subpart B);
- check whether the filer is complying with the regulations on outside activities and consider whether the reported interest might lead to a misuse of the filer's Government position (5 CFR part 2635, subparts G and H);
- consider whether the interest constitutes a supplementation of a Government salary (18 U.S.C. § 209);

- consider whether the employee could engage in prohibited representations before the U.S. Government and/or receive compensation related to another's representations (18 U.S.C. §§ 203 and 205); and
- determine whether additional compensation restrictions apply (5 CFR § 2635.804 and 5 CFR part 2636).

Remedies

Purpose

When potential conflicts of interest or impartiality concerns are identified during the review process, you need to alert the filer to the issues and counsel him as to what remedies would resolve these concerns. The type of remedy you recommend will depend on factors such as the filer's position, the statutory or regulatory provision(s) implicated, and the interests of your agency.

Type of Remedies

Possible remedies for issues related to 18 U.S.C. § 208 and the impartiality rules at 5 CFR part 2635, subpart E include:

- Recusal/Reassignment: Recusal means that the employee makes a commitment not to participate in certain matters. Reassignment is the result of a recusal and may take one of two forms—reassignment of the matter or reassignment of the employee.
- Waiver/Exemption (18 U.S.C. § 208): There are four waiver and exemption provisions for 18 U.S.C. § 208. An employee who has been granted a waiver or who qualifies for an exemption can participate in official matters without violating § 208.
 - b(1): A waiver that can be issued by your agency which covers certain financial interests that are not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government.
 - b(2): Blanket exemptions issued by OGE for financial interests considered too remote or inconsequential to affect the integrity of the employee's services.
 - b(3): A waiver for special Government employees on Federal Advisory Committee Act committees when the need for the employee's services outweighs the potential for conflicts.
 - b(4): An exemption for employees that have certain Native American or Alaskan Native birthrights.

- Impartiality Authorization (§ 2635.502): Agencies may authorize an employee to participate in matters that would otherwise raise impartiality concerns under 5 CFR § 2635.502. Waivers granted for § 208 concerns also address § 2635.502 issues of the same scope; however, an authorization made for impartiality concerns would not serve as a remedy for potential § 208 conflicts.
- Waiver of Disqualification (§ 2635.503): Agencies may waive the disqualification requirement related to extraordinary payments where the amount of the payment was not so substantial as to cause a reasonable person to question the employee’s ability to act impartially.
- Divestiture: The employee sells the financial asset.
- Resignation: The employee gives up a position in an outside organization or leaves his Government position.

Cautionary Letters In some cases, a filer’s reported interests do not require a remedy but still suggest the need for heightened attention and possible follow-up. You may wish to send the filer a cautionary or advisory letter in such cases, explaining the applicable rules and what steps the filer should take to avoid violating them. For example, if the activities at your agency can affect one of the filer’s interests, you may wish to remind him of his obligations under 18 U.S.C. § 208 and 5 CFR § 2635.502 even if you are not certain that the filer’s specific duties would involve or affect his interests. The decision whether to provide cautionary guidance will depend on the situation.

Technical Review

Purpose The purpose of a technical review is to ensure that filers have properly completed the form in accordance with the reporting requirements.

What Filers Report A filer must report:

- assets held for investment by the filer, the filer’s spouse, or the filer’s dependent children if the asset ended the reporting period with a value greater than \$1,000 or if the asset generated more than \$200 in investment income during the reporting period;
- the sources of the earned income (including honoraria) and other non-investment income that generated over \$200 for the filer during the reporting period;

- the sources of earned income (excluding honoraria) that generated over \$1,000 for the filer’s spouse during the reporting period; and
- the sources of honoraria that generated over \$200 for the filer’s spouse during the reporting period.

Investment Income: Investment income includes interest, rents, royalties, dividends, and capital gains of the filer, the filer’s spouse, and the filer’s dependent children. It includes income derived from all forms of property (such as securities, funds, accounts, and real estate); annuities; partnerships, joint ventures, and businesses; the investment portion of life insurance or endowment contracts; and income from interests in trusts.

Earned Income: Earned income includes fees, salaries, commissions, honoraria, and any other compensation received for personal services but excludes Federal Government salary and other Federal benefits (including retirement, unemployment benefits, and veterans’ benefits). As noted above, honoraria received by the filer’s spouse are treated differently from other earned income for disclosure purposes. Filers do not report earned income received by their dependent children.

Other Non-Investment Income: This remainder category is for income that is neither investment income nor earned income. Examples include prizes, scholarships, awards, and gambling income. Filers do not report “other non-investment income” that is received by their spouses or dependent children.

Reporting Period: The period of time covered by a report varies based on the type of report that the employee is filing.

- New Entrant (either first-time filers in the position or special Government employees): Filers report information for the 12 months that preceded the date of filing.
- Annual Filers (subsequent filings): Filers report information for the preceding calendar year (January 1 - December 31).

What Filers Do Not Report

Filers need not disclose the following (whether held or received by themselves, their spouses, or their dependent children):

- Salaries or retirement benefits from U.S. Government employment (including Thrift Savings Plan accounts);
- veterans’ benefits;

- Social Security benefits;
- cash deposit accounts (such as savings and checking accounts and certificates of deposit);
- term life insurance;
- money market mutual funds or money market accounts;
- diversified mutual funds;
- a personal residence unless rented out;
- U.S. Government obligations (such as Treasury bonds, bills, notes, and savings bonds);
- Government securities issued by U.S. Government agencies; or
- money owed by a spouse, parent, sibling, or child.

Supplemental requirements: Your agency may ask OGE for permission to collect supplemental information that is otherwise not reported. Consult your agency ethics rules and procedures for further guidance any supplemental requirements that may exist.

Reportable Assets The term “reportable asset,” as used in this guide, refers to an asset that meets the reporting threshold and is not exempt from disclosure.

Reportable Underlying Assets A number of commonly reported assets are actually investment vehicles that contain other assets. The assets that are contained in the investment vehicle are called the vehicle’s underlying assets. For example, a 401(k) is a retirement plan in which the contributions are invested in assets such as stocks and mutual funds. The stocks and mutual funds are underlying assets of the 401(k).

The term “reportable underlying asset” refers to an asset that is held by an investment vehicle and that individually meets the disclosure requirements. For example, if a stock held by a filer’s 401(k) plan ends the reporting period with a value greater than \$1,000 or if the stock generated more than \$200 in income, then the stock is a reportable underlying asset of the 401(k) plan and the filer must disclose the stock.

Reviewing Entries To complete a technical review of Part I, verify that the filer complied with the following requirements:

- The filer must either report assets/income on Part I or check the “No” box next to the reporting statement on the general information page, which reads: “I have reportable assets or sources of income for myself, my spouse, or my dependent children.”
- For each asset or source of income disclosed, the filer must completely describe the entry. The information required will depend on the type of asset or source of income.
- If applicable to the type of asset, the filer must disclose any reportable underlying assets.

A filer may choose to distinguish among entries belonging to different family members. For example, the filer may note (S) for “spouse,” (DC) for “dependent child,” or (J) for “jointly held” next to some entries. These designations are not mandatory.

Section 2: Reviewing Specific Types of Entries

Section 1 outlined the general review process for Part I of the OGE Form 450. This section provides more detailed guidance for specific entries on Part I. Please note that, unless otherwise stated, the disclosure requirements listed assume that the entry meets the relevant reporting threshold. Also note that the exemptions referenced are not necessarily exhaustive. Other exemptions may apply. *See 5 CFR part 2640.*

List of Entries

401(k) Plans

A type of defined contribution plan in which an employee places pre-tax earnings into a tax-deferred retirement account that a private employer creates and maintains. The employer holds the funds in trust until the employee reaches a specified age or leaves the employer. Plans are self-directed.

