

August 24, 2026

Office of Government Ethics
1201 New York Avenue NW, Suite 500
Washington, DC 20005

RE: Public Comment on Interim Final Rule: Exempting Certain Career Federal Employees From Ethics Reporting Requirements (Docket ID: GEO-2026-0067-0001; RIN: 3209-AA76)

I am writing this public comment in opposition to Office of Government Ethics (OGE) publication of Interim Final Rule at 91 FR 46239 amending 5 CFR Part 2634 to establish a categorical, schedule-wide exclusion from public financial disclosure (OGE Form 278e) for approximately 6,400 positions transferred into Schedule Policy/Career under Executive Order 14410.

Core Legal Foundations for Judicial Vacatur:

1. Procedural Nullity (5 U.S.C. § 553(b)(B)): OGE's invocation of the "good cause" exception relies on administrative workload caused by executive reclassification schedules. Under established D.C. Circuit precedent, self-imposed executive deadlines constitute "self-inflicted emergencies" that cannot legally satisfy § 553(b)(B) (*Sorenson Commc'ns, Inc. v. FCC*, 755 F.3d 702, 706 (D.C. Cir. 2014)).
2. Substantive Arbitrariness & Record Contradiction (5 U.S.C. § 706(2)(A)): OGE's finding under 5 U.S.C. § 13103(f)(5) that exempting these ~6,400 positions "would not affect adversely the integrity of the Government or public confidence" directly contradicts the Office of Personnel Management's (OPM) formal determination under 5 CFR § 213.3601 that these exact positions perform "confidential, policy-determining, policy-making, or policy-advocating" functions. Under *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983), an agency action resting on irreconcilable factual record contradictions is arbitrary and capricious.
3. Statutory Overreach Post-*Loper Bright*: Following *Loper Bright v. Raimondo*, 144 S. Ct. 2244 (2024), courts owe no deference to OGE's interpretation of its statutory authority. Converting a narrow statutory exemption for an "individual, or group of individuals" into a categorical exclusion for an entire employment schedule exceeds statutory authority under 5 U.S.C. § 13103(f)(5).
4. Article III Informational Standing & Whistleblower Protections: The rule inflicts direct informational injury under *FEC v. Akins*, 524 U.S. 11 (1998), while forcing Designated Agency Ethics Officials (DAEOs) into conflict with Prohibited Personnel Practice protections under 5 U.S.C. § 2302(b)(9)(D).

This public comment is submitted in accordance with Administrative Procedure Act (APA), 5 U.S.C. § 553(c), and Paperwork Reduction Act (PRA) regulations, 5 CFR § 1320.11, as a formal legal submittal to build the Administrative Record for judicial review under 5 U.S.C. § 706.

Additionally, I am formally requesting, under 5 U.S.C. § 553(c), OGE to evaluate, reconcile, and address every empirical counter-analysis, procedural challenge, and viable regulatory alternative set forth herein in the preamble to any final rule. Neglecting to address these points publicly in the Administrative Record renders the final rule and agency action vulnerable to immediate judicial vacatur under 5 U.S.C. § 706(2).

1. Background Context

Prior to July 23, 2026, executive branch positions designated as confidential or policymaking were subject to mandatory public financial disclosure under 5 U.S.C. § 13103(f)(5). Historical exclusions granted under 5 CFR § 2634.203 were strictly limited to:

- Positions at or below GS-13 where DAEOs certified the absence of policymaking duties; or
- Individualized, position-by-position audits for GS-14/GS-15 positions supported by documented job descriptions proving non-policymaking status.

The Interim Final Rule shifts this baseline by establishing a blanket categorical exclusion for ~6,400 senior officials (GS-14 to SES-equivalent) without requiring an individualized position audit or DAEO certification of non-policymaking functions, resulting in a 100% loss of public financial oversight across a reclassified policymaking cohort.

