



December 4, 2018
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MEMORANDUM

TO: Designated Agency Ethics Officials

FROM: Emory A. Rounds, III
Director

SUBJECT: Release of OGE's Updated *Public Financial Disclosure Guide* and *Confidential Financial Disclosure Guide*

The U.S. Office of Government Ethics (OGE) has released an updated *Public Financial Disclosure Guide* (Public Guide) and an updated *Confidential Financial Disclosure Guide* (Confidential Guide). The updated guides incorporate the changes necessitated by the recent revision of 5 C.F.R. part 2634,¹ and provide comprehensive guidance on completing an Executive branch financial disclosure report. Both guides are available in Adobe Portable Document Format (PDF) on OGE's website.² At year-end, OGE will replace the current version of the web-based Public Guide with the updated web-based version.³ The guidance will be applicable to financial disclosure reports filed on or after **January 1, 2019**.

The new guides contain OGE's interpretation of filing and review requirements and best reporting practices under the Ethics in Government Act, the Stop Trading on Congressional Knowledge Act, and the revised 5 C.F.R. part 2634. As a result, the guides differ in a number of places from OGE's earlier issuances. The attached table provides a detailed list of the changes, and some of the more significant changes are explained below.

The most significant change in the revised 5 C.F.R. part 2634 was to make the regulation consistent with the Ethics in Government Act by requiring the reporting of only "received" income rather than income that was "received or accrued," which led to changes in both guides.⁴ The updated guides provide that a filer has "received income when the filer has the right to exercise control over the income regardless of whether the filer has taken actual possession."⁵

¹ See 83 Fed. Reg. 33,980 (July 18, 2018).

² U.S. OFFICE OF GOV'T ETHICS, PUBLIC FINANCIAL DISCLOSURE GUIDE (2019) [hereinafter PUBLIC GUIDE], [https://www.oge.gov/web/OGE.nsf/Resources/Public+Financial+Disclosure+Guide+\(2019\)](https://www.oge.gov/web/OGE.nsf/Resources/Public+Financial+Disclosure+Guide+(2019)); U.S. OFFICE OF GOV'T ETHICS, CONFIDENTIAL FINANCIAL DISCLOSURE GUIDE (2019) [hereinafter CONFIDENTIAL GUIDE], [https://www.oge.gov/web/OGE.nsf/Resources/Confidential+Financial+Disclosure+Guide+\(2019\)](https://www.oge.gov/web/OGE.nsf/Resources/Confidential+Financial+Disclosure+Guide+(2019)).

³ U.S. OFF. GOV'T ETHICS: PUB. FIN. DISCLOSURE GUIDE, <https://www.oge.gov/Web/278eGuide.nsf>.

⁴ OGE previously required filers to report income that was "received or accrued to their benefit."

⁵ CONFIDENTIAL GUIDE, *supra* note 2, at 29; *see also* PUBLIC GUIDE, *supra* note 2, at 314.



The guides provide asset-by-asset instructions regarding income that is reportable under this new standard. This change will affect filers most when reporting income produced by assets in retirement accounts and college savings plans (529 plans). Filers will no longer be required to report income as it accrues in these accounts, but instead will be required to report the distributions they are receiving from these accounts.

Some of the other significant changes regarding the reporting of income appear in the sections on reporting deferred compensation, investment funds, and trusts. For deferred compensation, filers will report income when they receive a cash payment. For the revocable trust of the filer, filer's spouse, or filer's dependent child, or for one from which the filer, spouse, or dependent child is receiving mandatory distributions, the filer will report the assets and income generated by those assets as if the assets were held directly by the person. For a trust, the filer must determine if the value of an asset held in trust or the income from that asset is ascertainable. If it is ascertainable, information should be reported on an asset-by-asset level. If either the income or value is not ascertainable, then the filer may report what is unascertainable at the asset level at the trust level instead. For investment funds that do not qualify as excepted investment funds, the filer must report at the asset level if the income and value are ascertainable at that level.

In addition, OGE revised the definition of the "widely diversified" criteria with respect to excepted investment funds to make it more consistent with the standard used in the exemption for diversified mutual funds found in 5 C.F.R. part 2640. A fund now qualifies as "widely diversified" if "it does not have a stated policy of concentrating its investments in any industry, business, or single country other than the United States or bonds of a single state within the United States."