Disclosure Requirements: Filers disclose the plan's reportable underlying assets on Part I. Filers also disclose their participation in the plan on Part IV. If none of the underlying assets are reportable, filers do not report anything on Part I, but the plan must be disclosed on Part IV. Note that the Part I reporting requirements include plans held by the filer, the filer's spouse, and the filer's dependent children; however, only the filer's participation in a plan is reported on Part IV.

Conflict of Interest Analysis: You should analyze the underlying assets as if they were direct holdings, using the guidance that is appropriate for each type of asset (e.g., publicly traded stock, sector mutual fund, etc.). Note, however, that while defined contribution plans do not have the issuer's guarantee of a certain benefit level, some plans offer employees an option of investing in the company's stock through the plan, which would create a financial interest in the company. Nevertheless, the analysis of defined contribution plans is always the same—look to the underlying assets.

403(b) Plans

A type of defined contribution plan in which an employee places pre-tax earnings into a tax-deferred retirement account that is created and maintained by a state or local government employer or a tax-exempt organization, such as a school or charity. These plans generally offer a limited choice of funds.

Disclosure Requirements: Filers disclose the plan's reportable underlying assets on Part I. Filers also disclose their participation in the plan on Part IV. If none of the underlying assets are reportable, filers do not report anything on Part I, but the plan must be disclosed on Part IV. Note that the Part I reporting requirements include plans

held by the filer, the filer's spouse, and the filer's dependent children; however, only the filer's participation in a plan is reported on Part IV.

Conflict of Interest Analysis: You should analyze the underlying assets as if they were direct holdings, using the guidance that is appropriate for each type of asset (e.g., publicly traded stock, sector mutual fund, etc.). Note, however, that while defined contribution plans do not have the issuer's guarantee of a certain benefit level, some plans offer employees an option of investing in the company's stock through the plan, which would create a financial interest in the company. Nevertheless, the analysis of defined contribution plans is always the same—look to the underlying assets.

Annuities

Contract with a life insurance company in which the investor pays a premium to an insurance company and the insurance company makes payments to the investor starting at a specified age. Annuities can be fixed or variable.

- **Fixed Annuity:** Investors receive income from the annuity at a specified rate of return guaranteed by the insurance company. The insured individual has no direct interest in how the premiums are invested. *See Fixed Annuities.*
- **Variable Annuity:** The annuities offer investors a limited set of options in which they can invest, typically mutual funds. Investors can choose how their money is invested and receive a return based on the performance of the investments. *See Variable Annuities.*

Timing of the Payouts: The timing of pay-outs can vary. “Immediate annuities” begin paying out at once, whereas “deferred annuities” postpone payments until the investor reaches a certain age or retires. This distinction, however, does not affect the disclosure requirements or the conflict of interest analysis.

Bank Accounts (Personal)

Personal savings accounts, money market accounts, CDs, NOW accounts, and checking accounts as well as cash deposit accounts held in financial institutions such as banks, credit unions, etc.

Disclosure Requirements: Filers do not disclose these assets.

Conflict of Interest Analysis: Since these assets are not reportable on the OGE Form 450, you will not perform a conflict of interest analysis as part of the review process.

Bonds (Corporate)

A debt owed by a corporate issuer to a bondholder—usually a promise to pay a specified rate of interest over a fixed rate of time.

Disclosure Requirements: Filers must disclose the name of the bond on Part I.

Conflict of Interest Analysis: The potential for conflict depends on whether the filer may participate personally and substantially in a particular matter that would:

- alter the market resale value of the bond (e.g., by affecting market interest rates or the corporation’s credit rating) or
- affect the corporation’s ability or willingness to repay the debt (by affecting its financial stability).

When recommending remedies, you should first check whether any of the de minimis exemptions apply (5 CFR §§ 2640.202(a)-(c)).

**Business
Ownership and
Employment
Relationships**

Business ownership arrangements may include, but are not limited to, sole proprietorships, joint ventures, general partnerships, limited partnerships, “S” corporations, and regular corporations. Employment relationships may include salary or other earned income from former or current positions as well as any future employment agreements.

Disclosure Requirements:

- Business Ownership: For publicly-traded companies, disclosing the name of the business is sufficient. Interests that are not publicly traded require more detailed information:
 - the full name of the entity;
 - its address (city and state);
 - nature of any trade or business that is actively conducted by or through the entity; and
 - any portfolio investments or other attributions from the entity that are not solely incidental to the trade or business.

Businesses sometimes have non-incidental assets that a filer should disclose. When they do, the filer should disclose the value of his share (or that of his spouse or dependent children), using the disclosure rules appropriate for that type of asset.

- Employment Relationships (without Ownership): Filers report the sources of the income on Part I for themselves and their spouses if the income reaches the reporting threshold. For publicly-traded companies, disclosing the name of the business is sufficient. For

non-public entities, filers must also specify the nature of the business and its location (city and state). Filers do not disclose non-investment income received by their dependent children.

- **Other Reportable Items:** Business ownership and employment relationships may involve a number of other reportable items.
 - **Part I:** Other interests reportable on Part may include retirement plans, deferred compensation, stock options, severance payments, etc. *For information on one of these related interests, see its entry in this guide.*
 - **Parts II-V:** Related disclosures that may be necessary on the remaining parts of the form include non-incidental business liabilities (Part II), positions held by the filer (Part III), the filer's agreements or arrangements (Part IV), and gifts and travel reimbursements received by the filer (Part V).

Conflict of Interest Analysis (for the Filer's Interests): A brief overview of some of the most common conflict issues is included here. *The relevant restrictions differ if the business ownership interest or employment relationship is that of the filer's spouse or child so the analysis for those individuals is considered separately.*

- **Conflicting Financial Interests:** To check for potential conflicts under 18 U.S.C. § 208, determine whether the filer can participate personally and substantially in a particular matter that would directly and predictably affect the financial interests of the business.
 - **General Partner:** If the filer has general partners, the outside financial interests of these partners are imputed to him (though a potential exemption exists at 5 CFR § 2640.202(f)).
 - **Other Interests:** If there are other financial interests stemming from ownership, you should apply the conflicts analysis appropriate for that type of interest.
- **Impartiality Concerns (Personal and Business Relationships):** Check whether the interest creates any "covered relationships" for the filer under 5 CFR § 2635.502. Two relationships to look for, in particular, are those with:
 - a person or organization with whom the filer has or seeks a business, contractual, or other financial relationship that involves other than a routine consumer transaction, and

- a person or organization for whom the filer has, within the last year, served as officer, trustee, general partner, employee, agent, attorney, consultant or contractor.
- Impartiality Concerns (Extraordinary Payments): Payments to the filer in excess of \$10,000 from a former employer may constitute an “extraordinary payment” for the purposes of 5 CFR § 2635.503. *See also Severance Payments.*
- Representations: Under 18 U.S.C. § 205, filers generally may not represent a third party before the executive branch or any court (if the U.S. is a party or has an interest). 18 U.S.C. § 203 also prohibits a filer from seeking, agreeing to receive, or receiving compensation for his representations to the Government or for the representations that another makes on behalf of a third party.
- Supplementation: If the filer received a payment after entering Government service, you should consider whether the entity providing the payment is supplementing the filer for performance of official duties (18 U.S.C. § 209). Such payments may arise from ongoing outside activities or through a severance payment from a former employer. Watch for payments that vary from established compensation plans or the plans that permit discretion in a way which could favor those in or entering Government service. *See DAEOgram DO-02-016 and DO-02-016A for additional help applying the restrictions at 18 U.S.C. § 209.*
- Other Restrictions on Outside Activities: Agency rules vary as to when an employee may continue outside business and employment ties. Some agencies have prohibitions based on statute or policy, but the Standards of Conduct provide guidance for all agencies at subparts G and H. Check if the filer has complied with any prior approval requirements that your agency may have on outside activities, and check whether the outside activity relates to the filer’s official duties (5 CFR § 2635.807). Finally, there are additional considerations for non-career employees (5 CFR § 2635.804 and 5 CFR part 2636).

