STATEMENT OF

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OFFICE OF GOVERNMENT ETHICS

ON

OGE RECOMMENDATIONS ON STREAMLINING PUBLIC FINANCIAL DISCLOSURE AND OTHER ASPECTS OF THE PRESIDENTIAL APPOINTMENTS PROCESS

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ON

April 5, 2001

MR. CHAIRMAN, AND MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to appear today to discuss the report issued by the Office of Government Ethics. Congress had asked for this report under the Presidential Transition Act of 2000.

The nomination and confirmation process has grown increasingly complex over the years so that today it is viewed by many as being unnecessarily complicated and unduly burdensome for persons being considered for Presidential appointments. Various commissions and studies in the past have made recommendations for simplifying and rationalizing this process. In 2000, with the approach of another Presidential transition, attention once again turned to this process.

In the Presidential Transition Act of 2000, Congress told the Office of Government Ethics (OGE) to provide recommendations for streamlining the public financial disclosure requirements for Presidential nominees to confirmed positions and for improving other aspects of the nomination and confirmation process. I am happy to be here today to present our recommendations.

Before I discuss our recommendations, I would like to describe the steps that we took to prepare this report. OGE obtained the opinions of interested parties first by reviewing their studies of the nomination and confirmation process. We also reviewed the questionnaires used by confirming committees of the 106th Congress and the White House, as well as the forms and instructions used by all three branches for public financial disclosure required by the Ethics in

Government Act. We sought and obtained comments about the process through a notice in the Federal Register. Finally, we discussed possible proposals with executive branch ethics officials, and spoke with individuals who have been or are currently involved in the process.

As we reviewed the current requirement for public financial disclosure, it was important to re-evaluate the original purposes of public disclosure to see if they had changed. Public financial disclosure was intended to --

--increase public confidence in Government;

--demonstrate the high level of integrity of the vast majority of Government officials;

--deter conflicts of interest from arising because official activities would be subject to public scrutiny;

--deter persons whose personal finances would not bear public scrutiny from entering public service; and

--better enable the public to judge the performance of public officials in light of an official's outside financial interests.

We do not believe that the original purposes of public financial disclosure have changed. Moreover, OGE's own experience with nominations has indicated, and our outreach efforts confirmed, that the concept of public financial disclosure is not considered, in general, to be unduly burdensome by nominees or those considering going into public service. It is an accepted condition of Government service that the public must be able to assure itself that Government officials will act impartially. Rather, what is considered frustrating and unduly burdensome to many nominees is the requirement to obtain and disclose seemingly excessive detail regarding financial interests, the redundancy among the various forms used in the process, and the intrusion into a nominee's personal finances beyond what appears to be necessary for a conflicts analysis or public confidence.

Based upon more than 20 years of experience administering this statutory system, we believe that these concerns are valid. OGE's report recommendations, we believe, will begin to address these concerns.

With regard to excessive detail, we believe that the current public financial disclosure system requires the reporting of more information than is necessary or useful for the purposes of conflict of interest analyses or maintaining public confidence in Government. Some of the specific detail regarding assets, transactions and other reportable items is burdensome to the filer and could be eliminated without "lessening substantive compliance with any conflict of interest requirement." Eliminating such unnecessary detail would relieve the burden that falls not only on Presidential nominees but also on approximately 20,000 executive branch employees who are subject to public reporting.

We also believe that a reporting system should be designed so that it is practical for the vast majority of filers. For example, it is neither necessary nor desirable to require every filer to provide details for every asset that is reported, whether or not that asset presents a potential conflict. Even the existing reporting system does not require the reporting of so much detailed information that ethics officials never need to obtain additional clarifying information. Ethics officials as well as OGE currently request additional information from a filer that is relevant to the resolution of a potential conflict, and it is the filer's obligation to provide it.