2. Paperwork Reduction Act (PRA) & Regulatory Impact Analysis (RIA) Issues

OGE asserts that processing ~6,400 new OGE Form 278e reports creates an emergency administrative burden costing \$14.6 million. This calculation violates OMB Circular A-4 economic guidelines and Paperwork Reduction Act standards (44 U.S.C. § 3507) through three distinct methodological errors:

- Inflation of Processing Time Metrics via Omission of Form 450 Baselines: Approximately 82% of transferred employees currently submit confidential financial disclosure reports (OGE Form 450) under 5 CFR Part 2634 Subpart I. Ethics officials already review these assets annually. The incremental burden of converting to OGE Form 278e consists solely of public posting compliance, artificially inflating the OGE's \$14.6 million estimate.
- Omission of Automation Efficiencies in Cost Model: OGE's cost modeling assumes manual paper processing, ignoring automated data ingest and conflict-flagging capabilities within the Integrity e-filing system used across CFO Act agencies.
- Assignment of **\$0 Value** to Conflict Risks & Oversight Shifting: OMB Circular A-4 requires agencies to balance compliance costs against unmitigated regulatory risks. OGE assigned a \$0 valuation to the institutional costs of undetected financial conflicts among ~6,400 policy-influencing officials, while omitting the secondary administrative burden shifted onto Inspectors General required to audit unmonitored staff.

3. Core Legal Grounds for Judicial Vacatur

a. Procedural Nullity under APA § 553(b)(B) ("Good Cause" Bypass)

OGE violated the APA by issuing an Interim Final Rule without prior notice and comment. Workload strain from internal executive directives does not constitute an exogenous emergency under § 553(b)(B). See *Sorenson Commc'ns, Inc. v. FCC*, 755 F.3d 702, 706 (D.C. Cir. 2014); *Mack Trucks, Inc. v. EPA*, 682 F.3d 87, 93 (D.C. Cir. 2012) (holding that self-inflicted administrative deadlines do not justify waiving notice-and-comment requirements).

b. Substantive Arbitrariness & The Dual-Classification Paradox (*State Farm Standard*)

Under 5 U.S.C. § 706(2)(A), agency action is arbitrary and capricious if it relies on contradictory factual premises in the record (*State Farm*, 463 U.S. at 43). OPM reclassified ~7,600 positions into Schedule Policy/Career under 5 CFR § 213.3601 specifically because they exercise "confidential, policy-determining, policy-making, or policy-advocating" functions. OGE's determination under 5 U.S.C. § 13103(f)(5) that exempting these same positions "would not affect adversely government integrity" is an unreasoned contradiction. An agency cannot classify civil servants as policymakers to remove civil service protections while simultaneously classifying them as non-policymakers to shield their financial holdings from public view.

c. Statutory Overreach Post-*Loper Bright* (5 U.S.C. § 13103(f)(5))

Under *Loper Bright v. Raimondo*, 144 S. Ct. 2244 (2024), courts independently review statutory boundaries without deference to agency interpretations. Congress enacted 5 U.S.C. § 13103(f)(5) to establish public transparency as the default rule for senior policymaking positions. The statutory exemption permitting OGE to exclude an "individual, or group of individuals" was designed as a narrow exemption for discrete, non-policy roles. Issuing a wholesale exemption for an entire employment schedule comprised of ~6,400 senior officials exceeds statutory authority under EIGA.

d. Article III Informational Standing Anchor (*FEC v. Akins*)

Under *FEC v. Akins*, 524 U.S. 11, 21 (1998) and *Public Citizen v. DOJ*, 491 U.S. 440, 449 (1989), the deprivation of statutorily mandated public disclosure data inflicts a concrete, Article III "informational injury." Categorically exempting ~6,400 officials from OGE Form 278e reporting deprives public citizens and oversight organizations of information Congress mandated be made public, establishing undisputed standing to petition for judicial review under 5 U.S.C. § 702.

e. Conflict with Merit System Protection Principles (5 U.S.C. § 2302(b)(9)(D))

Under 5 U.S.C. § 2302(b)(9)(D), federal employees are statutorily protected when refusing to obey an order that would require them to violate a law. Compelling agency DAEOs to execute schedule-wide disclosure waivers that violate the statutory default of 5 U.S.C. § 13103(f)(5)

creates an unreasoned conflict with merit system protection principles, exposing agencies to retaliation claims from ethics personnel who refuse to process unlawful exclusions.

4. Recommendation: Proposed viable severable alternative of a two-tiered individualized exclusion framework with 180-Day transition bridge

Under *DHS v. Regents of the University of California*, 140 S. Ct. 1891, 1913 (2020), and *Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29, 51 (1983), OGE is legally bound to examine the distinct regulatory option detailed herein within its Final Regulatory Impact Analysis. The agency must provide an independent, data-backed rationale when adopting or declining any single component.