Conflict of Interest Analysis (for the Interests of the Filer’s Spouse and Minor Children):

- Conflicting Financial Interests:
 - Business Ownership: An ownership interest of the filer’s spouse or minor child is imputed to the filer for purposes of 18 U.S.C. § 208. The potential for conflict depends on whether

the filer may participate personally and substantially in a particular matter that would directly and predictably affect the financial interests of the business. If there are other financial interests stemming from ownership, you should apply the conflicts analysis appropriate for that type of interest.

- Employment Relationship (without Ownership): 18 U.S.C. § 208 attributes to the filer the interests of his spouse and minor children, not the interests of their employers. For a conflicts analysis of a spouse's employment, you therefore need to determine whether the filer's spouse could experience a gain or loss as a result of governmental action (e.g., can the filer participate personally and substantially in a particular matter that would directly and predictably affect the spouse's salary or continued employment). If the spouse has other financial interests stemming from the employment relationship like stock options or a pension, you should apply the conflicts analysis appropriate for that type of interest.

The same test would apply to a minor child's employment. However, since the filer need not report this income on the OGE Form 450, you will not analyze these interests as part of the review process.

- Impartiality Concerns (Personal and Business Relationships): Check for any "covered relationships" under 5 CFR § 2635.502. In particular, remember that the filer has a covered relationship with any person or organization for whom the filer's spouse, parent, or dependent child is, to the filer's knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee.

Collectibles

Personal property such as antiques, works of art, automobiles, stamps, rare coins, books, etc.

Disclosure Requirements: If held for investment or the production of income, filers report the nature of the collectibles, such as "rare books" or "classic cars," on Part I.

Conflict of Interest Analysis: The value of collectibles depends primarily on the market for those items. A few agencies may have missions that could affect the value of specific types of collectibles because of their roles concerning taxes or interest rates. Even when this possibility exists, however, it is unlikely that a filer would be acting in a particular matter that could have a direct and predictable effect on his financial interests.

Defined Benefit Plans

A type of pension interest in which the employer contributes to a pool that is held and invested for all participating employees. The employee then receives a fixed amount of benefits upon retirement.

Disclosure Requirements: Filers report the name of the plan’s sponsor on Part I. Filers also disclose their participation in the plan on Part IV. Note that Part I reporting requirements include plans held by the filer, the filer’s spouse, and the filer’s dependent children; however, only the filer’s participation in a plan is reported on Part IV.

Conflict of Interest Analysis: Under a defined benefit plan, the employer guarantees the targeted benefit level, so an interest exists between the participant and the plan’s sponsor. A conflict would exist if the filer participated personally and substantially in a particular matter that would directly and predictably affect the company’s ability or willingness to meet its pension commitments. As a practical matter, most governmental matters in which a filer participates are unlikely to have a direct and predictable effect on the sponsor’s ability or willingness to pay the pension. *See also DAEOgram DO-99-015.*

Defined Contribution Plans

A type of pension interest in which the employee makes contributions to an employer who maintains a separate account for each employee. Either the employee or an independent manager chooses how the contributions will be invested. The benefits upon retirement depend on the amount contributed and the performance of the plan’s assets. There are a variety of defined contribution plans, including 401(k) plans, 403(b) plans, Keogh plans, and Simplified Employee Pensions.

Disclosure Requirements: Filers disclose the plan’s reportable underlying assets on Part I. Filers also disclose their participation in the plan on Part IV. If none of the underlying assets are reportable, filers do not report anything on Part I, but the plan must be disclosed on Part IV. Note that the Part I reporting requirements include plans held by the filer, the filer’s spouse, and the filer’s dependent children; however, only the filer’s participation in a plan is reported on Part IV.

Conflict of Interest Analysis: You should analyze the underlying assets as if they were direct holdings, using the guidance that is appropriate for each type of asset (e.g., publicly traded stock, sector mutual fund, etc.). Note, however, that while defined contribution plans do not have the issuer’s guarantee of a certain benefit level, some plans offer employees an option of investing in the company’s stock through the plan, which would create a financial interest in the company. Nevertheless, the analysis of defined contribution plans is always the same—look to the underlying assets.

Diversified Mutual Funds

A mutual fund that does not have a stated policy of concentrating its investments in any industry, business, single country other than the U.S., or the bonds of a single state within the U.S (unlike sector mutual funds which do have a policy of concentrating investments). *See DAEOgram DO-00-030 for assistance distinguishing diversified mutual funds from sector mutual funds.*

Disclosure Requirements: Diversified mutual funds are not reported on the OGE Form 450.

Conflict of Interest Analysis: Since this type of asset is not reportable on the OGE Form 450, you will not perform a conflict of interest analysis as part of the review process.

Estates

Assets or income received from the estate of a deceased person.

Disclosure Requirements: Once the filer, the filer’s spouse or the filer’s dependent child has received a distribution from an estate (or has acquired a vested interest in a trust), the assets and income are reportable on Part I. Filers serving as executors or administrators of an estate must report fees received on Part I if the fees exceed the \$200 during the reporting period (or \$1,000 if received by the filer’s spouse). A filer would report such a position on Part III as well.

Conflict of Interest Analysis: Given the complexity often involved with such assets, specific guidance is not provided here. *See DAEOgrams DO-01-029, DO-02-008, and DO-02-015, though, for a discussion of certain issues related to estates.*

Exchange Traded Funds (ETFs)

A fund that pools investors’ money in a variety of investments with the goal of replicating the rate of return of a specified index (e.g., the Standard & Poor’s 500 Index). Some of these funds are diversified, while others are focused on specific sectors. Like traditional mutual funds, ETFs are publicly traded on national exchanges. Unlike traditional mutual funds, which are priced only at the end of a trading day, investors can purchase and sell ETFs like ordinary stock because they are priced continuously throughout the trading day.

Disclosure Requirements: ETFs are treated in the same manner as mutual funds and unit investment trusts. Diversified ETFs are not reportable, but sector ETFs must be disclosed on Part I.

Conflict of Interest Analysis: Diversified ETFs are eligible for the exemption at 5 CFR § 2640.201(a). Otherwise, you must examine the underlying assets of the fund for possible conflicts with the filer’s

responsibilities. As with any other asset, check whether the filer could participate personally and substantially in a particular matter that directly and predictably affects the filer's financial interests, either direct or imputed.

An issue with an underlying asset may be eligible for one of the exemptions at 5 CFR § 2640.201(b):

- The filer may participate in any particular matter affecting one or more of the underlying assets if the asset is not invested in the sector in which the ETF concentrates.
- A filer can participate in a particular matter affecting one or more of the underlying assets provided the market value of the funds affected do not exceed \$50,000. To calculate this amount, use the total amount of the filer's investment (as well as that of the filer's spouse and minor children) in the funds which concentrate in the sector and which include disqualifying interests.