To simplify financial disclosure and mitigate the burden, OGE is recommending changes to the Ethics in Government Act for the executive branch to (1) reduce the number of valuation categories; (2) shorten certain reporting time-periods; (3) limit the scope of reporting by raising certain dollar-thresholds; (4) reduce details that are unnecessary for conflicts analysis; and (5) eliminate redundant reporting. I will not go through each of the proposed changes here. Once you have reviewed them, I hope you will agree that we can significantly reduce and streamline the information sought from nominees, without reducing the ability to ascertain impartiality and conduct a conflicts analysis. I have also attached to my testimony a copy of the current financial disclosure form and a mock up of what the form would look like if OGE's recommendations became law.

Addressing the concern about the redundancy of forms involves more entities than OGE. In addition to the form used for public financial disclosure in the executive branch (the SF 278), there are several other forms requiring financial and other information that must be filed by potential nominees. These include the White House Personal Data Statement, the Questionnaire for National Security Positions (SF 86), and Senate confirming committee questionnaires. Our comparison of the SF 278, SF 86, and committee forms identified extensive overlap and inconsistency. We believe from the comparative charts we have made those areas of overlap and inconsistency are reasonably easy to discern, and the parties responsible for these forms can balance the burdens that they create against the need to obtain the information they seek.

When considering the question of whether the financial disclosure process results in unnecessary intrusion into personal finances, we first looked back to the original purpose of the public financial disclosure system. This system was intended to be a way to ensure impartiality of public officials. It has come to be used for more than that. The disclosure form itself is now used, often by the media, as a way to estimate the net worth of public officials. Yet, this was never intended to be the purpose of the public reporting system, nor should it be.

One of the changes that we are recommending to the public financial disclosure system is that the highest category of value that would now be reportable for public filers would be "over $100,000." This is a significant change from current law, which requires that asset valuation be declared in much greater detail, with the highest valuation at "over $50,000,000." We believe that this change will preserve the ability to evaluate potential conflicts and provide sufficient information regarding the magnitude of an asset, without unduly intruding upon the financial privacy of the filer.

In addition to the recommendations summarized above, OGE analyzed the many recommendations for improvement of the appointments process that have been made over the years.

We believe, based on our experience, that there are several issues raised in the studies that are timely. These issues include simplifying and standardizing the financial disclosure process; providing for electronic filing of information; and using an existing form such as the SF 278 as a more relevant source of financial information than the net worth questions in many Senate committee questionnaires.

A number of these outside studies also suggested that the criminal conflict of interest statutes of Chapter 11 of Title 18, U.S.C. be revised or decriminalized. OGE agrees that the conflicts laws may be complex. Nevertheless, they provide essential safeguards for the integrity of Government operations and programs. It may be that these laws, however, can be simplified without sacrificing the protection that they provide for a fair and impartial Government process. The revision of these laws is no easy task and we are not prepared to make detailed recommendations for changes at this time. We have already been in contact with the Department of Justice to begin exploring the revision of the conflicts laws.

Finally, I would like to inform the committee that, as a result of the directive to OGE in the Presidential Transition Act, we looked at changes and improvements that we could make to the process that would not require any amendment to the Ethics in Government Act. We found that we could have an immediate impact by consolidating the various levels of review of a nominee financial disclosure report within OGE. We also analyzed whether certain of our interpretations of the Ethics in Government Act should be revisited. We looked particularly at certain cases where filers have been required to report the holdings of limited partnerships, trusts, estates, and powers of attorney. We determined that some flexibility was warranted where filers were unable, without extraordinary effort, to ascertain the value and income of the subholdings of limited partnerships (i.e. where one limited partnership invests in another limited partnership). Those values are not necessary for conflict of interest analysis and obtaining them can sometimes impose a heavy burden on filers. In addition, upon reevaluation, we have decided that filers generally need not be required to disclose the assets of a person for whom they have a power of attorney, or the assets of an estate for which the filer serves as an executor. We are consulting with the Department of Justice to determine the reporting requirements for trust assets when a nominee has a non-beneficial interest in a trust. These changes should go a long way toward relieving the burden on nominees without diluting our ability to assess actual or apparent conflicts of interest.

In closing, I would like to reiterate that OGE is ready to work with both the executive and legislative branches to make the appointment process smoother and less burdensome for all parties. We have set out in the report a list of steps we are prepared to take alone and in conjunction with others. We believe that improvements can be made to the financial disclosure system and to the Presidential Appointments process. We are ready to work with the Congress and others toward that goal in those areas that are within our jurisdiction.