Both guides also contain the following changes:

- Clarify that a good faith estimate of value should not be used when an exact value is readily available.
- Provide that filers who report incentive stock options, restricted stock units, and other employment-related equity based compensation will need to indicate if the award is vested or unvested in the "Description" field.
- Add an entry on the reporting of virtual currency.
- Clarify that filers must report all liabilities for which the filer is personally liable, even if the liability is related to an ongoing trade or business.

The updated Confidential Guide:

- Reflects the increased threshold for reportable income of over \$1,000.
- No longer requires the reporting of an agreement to participate in a defined contribution plan to which the former employer is no longer contributing.
- No longer requires the reporting of a diversified fund held in an employee benefit plan.
- No longer requires new entrant filers to report holdings valued below the \$1,000 reporting threshold, even if those holdings generated over \$1,000 in income prior

to the filing date (*e.g.*, a stock that was sold prior to the filing date that generated reportable capital gains).

- No longer allows the use of the OGE Form 450-A as the default alternative filing procedure. Agencies instead can propose alternative filing systems to OGE for consideration and approval.

OGE intends for the guides to be living documents to the extent that they may change over time as the government ethics community encounters new financial instruments. In addition, OGE will update the guides as legal interpretations of applicable financial disclosure requirements evolve. Agency ethics officials may contact their OGE Desk Officers if they have questions about content in the new guides, if they identify any errors or unclear language, or if they have suggestions for additional content or future revisions. Other stakeholders may provide feedback by emailing OGE at *ContactOGE@oge.gov*.

Attachment 1: Highlighted Changes to the Public Financial Disclosure Guide

Section of Guide	Changes
Definitions: Confidential Clients	Revised text to follow the revised regulatory text more closely.
Definitions: Excepted Investment Fund	Explains the revised “widely diversified” criteria with respect to excepted investment funds.
Definitions: Received	Defines “receipt of income” and provides general guidance. Of particular note, income is treated as received from a tax-deferred account/plan when distributions are made; however, dividends, capital gains, and other income within a regular, taxable account are received regardless of whether funds are transferred out of the account.
Definitions: Reporting Periods	Explains the revised reporting period applicable to Termination reports. The difference applies primarily to filers who terminate prior to completing a first Annual report.
Definitions: Valuation of Assets	Clarifies guidance on valuing assets, noting that a good faith estimate should not be used for threshold purposes when the filer can easily obtain the actual value.
Definitions: Valuation of Gifts and Travel Reimbursements	Revises guidance on valuing gifts and reimbursements, in particular gifts of free attendance.
Parts 2, 5, and 6: Various items	Explains the receipt standard for income applies to specific types of entries. In particular, as examples of the new guidance, see the entries for Annuity (fixed); Annuity (variable); Brokerage Account; College Savings Plan; Deferred Compensation; Defined Contribution Plan; Investment Fund; IRA, Roth IRA, SEP IRA, or Keogh Plan; Stock; Trust (irrevocable); Trust (revocable); and Will or Estate.
Various	Clarifies that filers apply the relatedness test when determining whether to report the assets held by an operating business. Filers need not report liabilities owed by a business, unless the filer, the filer’s spouse, or a dependent child is also personally liable.
Parts 2 and 5: Carried Interest	Clarifies that filers must report the underlying assets on which a carried interest is based, unless those assets are otherwise disclosed as part of a direct equity interest. In addition, requires filer to provide basic information about how the carried interest is calculated if a value has not been specified.
Parts 2 and 5: Incentive Stock Options, Phantom Stock, Restricted Stock, Restricted Stock Units, Stock Appreciation Rights	Explains that filers must indicate whether the equity compensation is vested even if a value category has been selected.
Part 6: Trust (irrevocable)	Explains the new regulatory text with respect to current and future interests in trusts.

Section Of Guide	Changes
Part 6: Trust (revocable)	Clarifies that a revocable trust is reported in the same manner as an irrevocable trust if the filer, spouse, or a dependent child receives mandatory distributions from a third party's revocable trust.
Part 7	Notes the new reporting exclusion for transactions occurring before the filer became a public filer.
Part 8	Makes clear that installment loans are reportable.
Part 8	Revises credit card example to require a description of the rate terms, consistent with the existing instructions.
Part 9	Notes the new reporting exclusion for travel reimbursements from a non-federal employer.
For Ethics Officials, 1.02: Officials Required to File	Discusses the new exclusion process for non-policy-making Schedule C positions.
For Ethics Officials, 1.02: Types of Reports and Filing Deadlines	Addresses early filing of Termination reports and elaborates on guidance applicable to filers moving between positions.
For Ethics Officials, 4.01: Certification Requirements	Notes that certification also includes a determination that no interest or position disclosed on the form violates or appears to violate any other applicable Executive Order in force at the time of the review.
For Ethics Officials, 4.02: Review Timeframes	Explains the new standards with regard to review timeframes. In particular, requests for additional information require a response within 30 days unless a written extension is granted.
For Ethics Officials, 4.05: Report Amendments and Annotations	Addresses amendments to reports after certification.
For Ethics Officials, 4.10: Special Procedures for PAS Nominees	Adds a brief overview of the review process for PAS nominees.