Even if there are no conflicts with the underlying assets, filers may have a potential conflict with the issuing investment company or brokerage. This is most likely if your agency regulates securities. Note, however, there is an exemption at 5 CFR § 2640.201(d) for particular matters of general applicability that affect a mutual fund as a separate legal entity; ETFs qualify for this exemption.

Fixed Annuities

Income received from an annuity at a specified rate of return that is guaranteed by the insurance company. The insured has no direct interest in how the premiums are invested.

Disclosure Requirements: Filers must disclose the name of the insurance company on Part I, specifying that the asset is a fixed annuity.

Conflict of Interest Analysis: In a fixed annuity, the life insurance company's guarantee of a specific rate of return creates a financial interest for the filer in matters affecting the insurance company. However, unless the filer can participate in particular matters affecting the financial soundness of the insurance company involved or unless the filer has access to non-public information about the company, an annuity should not pose conflict of interest problems.

Funds Receivable

Loans or other receivable accounts owed to filers, their spouses, or their dependent children (e.g., compensation owed by former employers or money owed for goods and services).

Disclosure Requirements: The filer must disclose the interests on Part I unless they are loans to a parent, spouse, sibling, or child of the filer, the filer's spouse, or the filer's dependent children.

Conflict of Interest Analysis: Although filers do not disclose the terms of the loan on the OGE Form 450, you may need this information to identify areas of potential concern. Information that may prove relevant includes:

- whether the debtor is a Government employee, and, if so, whether a supervisory or superior/subordinate relationship exists;
- whether the debtor is a prohibited source of gifts;
- the security or collateral on the loan; and
- the terms and interest rate.

If the debtor has matters or represents parties to particular matters that are within the scope of the filer's duties, you must determine whether the filer could participate personally and substantially in a particular matter that would have a direct and predictable effect on the debtor's ability or willingness to repay the obligation.

In cases of loans between Government employees, consult 5 CFR part 2635, subpart C.

Futures

An agreement to buy or sell a commodity or a financial interest at a stipulated price, quantity, and time.

Disclosure Requirements: Filers disclose the name of the futures on Part I if the fair market value (unrealized gain) and/or income generated exceed the reporting threshold.

Conflict of Interest Analysis: You should examine the underlying commodity or financial instrument of the futures for a possible conflict with the filer's responsibilities. The risk for conflict is greatest for agencies that have responsibilities affecting the value of agricultural products, energy products, or interest rates. Another source of concern exists for agencies that can affect the futures and options market itself such as the Commodity Futures Trading Commission or the Securities and Exchange Commission. The central question is whether the filer has the potential to participate personally and substantially in particular matters that have a direct and predictable effect on the values of the futures. The de minimis exceptions at 5 CFR §§ 2640.202(a)-(c) would not apply.

General Obligations

A type of municipal security which is a debt obligation for general expenditures and backed by taxing and borrowing power.

Disclosure Requirements: Filers must disclose the name of the security on Part I.

Conflict of Interest Analysis: Employees at your agency may work on matters such as grants and fund allocations to states and local communities that could affect these securities' value. In deciding whether a matter will have a direct and predictable effect on the financial interests of a filer who holds municipal bonds, you should analyze the matter's potential to affect either:

- the market resale value of the bonds (by affecting market interest rates or the sponsor's credit rating) or
- the issuer's ability or willingness to repay its debt obligations (by affecting its financial stability).

When recommending remedies, you should first check if any of the de minimis exemptions apply (5 CFR §§ 2640.202(a)-(c)).

Government Agency Securities

Debt obligations issued by Federal agencies and Government-sponsored corporations to help finance operations. Some common issuers are Ginnie Mae, Fannie Mae, Freddie Mac, SBA, and TVA.

Disclosure Requirements: Filers do not disclose these assets.

Conflict of Interest Analysis: Since these assets are not reportable on the OGE Form 450, you will not perform a conflict of interest analysis as part of the review process.

Honoraria

Payment of money or anything of value for an appearance, speech, or article, excluding necessary travel expenses.

Disclosure Requirements: Filers must list reportable honoraria on Part I. Honoraria received and subsequently donated to charity are reportable as are payments directed to charities in lieu of honoraria.

Conflict of Interest Analysis: You should consider whether:

- the filer can participate in particular matters affecting the ability or willingness of the entity providing the honoraria to make any anticipated future honoraria payments (18 U.S.C. § 208 concern);

- the group providing the honoraria is supplementing the filer’s salary through the honoraria for performance of Government responsibilities (18 U.S.C. § 209 concern); and
- the subject of the speech, article, or appearance relates to the filer’s official duties (5 CFR § 2635.807).

Other Considerations: If the filer received an honorarium under a contract, then the filer would have a covered relationship under the appearance standard with the entity that paid the honorarium, which may require recusal from matters involving that paying entity (5 CFR § 2635.502). Certain non-career employees are subject to additional restrictions.

Individual Retirement Accounts (IRAs)

Typically a bank, brokerage, or mutual fund account that a person has designated as a tax-deferred retirement account. All IRAs are self-directed because investors choose where to invest the funds.

Disclosure Requirements: Filers must disclose all reportable underlying assets on Part I. If none of the underlying assets are reportable (e.g., all holdings are diversified mutual funds), filers do not need to list the IRA on Part I.

Conflict of Interest Analysis: You should analyze the underlying assets as if they were direct holdings, using the guidance that is appropriate for each type of asset (e.g., publicly traded stock, sector mutual fund, etc.).

Intellectual Property

Investments in intellectual property and related rights can include items such as patents, copyright, computer software, etc. Intellectual property may produce both earned income (paid when the property is sold) and investment income (royalties).

Disclosure Requirements: Filers must disclose the nature of the item and any contractual arrangements on Part I.

Conflict of Interest Analysis: Conflicts are more likely if the subject matter of the work-product relates to your agency’s mission or the filer’s responsibilities. You should also check whether the filer can participate in particular matters affecting the publisher’s ability or willingness to satisfy its financial commitments or if the filer’s duties provide for participation in intellectual property disputes. Special restrictions apply for certain senior employees receiving compensation other than continuing royalties during Government service (*see 5 CFR part 2636, subpart C*).

Continuing contractual arrangements would constitute a “covered relationship” within the meaning of 5 CFR § 2635.502. Be sure that filers comply with § 2635.502 when participating in particular matters affecting the organization.

Employee-Inventors: In cases where the Government waives an interest in commercializing an invention and permits the employee-inventor to pursue patent rights, 18 U.S.C. § 209 ordinarily does not preclude outside royalty payments to the employee-inventor. *See DAEOgram DO-00-032.*

Investment Clubs

Most investment clubs are set up as general partnerships. Each member or partner owns a proportionate share of the assets in the club.

Disclosure Requirements: Filers disclose the investment club on Part I, and they usually must disclose the underlying assets as well. The reporting threshold for the club is the overall amount that the filer invested in the club. For the underlying assets, the reporting threshold is based on the filer’s interest in each asset. Positions that the filer holds in the club, such as general partner, are ordinarily reportable on Part III.

Conflict of Interest Analysis: You should analyze the underlying assets as if they were direct holdings, using the guidance that is appropriate for each type of asset (e.g., publicly traded stock, sector mutual fund, etc.).