- Component A (Presumptive Public Filing for GS-15 / SES Roles): Transferred positions encumbered at the GS-15, SES, or equivalent levels maintain statutory public disclosure under OGE Form 278e, preserving public transparency for key policy-influencing positions.
- Component B (DAEO Individualized Audit Exemption for GS-14 and Below): For positions encumbered at GS-14 or below, agency DAEOs may grant temporary public disclosure exemptions under 5 U.S.C. § 13103(f)(5) only upon submitting a written position audit certifying that the specific position description lacks independent policymaking or direct regulatory approval authority.
- Component C (180-Day Extension Bridge): Agencies receive a 180-day filing extension bridge, using existing regulatory authority under 5 CFR § 2634.201(f), during which transferred filers submit a confidential OGE Form 450 while DAEO audits are completed, mitigating administrative backlog concerns without granting unsubstantiated, schedule-wide waivers.

Mandatory Severability Requirement: Each component above is structurally independent. Rejecting this framework as an indivisible unit without evaluating and providing a distinct administrative rationale for Component A, Component B, and Component C independently will fail to satisfy the agency's obligation to consider reasonable alternatives under 5 U.S.C. § 706(2)(A).

5. Summary of Actions

Thank you for the opportunity to provide input to this important ethics rule. Government without ethics destroys public trust, enables unchecked corruption, and weakens the core foundations of democracy (Thank you for everything that you do to prevent misconduct). I am asking OGE to provide formal, document-backed responses to the following summary of actions including both action items as well as technical and legal queries in the final rule preamble:

1. Target: Preamble Section II (91 FR 46239) — APA § 553 Good Cause Bypass

- **Identified Defect & Conflict:** Procedural Nullity under 5 U.S.C. § 553(b)(B). Executive Order deadlines and internal administrative workload constitute "self-inflicted emergencies" that cannot legally justify bypassing public notice and comment (*Sorenson Commc'ns, Inc. v. FCC*, 755 F.3d 702, 706 (D.C. Cir. 2014)).
- **Mandatory Agency Action [Action Item 1]:** Rescind the interim final status of the rule and re-issue the rulemaking as a standard Notice of Proposed Rulemaking (NPRM) with a 60-day public comment period to cure APA § 553 notice defects.

Administrative Inquiries:

1. **1.1.** State the specific *exogenous, emergency facts* occurring prior to July 23, 2026—*independent of internal Executive Branch implementation schedules under Executive Order 14410*—that rendered prior notice and comment "impracticable, unnecessary, or contrary to the public interest" under 5 U.S.C. § 553(b)(B).
2. **1.2.** Does OGE contend that an Executive Order issued by the President of the United States constitutes an "exogenous event" outside the control of the Executive Branch for the purposes of APA § 553(b)(B)? If so, cite the judicial authority holding that co-equal components of the same Executive Branch can claim self-created administrative deadlines as external emergencies under *Sorenson*.

2. Target: 5 CFR § 2634.203(e) — The Dual-Classification Conflict (*State Farm*)

- **Identified Defect & Conflict:** Substantive Arbitrariness under 5 U.S.C. § 706(2)(A). Direct contradiction between OPM's formal designation that these roles possess a "confidential or policymaking character" (5 CFR § 213.3601) and OGE's finding under 5 U.S.C. § 13103(f)(5) that exempting them has "no adverse effect on integrity" (*State Farm*, 463 U.S. at 43).
- **Mandatory Agency Actions [Action Item 2 and 3]:**
 - **[Action Item 2]** Withdraw proposed subsection 5 CFR § 2634.203(e) and rescind the categorical, schedule-wide exclusion for Schedule Policy/Career positions.
 - **[Action Item 3]** Publish an interagency reconciliation matrix in the Administrative Record harmonizing OPM's policymaking designation with OGE's non-policymaking exemption finding.

Administrative Inquiries:

1. **2.1.** Does OGE contend that an employee officially designated by OPM under 5 CFR § 213.3601 as possessing a "confidential, policy-determining, policy-making, or policy-advocating" character lacks "policymaking" responsibilities under 5 U.S.C. § 13103(f)(5)?
2. **2.2.** If OGE contends these roles lack policymaking authority, set forth the precise legal definition, empirical criteria, and position description audit standards OGE uses to distinguish OPM "policymaking" from OGE "policymaking."
3. **2.3.** If OGE concedes these positions *are* policymaking in nature, state the evidentiary basis under 5 U.S.C. § 13103(f)(5) for finding that exempting ~6,400 senior policymakers from public disclosure "would not affect adversely the integrity of the Government or public confidence."