Attachment 2: Highlighted Changes to the Confidential Financial Disclosure Guide

Section of Guide & Heading	Changes
Various Sections	Explains the revised reporting periods for New Entrant reports.
1 - Officials Required to File	Explains the revised regulatory criteria for when a special Government employee is subject to confidential filing. Recommends that filing exclusions be documented in writing.
1 - Confidential Financial Disclosure Forms	Explains that the OGE Optional Form 450-A has been discontinued.
1 - Extensions	Recommends that extensions be documented in writing. Explains the now-automatic extension for service in a combat zone or service during a period of national emergency.
2 - Use of Brokerage Statements and Attachments	Gives agencies the option of approving (or rejecting) the use of brokerage statements and attachments that otherwise provide the information required by the OGE Form 450.
2 - Part I: Assets and Income	Notes the increase in the income reporting threshold to \$1,000. Defines “receipt of income” and provides general guidance. Of particular note, income is received from a tax-deferred account/plan when distributions are made; however, dividends, capital gains, and other income within a regular, taxable account are received regardless of whether funds are transferred out of the account. Clarifies guidance on valuing assets, noting that a good faith estimate should not be used for threshold purposes when the filer can obtain the exact value without undue hardship or expense. Notes the new reporting exclusions for diversified funds in employee benefit plans. Explains the revised “widely diversified” criterion with respect to excepted investment funds.
2 - Part II: Liabilities	Makes clear that installment loans are reportable.
2 - Part IV: Agreements or Arrangements	Added an exception to the reporting for defined contribution plans to which a former employer is not contributing and notes that continuing payments from and participation in plans with a current employer are reportable.
2 - Part V: Gifts and Travel Reimbursements	Notes that a single threshold now applies to gifts and travel reimbursements. Revises guidance on valuing gifts and reimbursements, in particular gifts of free attendance.
3 - Certification Requirements	Notes that certification also includes a determination that no interest or position disclosed on the form violates or appears to violate any other applicable Executive Order in force at the time of the review.

Section of Guide & Heading	Changes
3 - Review Timeframes	Explains the new standards with regard to review timeframes. In particular, that requests for additional information must require a response within 30 days unless a written extension is granted.
3 - Reviewer Notes and Annotations	Addresses amendments to reports after certification.
4 - Various	Explains how the new reporting period for New Entrants and the receipt standard for income apply to specific types of entries. In particular, as examples of the new guidance, see the entries for Annuity (fixed); Annuity (variable); Brokerage Account; College Savings Plan; Deferred Compensation; Defined Contribution Plan; Investment Fund; IRA, Roth IRA, SEP IRA, or Keogh Plan; Stock; Trust (irrevocable); Trust (revocable); and Will or Estate.
	Clarifies that filers apply the relatedness test when determining whether to report the assets held by an operating business. Filers need not report liabilities owed by a business, unless the filer, the filer's spouse, or a dependent child is also personally liable.
4 - Carried Interest	Clarifies that filers must report the underlying assets on which a carried interest is based, unless those assets are otherwise disclosed as part of a direct equity interest.
4 - Farm or Farmland	Addresses active ownership interests in farms and passive interests in farms or farmland as separate entries.
4 - Incentive Stock Options, Phantom Stock, Restricted Stock, Restricted Stock Units, Stock Appreciation Rights	Explains that filers must indicate whether the equity compensation is vested.
4 - Real Estate Holding Company	Addresses real estate holding companies with a new entry.
4 - Small Business	Addresses active and passive ownership interests in small businesses as separate entries.
4 - Trust (irrevocable)	Explains the new regulatory text with respect to current and future interests in trusts.
	Clarifies that a revocable trust is reported in the same manner as an irrevocable trust if the filer, spouse, or a dependent child receives mandatory distributions from a third party's revocable trust.
4 - Virtual Currency	Addresses virtual currency with a new entry.