Filers would have all of the pool’s holdings imputed to them as well as the financial interests of their general partners (even those interests that are separate from the investment club). The de minimis exemptions at 5 CFR §§ 2640.202(a)-(c) might apply to some of the underlying assets, and a narrower exemption may apply to the outside interests of the other general partners (§ 2640.202(f)).

Keogh Plans (HR-10 Plans)

A type of defined contribution plan for self-employed persons and employees of unincorporated businesses.

Disclosure Requirements: Filers disclose the plan’s reportable underlying assets on Part I. Filers also disclose their participation in the plan on Part IV. If none of the underlying assets are reportable, filers do not report anything on Part I, but the plan must be disclosed on Part IV. Note that the Part I reporting requirements include plans held by the filer, the filer’s spouse, and the filer’s dependent children; however, only the filer’s participation in a plan is reported on Part IV.

Conflict of Interest Analysis: You should analyze the underlying assets as if they were direct holdings, using the guidance that is appropriate for each type of asset (e.g., publicly traded stock, sector mutual fund, etc.). Note, however, that while defined contribution plans do not have the issuer’s guarantee of a certain benefit level, some plans offer employees an option of investing in the company’s stock through the plan, which would create a financial interest in the company. Nevertheless, the analysis of defined contribution plans is always the same—look to the underlying assets.

Law Firms

Attorneys sometimes practice alone but more commonly associate with a law firm.

Disclosure Requirements: A filer must disclose the name of the firm, identifying it as a law firm; list its location (city and state); and identify the ownership interest or employment arrangements as well as any other payments or compensation received. The *Business Ownership and Employment Relationships* entry has further details on how to report business and employment ties.

Conflict of Interest Analysis: A number of statutory and regulatory restrictions affect an attorney’s transition from a private law firm into Government service. Normally, resignation and severing all financial linkages is the preferable solution; however, apart from income and other restrictions on certain non-career employees, no general prohibition exists on an employee’s outside practice of law. Some agencies, though, require prior approval or simply bar such practice.

The *Business Ownership and Employment Relationships* entry in this document provides some basic guidance on conflicts with respect to business and employment ties. Law firms, however, constitute a specialized example with unique concerns. The representational prohibitions at 18 U.S.C. §§ 203 and 205, in particular, require careful attention, and continuing payments (e.g., contingency fee cases) may raise issues under 18 U.S.C. § 209 unless the maximum fee or percentage is set upon entering Government service. You should also consider the likelihood of impartiality concerns under 5 CFR § 2635.502 if former clients or law partners could be parties or represent parties in matters before your agency. Finally, a covered non-career employee may not permit his name to be used by any firm, partnership, association, corporation, or other entity, which provides professional services involving a fiduciary relationship.

Pages 6-22 through 6-25 in the “Public Financial Disclosure: A Reviewer’s Reference” (Second Edition, 2004) provide a detailed discussion of the issues to consider when reviewing law firm entries.

Life Insurance Policies

Policies are issued in two basic varieties: term and cash value. Term insurance is purely insurance, whereby beneficiaries receive a death benefit if the insured person dies during the term of the policy. Cash value insurance is part insurance and part investment. A portion of the premiums pay for expenses and the insurance part of the policy. The remainder goes into a tax-deferred cash reserve which is invested and builds the policy's cash value. The types of cash value insurance are:

- **Universal:** The policyholder can vary premiums by paying them with some of the accumulated cash value of the policy. The policyholder normally receives a minimum guaranteed rate of return at money market rates and has no control over investment decisions. *See Universal Life Insurance Policies.*
- **Variable:** The policyholder chooses investments from among several company options and their performance determines the policy's value. *See Variable Life Insurance Policies.*
- **Whole:** The policyholder pays fixed premiums and has no control over the investments selected. *See Whole Life Insurance Policies.*

Limited Partnerships (LP)

Partnerships may be formed when two or more persons join together for the purpose of conducting or investing in a trade or business. A limited partnership usually has one general partner who organizes and manages its operations. The other investors are limited partners.

Disclosure Requirements: Disclosure requirements for Part I depend on the structure of the Limited Partnership (LP). Filers must disclose the name of a public LP and, unless certain conditions apply, the partnership's reportable underlying assets. For private LPs, filers must provide the partnership's name, its location (city and state), a brief description of its purpose or operations, and, unless certain conditions apply, the partnership's reporting underlying assets.

If the following conditions are met, the filer does not have to disclose the partnership's underlying assets:

- the LP is widely held;
- the LP is publicly traded (or available) or widely diversified; and
- the LP is independently managed, that is, arranged so that the filer neither exercises control nor has the ability to exercise control over the financial interests held by the fund.

Pages 7-2 through 7-3 in the “Public Financial Disclosure: A Reviewer’s Reference” (Second Edition, 2004) address these criteria more fully.

Conflict of Interest Analysis: You should analyze the underlying assets as if they were direct holdings, using the guidance that is appropriate for each type of asset (e.g., publicly traded stock, sector mutual fund, etc.). Even if there is no conflict with the underlying assets, filers at agencies that regulate publicly traded LPs may have a potential conflict with the partnership. Lastly, although the interests of the other limited partners are not imputed to the filer under 18 U.S.C. § 208, the financial interests of the LP’s general partner are. Check if the exemption at 5 CFR § 2640.202(f) applies.

Livestock and Farm Interests

Filers may have interests in livestock or other farm interests either as owners, employees, or investors. *See also Business Ownership and Employment Relationships.*

Disclosure Requirements: Filers disclose on Part I the name of the farm, the type of interest in the farm, its business (such as corn or livestock), and the location (city and state). Positions held by the filer such as “sole proprietor” are reported on Part III.

Conflict of Interest Analysis: When a filer reports a farm, you need to consider the farm’s participation in Federal programs, its geographic location in relation to Government activities, and its contracts. If your agency administers any subsidy programs, you should inquire whether the farm participates in these programs to ensure that no conflict exists. Other restrictions may also apply:

- Some agencies have prohibitions against operating farms.
- If the farm is anything other than a sole proprietorship, a Federal employee may violate criminal restrictions on representation of others before the Government if the employee applies for any USDA or other Federal benefits on behalf of the farm.
- Senior employees subject to restrictions on outside earned income must avoid active management of the farm.

Filers in agriculture-related agencies may have a potential conflict when they rent land to sharecroppers. A conflict could arise if the filer, through an agency program, could influence the value or quantity of a crop that the sharecropper raised. The sharecropping agreement would make the success of the crop a financial interest of the filer. Finally, you should inquire whether your agency has

operations near the farm or whether it might contract with the farm. If so, you must determine if the filer can participate in actions that create a real possibility of gain or loss to the filer's interest.

Mortgage-Backed Securities

Securities that are issued when Government agencies (including U.S. Government-sponsored corporations) or private investment firms pool mortgages and pay out income from them to investors. Common types of mortgage-backed securities include:

- Mortgage Pass-Throughs: Pass-throughs are created by pooling mortgages and selling share certificates backed by the pools. Most pass-throughs are issued by Government agencies such as the Ginnie Mae, Fannie Mae, or Freddie Mac.
- Collateralized Mortgage Obligations (CMOs): CMOs are mortgage-backed bonds that pass income through as periodic interest.
- Real Estate Mortgage Investment Conduits (REMICs): REMICs are partnerships, corporations, or trusts that issue securities backed by mortgage pools and that serve as income pass-throughs.

Disclosure Requirements: Filers need not disclose securities issued by Government agencies. For other securities that are publicly traded or available, filers must list the full name of the portfolio. If not publicly traded or available, the filer will probably need to disclose the underlying type of property and the location(s) (city and state).