3. Target: Preamble Section IV (91 FR 46240) — PRA Metrics & Net Conflict Risk

- **Identified Defect & Conflict:** Methodological Defect under 44 U.S.C. § 3507 and OMB Circular A-4. Fails to account for baseline OGE Form 450 cross-filers and assigns an arbitrary \$0 value to unmitigated conflict-of-interest risks.
- **Mandatory Agency Action [Action Item 4a]:** Re-evaluate the Paperwork Reduction Act (PRA) burden using actual Integrity e-filing system metrics and quantify unmitigated conflict costs within a revised Regulatory Impact Analysis (RIA).

Administrative Inquiries:

1. **3.1.** For the ~82% of affected employees who currently submit confidential Form 450s, state the exact incremental review hours required solely to transition a pre-existing Form 450 asset review to a public Form 278e posting.
2. **3.2.** Cite the specific time-motion studies, empirical survey data, or Integrity e-filing system audit logs relied upon by OGE to calculate the \$14.6 million administrative burden figure. If no empirical audit logs were reviewed prior to promulgation, state the legal basis under 44 U.S.C. § 3507 for adopting that figure.
3. **3.3.** Under OMB Circular A-4, what quantitative or qualitative value did OGE assign to the oversight and deterrent effect of *public* disclosure (Form 278e) versus *confidential* disclosure (Form 450)?
4. **3.4.** If public disclosure provides \$0 incremental conflict-detection value over confidential disclosure, state OGE's statutory rationale under EIGA for maintaining Form 278e reporting for *any* executive branch position.
5. **3.5.** If public disclosure provides greater than \$0 deterrent value, what quantitative methodology did OGE use to value the net increase in unmitigated conflict-of-interest risks resulting from shielding ~6,400 policy-influencing officials from public view?

4. Target: 5 U.S.C. § 13103(f)(5) Scope — Post-*Loper Bright* Statutory Limits

- **Identified Defect & Conflict:** Statutory Overreach under 5 U.S.C. § 706(2)(C). Following *Loper Bright v. Raimondo*, 144 S. Ct. 2244 (2024), OGE receives no deference. Transforming a narrow exemption for an "individual, or group of individuals" into an entire schedule-wide waiver violates the statutory text and renders EIGA's public reporting default impermissibly surplusage.
- **Mandatory Agency Action:** Restore individualized, position-by-position DAEO audits as mandated by EIGA prior to granting any public disclosure exclusion.

Administrative Inquiries:

1. **4.1.** Applying independent judicial interpretation pursuant to *Loper Bright*, state OGE's precise statutory construction of 5 U.S.C. § 13103(f)(5) that authorizes a categorical, schedule-wide exemption for ~6,400 positions.
2. **4.2.** How does OGE interpret the singular statutory phrase "individual, or group of individuals" without rendering EIGA's default mandate of public disclosure for senior civil servants impermissibly surplusage?

5. Target: Regulatory Record & Alternatives — *State Farm & DHS v. Regents Pincer*

- **Identified Defect & Conflict:** Failure to Consider Less Restrictive Alternatives under 5 U.S.C. § 706(2)(A). Under *DHS v. Regents*, 140 S. Ct. 1891, 1913 (2020), an agency's

failure to evaluate a viable, less disruptive alternative submitted in public comments constitutes an automatic ground for judicial vacatur.

- **Mandatory Agency Action [Action Item 4b]:** Formally evaluate and respond to the commenter's Two-Tiered Individualized Exclusion Framework with a Bridge recommendation in the preamble to the Final Rule.

Administrative Inquiries:

1. **5.1.** State OGE's specific operational and legal reasons for accepting or rejecting each element of the proposed **Two-Tiered Individualized Exclusion Framework**:
 - Component A: Mandatory public filing (Form 278e) retained for GS-15, SES, or equivalent senior roles.
 - Component B: Temporary public disclosure exemptions for GS-14 and below granted *only* upon a written DAEO position audit certifying a lack of independent policymaking authority.
 - Component C: 180-Day Extension Bridge: A 180-day transition window during which filers submit confidential Form 450s while position audits are completed.
2. **5.2.** Specifically explain why maintaining public reporting for GS-15/SES senior policymakers cannot be implemented while administrative reviews proceed.
3. **5.3.** If OGE adopts any unpromulgated functional threshold (e.g., procurement authority caps, dollar-value limits, or duty-based carve-outs) in the Final Rule preamble to qualify positions for exemption, cite the specific record evidence supporting that threshold and state how introducing it without prior notice satisfies APA § 553.

OGE's failure to address these numbered queries in its final administrative record will constitute a failure to consider an important aspect of the problem, rendering the final rule vulnerable to challenge under 5 U.S.C. § 706(2).

Respectfully submitted,

Ben