Reporting Individual's Name

SCHEDULE A

Page Number

Assets and Income — BLOCK A

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income.

For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse).

None ☐

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

	Assets and Income (Block A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples	Central Airlines Common				x												x						x										
	Doe Jones & Smith, Hometown, State			x																												Law Partnership Income $130,000	
	Kempstone Equity Fund					x								x										x									
	IRA: Heartland 500 Index Fund							x						x											x								
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* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot Be Used.

Do not complete Schedule B if you are a new entrant, nominee, or Vice Presidential or Presidential Candidate

Reporting Individual's Name	SCHEDULE B	Page Number

Part I: Transactions

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

None ☐

	Identification of Assets	Transaction Type (x)			Date (Mo., Day, Yr.)	Amount of Transaction (x)											
		Purchase	Sale	Exchange		$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
Example	Central Airlines Common	x			2/1/99			x									
1																	
2																	
3																	
4																	
5																	

*This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260, and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. **Exclude** anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☐

	Source *(Name and Address)*	Brief Description	Value
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty)	$500
	Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$300
1			
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3			
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Prior Editions Cannot Be Used.

Reporting Individual's Name

SCHEDULE C

Page Number

Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at **any time** during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None ☐

	Creditors *(Name and Address)*	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x): $10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001- $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001- $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			x								
	John Jones, 123 J St., Washington, DC	Promissory note	1999	10%	on demand					x						
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4																
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*This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None ☐

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1			
2			
3			
4			
5			
6			

Prior Editions Cannot Be Used.

Reporting Individual's Name	SCHEDULE D	Page Number

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization *(Name and Address)*	Type of Organization	Position Held	From *(Mo., Yr.)*	To *(Mo.,Yr.)*
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
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Part II: Compensation in Excess of $5,000 Paid by One Source

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

None ☐

	Source *(Name and Address)*	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1		
2		
3		
4		
5		
6		

Prior Editions Cannot Be Used.

Reporting Individual's Name	Schedule A	Page Number

Assets and Income		Asset Value at close of reporting period			Type						Amount of Income			
For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $500 in income during the reporting period. For yourself, and your spouse, also report the source of earned income exceeding $500 (other than from the U.S. Government). For honoraria earned prior to Government service report source as earned income -- do not report exact amount. For honoraria earned during Government service, report source, exact amount, and date. None ☐		$1,001-$15,000	$15,001 - $100,000	over $100,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Investment Income	Earned Income	Honoraria	$501 - $20,000	$20,001 - $100,000	over $100,000	If Honoraria, exact amount, and date (mo/yr)
1														
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Reporting Individual's Name	Schedule B	Page Number

Part I: Transactions

Report any real property, stocks, bonds, commodity futures, or other securities not already listed on Schedule A, which were valued at over $1000 at any time during the reporting period but which you no longer hold.

None ☐

Do not complete if you are a nominee or a new entrant.

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Part II: Gifts, Reimbursements, and Travel Expenses

For you, and your spouse, and dependent children, report the source, a brief description, and the value of: (1) gifts (such and tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260, and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as a personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. **Exclude** anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☐

	Source (Name and Address)	Brief Description	Estimated Value
1			
2			
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4			
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Reporting Individual's Name	Schedule C	Page Number

Part I: Liabilities

None ☐

Report Liabilities over $20,000 owed to any one creditor at **any time** during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliance; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

	Creditor's Name	Type of Liability	Date Incurred	Interest Rate	$20,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000
1							
2							
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Part II: Agreements or Arrangements

None ☐

Report your agreements or arrangements for (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

	Status and Terms of any Agreement or Arrangement	Parties
1		
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Reporting Individual's Name	**Schedule D**	Page Number

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization of educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
1					
2					
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Part II: Compensation in Excess of $25,000 Paid by one Source

Report sources of more than $25,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $25,000. You need not report the U.S. Government as a source.

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

None ☐

	Source (Name and Address)	Brief Description of Duties
1		
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