Conflict of Interest Analysis: For most mortgage-backed securities (particularly those issued by U.S. Government agencies), it is unlikely that a security holder could affect his financial interest, as income is tied to the fixed payments made by borrowers. If matters on which a filer works could directly and predictably affect those payments, however, then you should examine the underlying mortgages by consulting investment service guides or the securities issuer.

Even if there is no conflict with the securities, filers may have a potential conflict with the issuer. This is most likely if your agency regulates securities.

Municipal Securities

Debt obligations of cities, counties, etc. Two common types are general obligations and revenue bonds.

- General Obligation: Used for general expenditures and backed by the issuer's full faith and credit (taxing and borrowing power).

- Revenue Bond: Used to finance specific public service projects and backed by the cash flow from those projects.

Disclosure Requirements: Filers must disclose the name of the security on Part I.

Conflict of Interest Analysis: Employees at some agencies may work on matters such as grants and fund allocations to states and local communities that could affect these securities' value. In deciding whether a matter will have a direct and predictable effect on the financial interests of a filer who holds municipal bonds, you should analyze the matter's potential to affect either:

- the market resale value of the bonds (by affecting market interest rates or the sponsor's credit rating); or
- the issuer's ability or willingness to repay its debt obligations (by affecting its financial stability).

When recommending remedies, you should first check if any of the de minimis exemptions apply (5 CFR §§ 2640.202(a)-(c)).

Municipal industrial development bonds may present additional conflict concerns. The private company to which the bond issuer expects to lease the facilities that are being financed is responsible for backing the bonds. You must, therefore, focus your conflict analysis on both the municipal issuer of industrial development bonds and the private company involved.

Mutual Funds

A portfolio of securities that is created and managed as an investment company and registered under the Investment Company Act of 1940, as amended (15 U.S.C. 80a-1 et seq.). Ethics regulations distinguish between diversified and sector mutual funds.

- Diversified: A diversified mutual fund is one that does not have a stated policy of concentrating its investments in any industry, business, single country other than the U.S., or bonds of a single U.S. state. *See Diversified Mutual Funds.*
- Sector: A sector mutual fund is one that has a stated policy of concentrating its investments in any industry, business, single country other than the U.S., or the bonds of a single U.S. state. *See Sector Mutual Funds.*

See DAEOgram DO-00-030 for assistance distinguishing diversified mutual funds from sector mutual funds.

Options

Rights to buy or sell a commodity or financial interest at specified quantities and prices within a certain time period. *See Stock Options for information on options to buy or sell stock.*

Disclosure Requirements: Filers must disclose the options on Part I.

Conflict of Interest Analysis: You should examine the underlying commodity or financial instrument of the option for a possible conflict with the filer's responsibilities. The risk for conflict is greatest for agencies that have responsibilities affecting the value of agricultural products, energy products, or interest rates. Another source of concern exists for agencies that can affect the futures and options market itself such as the Commodity Futures Trading Commission or the Securities and Exchange Commission. The central question is whether the filer has the potential to participate personally and substantially in particular matters that have direct and predictable effects on the values of the options. The de minimis exceptions for securities at 5 CFR §§ 2640.202(a)-(c) would not apply.

Precious Metals

Metals such as gold, silver, and platinum that are held by some investors as a hedge against inflation or foreign exchange fluctuations. Investors may take physical possession of the metals, hold certificates issued by an investment entity, or hold shares of metals in metal mutual funds or futures.

Disclosure Requirements: Other than coin collections or jewelry held strictly for enjoyment or utility, precious metals are ordinarily reportable. For metals held physically or through certificates, filers must disclose the type of metal on Part I. The filer may choose to specify the metal as ingots, jewelry, coins, or warehouse certificates for clarity. For metals held through securities such as a metals mutual fund or futures, filers should use the disclosure method appropriate for that type of security (i.e., *see the entry for Mutual Funds or Futures*).

Conflict of Interest Analysis Precious metals do not usually present a potential for conflict. The value of these items and their potential for producing capital gains upon resale are controlled primarily by the market forces of supply and demand, popular fads for certain types of collections, and the interest and foreign exchange rates for precious metals. A few agencies may have missions that could affect the value of precious metals because of their roles concerning taxes or interest rates. Even when this possibility exists, however, it is unlikely that a filer would be acting in a particular matter that could have a direct and predictable effect on these financial interests.

Prepaid (College) Savings Plans

A type of qualified tuition program (529 plan) in which an individual chooses among various investment options, often consisting of mutual funds. The amount available for future tuition depends solely on the amount contributed and the performance of the investments.

Disclosure Requirements: Filers must disclose the plan’s reportable underlying assets on Part I.

Conflict of Interest Analysis: You should analyze the underlying assets as if they were direct holdings, using the guidance that is appropriate for each type of asset (e.g., publicly traded stock, sector mutual fund, etc.). These plans usually contain diversified mutual funds, which have an exemption at 5 CFR § 2640.201(a).

Prepaid Tuition Plans

A type of qualified tuition program (529 plan) in which an individual has a contract with the plan’s sponsor that allows the individual to prepay future tuition expenses at current tuition rates. The sponsor can be either a state or the Tuition Plan Consortium, LLC, for private institutions (also known as the “Independent 529 Plan”).

Disclosure Requirements: Filers must disclose the name and sponsor of the plan (e.g., Maryland Prepaid College Trust).

Conflict of Interest Analysis: An interest in a prepaid tuition plan, for purposes of 18 U.S.C. § 208 is a contractual interest in the sponsor’s ability or willingness to honor its future obligation.

Qualified Tuition Programs

A program that offers investors tax-advantaged accounts for the purpose of saving money to cover educational expenses. These programs are often called “529 plans” because they are recognized in the tax code at 26 U.S.C. § 529. There are two types of plans:

- **Prepaid (College) Savings Plan:** An investment account in which an individual chooses among various investment options, often consisting of mutual funds. The amount available for future tuition depends solely on the amount that the individual contributes and the performance of the investments. *See Prepaid (College) Savings Plans.*
- **Prepaid Tuition Plan:** A contract between an individual and the plan’s sponsor that allows the individual to prepay future tuition expenses at current tuition rates. The sponsor can be either a state or the Tuition Plan Consortium, LLC, for private institutions (also known as the “Independent 529 Plan”). *See Prepaid Tuition Plan.*

Real Estate

Real estate investments typically include residential property (homes, apartment buildings, hotels), commercial property (office buildings, business sites, shopping malls), and land held for agricultural use or mineral exploration. Vacant lots are included if held for the production of income such as appreciation in value.

Disclosure Requirements: Filers must report the name of the asset and its location (city and state) on Part I. Filers, however, do not need to report personal residences. A “personal residence” is defined at 5 CFR § 2634.105(l) to mean any real property used exclusively as a private dwelling by the filer or the filer’s spouse, which is not rented out during any portion of the reporting period.

Conflict of Interest Analysis: You must consider the location and use of the property (e.g., farming, mineral exploration or extraction, residential, or a particular type of business). With this information, you should be able to determine whether the value of the real estate could be directly and predictably affected by agency programs in which the filer may participate.

Real Estate Investment Trusts (REITs)

Managed diversified portfolios of real estate and mortgages that are usually publicly traded like mutual funds.

Disclosure Requirements: At minimum, filers disclose the name of the REIT. Disclosure of the underlying properties is unnecessary if the REIT is:

- widely held;
- publicly traded (or available) or widely diversified; and
- independently managed, that is, arranged so that the filer neither exercises control nor has the ability to exercise control over the financial interests held by the fund.

