



September 19, 2018  
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LEGAL ADVISORY

TO: Designated Agency Ethics Officials

FROM: Emory A. Rounds, III  
Director

SUBJECT: Annual Public Financial Disclosure Filing Requirements for Employees who  
Change Agencies or Branches of Government

The U.S. Office of Government Ethics (OGE) is issuing this Legal Advisory to provide guidance regarding the annual public financial disclosure report filing obligations for employees who change agencies or move to the Executive branch from another branch of the Federal government. If an employee serves in a public financial disclosure filing position (covered position) for more than 60 days in a calendar year, that employee is required to file an annual public financial disclosure report for that year. *See* 5 U.S.C. app. § 101(d). This obligation remains with the employee even if the employee changes agencies or branches. Therefore, an employee who serves more than 60 days in a covered position and moves to another covered position, without a 30-day break in service, will be required to file an annual public financial disclosure report. *See* 5 U.S.C. app. § 101(d), (e).<sup>1</sup>

Filers sometimes question whether they are required to file an annual report for their previous filing position, in which they served for more than 60 days in the previous calendar year, when they already filed a nominee report covering a similar time period for a new position in which they are currently serving. Even if the employee filed a nominee financial disclosure report for the position the employee currently holds (or any other position), the employee must also file the annual report for the prior position if that employee was in that filing position for more than 60 days in the previous calendar year. *See* 5 U.S.C. app. § 101(a), (d).<sup>2</sup>

**I. Filing Process**

The employee files the required annual public financial disclosure report with the agency with which the employee is employed at the time of filing. *See* 5 U.S.C. app. § 103(a); 5 C.F.R.

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<sup>1</sup> In contrast, if the employee leaves the Federal government or changes agencies or branches with more than a 30-day break in service, the employee is required to file a termination (or combination termination/annual) report with the employee's former agency or branch. *See* 5 U.S.C. app. § 101(e). The employee will also file a new entrant report with the new employing agency. *See* 5 U.S.C. app. § 101(a).

<sup>2</sup> The nominee financial disclosure report only relieves the employee of the obligation to file a new entrant financial disclosure report within 30 days of starting a position. *See* 5 U.S.C. app. § 101(a).



§ 2634.201(a); 5 C.F.R. § 2634.201(b)(2)(ii) note. In cases when an employee moves between covered positions between January 1 and May 15<sup>3</sup> and has not already filed an annual report, OGE suggests as a best practice that the receiving agency encourage the employee to file the required annual report within 30 days of the employee's start date at the new agency to allow for a prompt conflicts review. *See* 5 C.F.R. § 2634.605(b) (discussing review standard). If the employee starts at the new agency after filing an annual public financial disclosure report in the current calendar year with the former agency or branch, the receiving agency should collect that annual report from the employee or the former agency or branch so the receiving agency can complete a conflicts review for the new employee.

If the annual report is filed with the receiving agency, that agency's reviewing official should consult as needed with the appropriate ethics official at the agency or branch the employee left and, if necessary, send a copy of the report to that agency or branch for their review and comment. Final certification responsibility remains with the agency at which the report is filed. *See* 5 C.F.R. § 2634.605(b).

## **II. Examples**

For example,<sup>4</sup> the Secretary of the Treasury served for more than 60 days in the previous calendar year and was appointed in March of the current year to be Chairman of the Board of Governors of the Federal Reserve System ("Federal Reserve Board"). The new Chairman will file an annual report, due May 15 of the current year, with the Federal Reserve Board. The reviewing official at the Federal Reserve Board should consult with and, if necessary, send a copy of the report to the Department of the Treasury's ethics office for its review.

Similarly, an employee who served in a covered position as the Chief of Staff for the Senate Committee on Agriculture, Nutrition, and Forestry (Senate Committee on Agriculture) for more than 60 days during the previous calendar year, and who was appointed by the President and confirmed by the Senate to be Under Secretary of Agriculture for Rural Development in March of the current year, should file an annual report with the Department of Agriculture. The reviewing official at the Department of Agriculture may consult with and/or send a copy of the report to the Senate Select Committee on Ethics.

In contrast, if a Department of Agriculture employee served in a filing position with the Food & Drug Administration (FDA) for more than 60 days in the previous calendar year and filed an annual report covering the previous year with the FDA, the ethics official with the Department of Agriculture should ask the employee or the FDA ethics office for a copy of the annual financial disclosure report and ask the employee if there are any significant changes in order to complete a conflicts review.

## **III. OGE Review**

Finally, the annual report of an employee who changed agencies and is now serving in a Presidentially appointed, Senate-confirmed position (PAS position) or qualifying White House position should be sent to OGE only if employee held a position as of December 31 of the

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<sup>3</sup> The employee must have served more than 60 days in the previous calendar year and not had a break in service of more than 30 days between the previous position and the current position.

<sup>4</sup> See the attachment for timelines that illustrate the examples.

previous year that was a position for which OGE review is required.<sup>5</sup> *See* 5 C.F.R. § 2634.602(c)(1). For example, with regard to the Federal Reserve Chairman discussed above, because the filer served in a PAS position for more than 60 days in the previous year and ended the year in a PAS position, the agency must send the annual report to OGE once the Federal Reserve Board has certified the report. By contrast, in the Under Secretary of Agriculture example, the Department of Agriculture would not send the report to OGE because the filer did not serve in a position for more than 60 days in the previous year for which OGE review is required.