If these criteria are not met, filers must disclose the type of underlying properties and the locations of those properties (city and state). Pages 7-2 through 7-3 in the “Public Financial Disclosure: A Reviewer’s Reference” (Second Edition, 2004) address these criteria more fully.

Conflict of Interest Analysis: If the filer’s agency has responsibilities that could directly and predictably affect real estate, then you should evaluate the underlying assets for potential conflicts. You should also consider whether a conflict might exist with the issuer of the REIT if your agency’s functions could affect that entity.

Revenue Bonds

A type of municipal security which is a debt obligation used to finance specific public service projects and is backed by the cash flow from those projects. *See also Municipal Securities.*

Disclosure Requirements: Filers must disclose the name of the security on Part I.

Conflict of Interest Analysis: Employees at some agencies may work on matters such as grants and fund allocations to states and local communities that could affect these securities' value. In deciding whether a matter will have a direct and predictable effect on the financial interests of a filer who holds municipal bonds, you should analyze the matter's potential to affect either:

- the market resale value of the bonds (by affecting market interest rates or the sponsor's credit rating) or
- the issuer's ability or willingness to repay its debt obligations (by affecting its financial stability).

When recommending remedies, you should first check if any of the de minimis exemptions apply (5 CFR §§ 2640.202(a)-(c)).

Sector Mutual Funds

A fund that has a stated policy of concentrating its investments in any industry, business, single country other than the U.S., or bonds of a single state within the U.S (unlike diversified mutual funds which do not have such a policy). *See DAEOgram DO-00-030 for assistance distinguishing diversified mutual funds from sector mutual funds.*

Disclosure Requirements: Filers disclose the name of the fund on Part I.

Conflict of Interest Analysis: You must examine the underlying assets of the mutual fund for possible conflicts with the filer's responsibilities. As with any other asset, check whether the filer could participate personally and substantially in a particular matter that directly and predictably affects the filer's financial interests, either direct or imputed.

An issue with an underlying asset may be eligible for one of the exemptions at 5 CFR § 2640.201(b):

- The filer may participate in any particular matter affecting one or more of the underlying assets if the asset is not invested in the sector in which the fund concentrates.

- A filer can participate in a particular matter affecting one or more of the underlying assets provided the market value of the funds affected do not exceed \$50,000. To calculate this amount, use the total amount of the filer's investment (as well as that of the filer's spouse and minor children) in the funds which concentrate in the sector and which include disqualifying interests.

Even if there are no conflicts with the underlying assets, filers may have a potential conflict with the issuing investment company or brokerage. This is most likely if your agency regulates securities. There is, however, an exemption at 5 CFR § 2640.201(d) for particular matters of general applicability that affect a mutual fund as a separate legal entity.

Severance Payments

Anticipated or received payment from a former employer.

Disclosure Requirements: For severance payments that have already been received, filers must disclose the name of the employer on Part I. If the employer is not a publicly traded entity, filers also specify the nature of the business and its location (city and state). Continuing or anticipated severance payments to the filer are disclosed on Part IV.

Conflict of Interest Analysis: If the payments vary from established company plans or if the plans permit discretion in determining the nature or amount of payments in a way that could favor those entering Government service, 18 U.S.C. § 209 may prohibit the payments as an improper supplementation of Government salary. The following factors should be considered in determining the intent of the parties to a severance or other arrangement:

- the filer's official position;
- who the payment is coming from;
- whether similar payments are being made to non-Government employees;
- whether the payment is motivated by sympathy or a desire other than to compensate the filer for Government service;
- whether the payment is a bona fide award for public service;
- the express intent of the payor;
- whether the filer is in a position to influence the Government on behalf of the payor; and

- the relationship or pattern of dealings between your agency and the payor.

In addition, an anticipated severance payment may present a conflict under 18 U.S.C. § 208 because it represents a continuing interest in a former employer. Even where violations of §§ 208 and 209 are avoided because the payment is received before Government service, 5 CFR § 2635.503 may require recusal from matters affecting the source of “extraordinary” severance payments.

**Simplified
Employee Pensions
(SEPs)**

A type of defined contribution plan for small employers with 25 or fewer employees. The employer does not have a continuing obligation once the contributions are made. SEPs are self-directed by the employee.

Disclosure Requirements: Filers disclose the plan’s reportable underlying assets on Part I. Filers also disclose their participation in the plan on Part IV. If none of the underlying assets are reportable, filers do not report anything on Part I, but the plan must be disclosed on Part IV. Note that the Part I reporting requirements include plans held by the filer, the filer’s spouse, and the filer’s dependent children; however, only the filer’s participation in a plan is reported on Part IV.

Conflict of Interest Analysis: You should analyze the underlying assets as if they were direct holdings, using the guidance that is appropriate for each type of asset (e.g., publicly traded stock, sector mutual fund, etc.). Note, however, that while defined contribution plans do not have the issuer’s guarantee of a certain benefit level, some plans offer employees an option of investing in the company’s stock through the plan, which would create a financial interest in the company. Nevertheless, the analysis of defined contribution plans is always the same—look to the underlying assets.

Stocks

Securities that represent equity (ownership interest) in a corporation, entitling the holder to a claim on corporate assets and earnings. Normally, a company pays a portion of its earnings to shareholders as dividends. Shareholders may also receive capital gains when they sell the stock. Corporations issue two basic types of stock—common and preferred. The differences between the two types involve shareholder voting rights and the priorities for payment of dividends and liquidation claims. For financial disclosure and conflict analysis, these differences are ordinarily not significant, and there is no requirement to specify the type of stock on the disclosure form.

Disclosure Requirements: For publicly-traded stocks, filers disclose the name of the stock on Part I. For non-public stock, filers must identify the issuer, its trade/business, and its location (city and state).

Conflict of Interest Analysis: Since stocks represent an ownership interest in a company, matters that affect the issuing company's financial interests are presumed to have direct and predictable effects on the financial interests of the stockholders. Matters affecting a parent company or subsidiaries could also affect the firm, though the effect might not be direct or predictable in a given circumstance. If a potential conflict is deemed to exist, you should first consider whether any of the de minimis exemptions at 5 CFR § 2640.202(a)-(c) apply. Please note that non-public stocks are ineligible for these exemptions.

Stock Options

Rights to buy or sell stocks at specified quantities and prices within a certain time period. Some options are a form of employee benefits, which are granted by a company to its employees as part of an incentive and compensation plan.

Disclosure Requirements: Filers must disclose stock options on Part I. Stock options received through an agreement with the filer's employer should also be disclosed on Part IV. Stock options purchased through the market or those owned by the filer's spouse or child are not disclosed on Part IV.

Conflict of Interest Analysis: Stock options pose the same conflicts issues as stocks, so matters that affect the issuing company's financial interests are presumed to have direct and predictable effects on the financial interests of those holding stock options. Unlike stocks, however, the de minimis exemptions for securities at 5 CFR §§ 2640.202(a)-(c) do not apply. Please also note that filers are sometimes able to accelerate the vesting of options acquired through an employment arrangement. In some cases, the acceleration might constitute an extraordinary payment.

Term Life Insurance Policies

An insurance product, whereby beneficiaries receive a death benefit if the insured person dies during the term of the policy. Unlike other insurance policies (e.g., universal, variable, and whole life), term life policies do not generate any cash value from investments.

Disclosure Requirements: Filers do not disclose term life insurance.

Conflict of Interest Analysis: Since this type of asset is not reportable on the OGE Form 450, you will not perform a conflict of interest analysis as part of the review process.

TIAA-CREF

The Teachers Insurance and Annuity Association—College Retirement Equities Fund. TIAA-CREF is a non-profit entity that provides a variety of financial services, including retirement plans. TIAA-CREF is one of the largest financial services providers in the United States, and its retirement products typically appear in financial disclosure reports of filers who have worked as professors or teachers. TIAA-CREF offers a range of plans, including 403(b) retirement plans, simplified employee pensions (SEPs), Keogh plans, and college savings plans. TIAA-CREF also offers a number of specific financial instruments, including annuities, various forms of insurance, cash accounts, and mutual funds.

Disclosure Requirements: Reporting requirements will depend on the investments held. Filers must disclose holdings in the TIAA Traditional Annuity and any sector mutual funds on Part I (e.g., the TIAA Real Estate Account and the CREF Real Estate Securities Fund). Filers need not report the CREF Stock Account because it is a diversified mutual fund. In addition, if the filer has invested in TIAA-CREF through a former employer such as a university, then the filer must report the plan on Part IV.

Conflict of Interest Analysis: You should apply the conflicts analysis that is appropriate to the particular types of assets held (e.g., annuity or mutual fund).

Treasury Securities

Debt obligations issued by the Federal Government and secured by the full faith and credit (the power to tax and borrow) of the United States. Examples include Treasury bills (T-bills), Treasury notes, Treasury bonds, and U.S. savings bonds.

Disclosure Requirements: Filers do not disclose these assets.

Conflict of Interest Analysis: Since these assets are not reportable on the OGE Form 450, you will not perform a conflict of interest analysis as part of the review process.

Trusts

A formal legal arrangement by which legal title and management responsibility for a person's property (grantor, settlor, or donor) is given to a fiduciary (trustee) for the benefit of another (beneficiary).

Disclosure Requirements: Only general guidance is possible given the many types of trusts. If the filer, the filer's spouse, or the filer's dependent child has a reportable vested beneficial interest in the principal or income of the trust, the filer must disclose the name of the trust and any reportable underlying assets on Part I. Filers should also report a trustee position on Part I if the position provides more than

\$200 in fees during the reporting period (or \$1,000 if received by the filer's spouse). A trustee position held by the filer is reportable on Part III whether compensated or not.

Vested: "Vested" means that the individual has a present legal right to property or income (including the authority to dispose of the property or income), even if that right is defeasible (subject to being revoked or voided). The reporting threshold for a trust is the overall amount of the beneficiary's interest, not the value of the beneficiary's shares of particular assets. Underlying assets are disclosed if they individually meet the reporting threshold and are not otherwise exempt from reporting (e.g., diversified mutual fund).

Revocable inter vivos ("living") trusts: In this type of trust, the grantor conveys property in trust to a trustee (who is often the grantor) and retains a life estate, with the remainder to go to specified beneficiaries upon the termination of the life estate. What makes a living trust revocable is that the grantor expressly reserves the power to revoke the trust entirely and to make other changes, such as substitutions of beneficiaries or trustees.

Filers need not report assets or income from a revocable living trust :

- provided that the individuals have only a remainder interest, and
- provided that the grantor is neither the filer, the filer's spouse, nor the filer's dependent child.

Reduced Disclosure for Blind or Excepted Trusts: Qualified blind trusts, qualified diversified trusts, and excepted trusts reduce disclosure requirements and the need for conflict assessments since filers will have little or no knowledge of the underlying holdings. *See 5 CFR § 2634.310(b) and 5 CFR part 2634, subpart D.*

Conflict of Interest Analysis: Given the complexity often involved with such assets, specific guidance is not provided here. *See DAEOgrams DO-01-029, DO-02-008, and DO-02-015, though, for a discussion of certain issues related to trusts.*

Unit Investment Trusts

Brokerage firms create unit investment trusts (UITs) by establishing fixed portfolios of securities with similar maturity dates. Unlike mutual funds, UITs are not managed on a continuing basis—the portfolio's investments are fixed when it is established, and they remain unchanged until the underlying assets mature or are redeemed.

Disclosure Requirements: UITs are treated in the same manner as mutual funds. Diversified UITs are not reportable, but sector UITs must be disclosed on Part I.

Conflict of Interest Analysis: Diversified UITs are eligible for the exemption at 5 CFR § 2640.201(a). Otherwise, you must examine the underlying assets for possible conflicts with the filer's responsibilities. As with any other asset, check whether the filer could participate personally and substantially in a particular matter that directly and predictably affects his financial interests, either direct or imputed.

An issue with an underlying asset may be eligible for one of the exemptions at 5 CFR § 2640.201(b):

- The filer may participate in any particular matter affecting one or more of the underlying assets if the asset is not invested in the sector in which the UIT concentrates.
- A filer can participate in a particular matter affecting one or more of the underlying assets provided the market value of the funds affected do not exceed \$50,000. To calculate this amount, use the total amount of the filer's investment (as well as that of the filer's spouse and minor children) in the funds which concentrate in the sector and which include disqualifying interests.

Even if there are no conflicts with the underlying assets, filers may have a potential conflict with the issuing investment company or brokerage. This is most likely if your agency regulates securities. Note, however, there is an exemption at 5 CFR § 2640.201(d) for particular matters of general applicability that affect a mutual fund as a separate legal entity; UITs qualify for this exemption.

Universal Life Insurance Policies

A type of cash value insurance in which the policyholder can vary premiums by paying them with some of the accumulated cash value of the policy. The policyholder normally receives a minimum guaranteed rate of return at money market rates and has no control over investment decisions.

Disclosure Requirements: Filers report the name of the insurance company on Part I, specifying that the asset is universal life insurance.

Conflict of Interest Analysis: Actions in Government matters that affect the financial stability of the issuer or its willingness or ability to support the policy might pose a conflict of interest

Variable Annuities Annuities that offer investors a limited set of options in which they can invest, typically mutual funds. Investors can choose how their money is invested and receive a return based on the performance of those investments.

Disclosure Requirements: Filers must disclose the name of the company and the reportable underlying assets on Part I.

Conflict of Interest Analysis: Actions in Government matters that affect the financial stability of the issuer or its willingness or ability to support the annuity might pose a conflict of interest. In addition, filers have an interest in the underlying assets selected, so you should analyze the underlying assets as if they were direct holdings, using the guidance appropriate for each type of asset (e.g., publicly traded stock, sector mutual fund, etc.). The underlying assets, however, are almost invariably diversified mutual funds, which have an exemption at 5 CFR § 2640.201(a).

Variable Life Insurance Policies A type of cash value insurance in which the policyholder chooses investments from among several company options and their performance determines the policy's value.

Disclosure Requirements: Filers report the name of the insurance company, the type of insurance, and the reportable underlying assets on Part I.

Conflict of Interest Analysis: Actions in Government matters that affect the financial stability of the issuer or its willingness or ability to support the policy may create a conflict of interest. In addition, filers have an interest in the underlying assets selected, so you should analyze the underlying assets as if they were direct holdings, using the standards appropriate for each type of asset (e.g., publicly traded stock, sector mutual fund, etc.).

Whole Life Insurance Policies A type of cash value insurance in which the policyholder pays fixed premiums and has no control over the investments selected.

Disclosure Requirements: Filers report the name of the insurance company on Part I, specifying that the asset is whole life insurance.

Conflict of Interest Analysis: Actions in Government matters that affect the financial stability of the issuer or its willingness or ability to support the policy might pose a conflict of interest.