#### **IV. Questions**

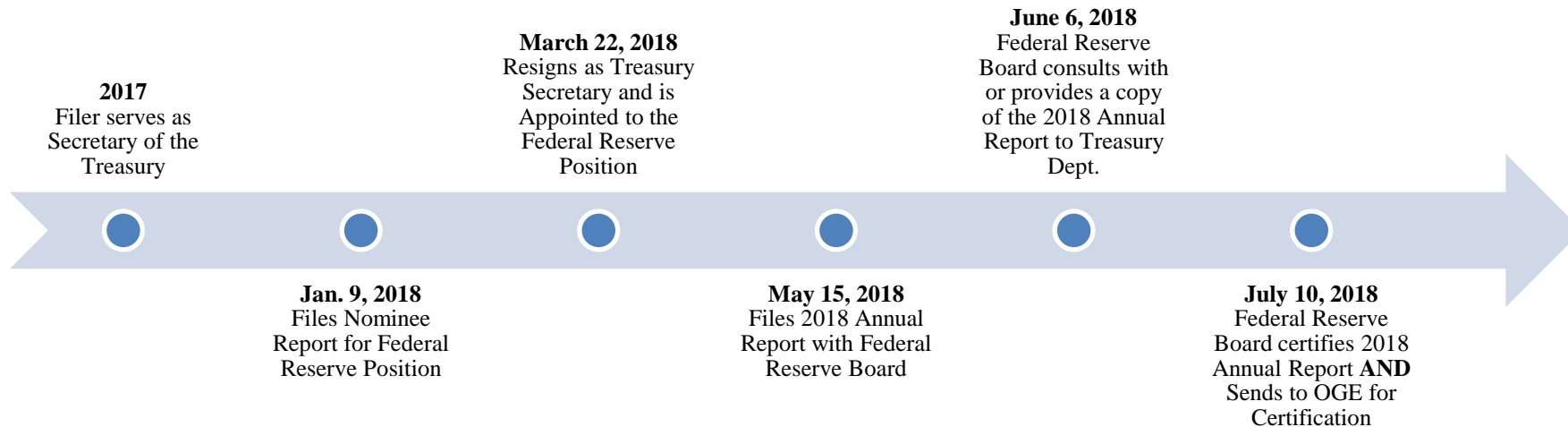
Agency ethics officials who have questions about this Legal Advisory should contact their OGE Desk Officer.

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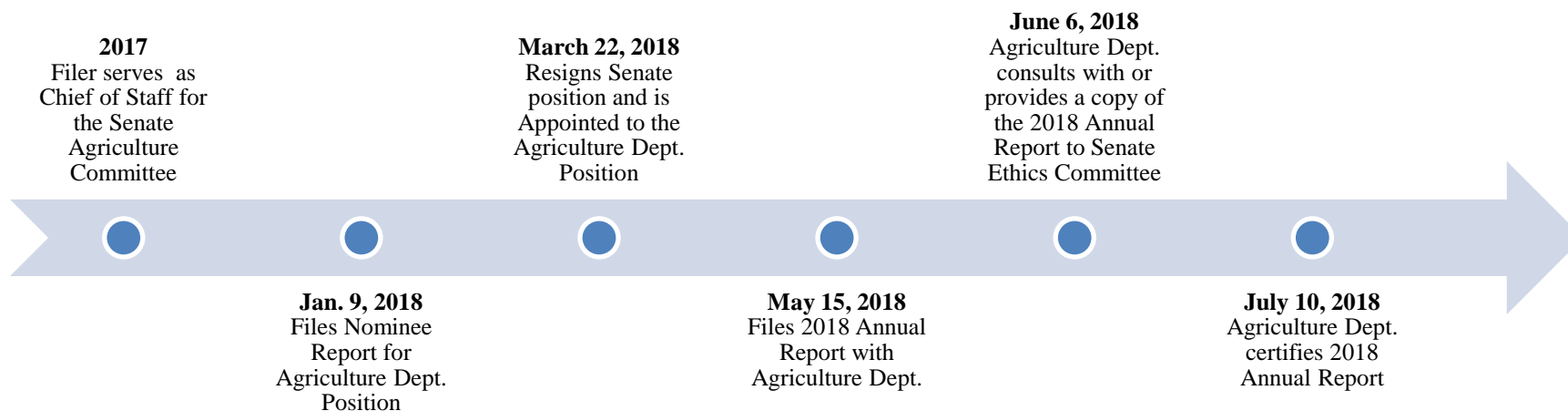
<sup>5</sup> For PAS officials: If the filer's previous position was not as a PAS official, the agency's *Integrity* administrator will need to create a filing position for that employee in the General 278 workflow in *Integrity* for the annual report so that the annual report is not sent to OGE for certification. This is in addition to the employee's filing position in *Integrity* in the PAS/DAEO workflow. For guidance regarding switching a report that has already been started from the PAS workflow to the General 278 workflow *see* U.S. OFFICE OF GOV'T ETHICS, *INTEGRITY* USER GUIDE 127, § 6.4.8 (2018).

**Attachment**

**Timeline: Treasury Secretary Who Becomes Chairman of the Board of Governors of the Federal Reserve System**



**Timeline: Senior Senate Staffer Who Becomes Under Secretary of Agriculture for Rural Development**



**Attachment**

**Timeline: Food & Drug Administration Employee Who Becomes A Department of Agriculture Employee**

