



United States
Office of Government Ethics
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MEMORANDUM FOR DESIGNATED AGENCY ETHICS OFFICIALS

FROM: STEPHEN D. POTTS
DIRECTOR

SUBJECT: Publication of new regulation on public and confidential financial disclosure and new standard form for confidential financial disclosure

A. Background and Effect

Title II of the Ethics Reform Act of 1989 made several changes to the public financial disclosure system and the procedures for qualified blind and diversified trusts in the executive branch. It also authorized, and Section 201(d) of Executive Order 12674 directed, the establishment of a revised uniform system of confidential financial disclosure for the executive branch. To implement these new requirements, OGE published an interim regulation on April 7, 1992, in the Federal Register (57 FR 11800- 11830), after extensive consultation with the Department of Justice and the Office of Personnel Management over the past two years. A copy of that regulation is enclosed.

Additionally, we will be publishing a notice in the Federal Register during the week of April 13, concerning a draft new standard form for confidential financial disclosure, which we have submitted to the Office of Management and Budget for paperwork reduction approval and to GSA for standard form approval. This form will be used by all executive branch agencies for their confidential filers, once it is approved as a standard form and the new regulation on confidential disclosure becomes effective. OGE was explicitly empowered to promulgate such a standard form by the terms of the Reform Act. A draft copy is enclosed. Any comments should be submitted within 30 days.

The regulation, on which any comments must be submitted within 60 days, combines guidance for the public and confidential systems into a single rule, to be codified at 5 CFR part 2634. As an interim rule, it immediately replaces current subparts A - I of 5 CFR part 2634 on public financial disclosure and qualified trusts. The revised public system became effective in January 1991, and it has been in use since then with the revised SF 278 and instructions which this Office issued last year.

Those portions of the interim regulation pertaining to confidential financial disclosure will not become effective until October 5, 1992, which is 180 days following Federal Register publication. That delayed effective date is designed to allow for an orderly transition to the new uniform confidential system and for the new confidential standard form to be finalized and stocked through GSA. Upon the interim regulation's effective date for the new confidential

disclosure system, OPM's subpart D and § 735.106 of 5 CFR part 735 pertaining to the current confidential disclosure system will automatically be replaced, and agency regulations implementing those sections will be superseded. Likewise, the OPM model formats and agency forms based thereon which are currently being used to collect confidential financial disclosures from both regular and special Government employees will be superseded. Because the new regulation will eliminate portions of 5 CFR part 735 and the OPM model formats for confidential disclosure, OPM has jointly issued the new interim regulation with OGE.

B. General Substance and Purpose

Changes to the public financial disclosure system and to the qualified trust program which the new interim regulation implements are based primarily on the statutory requirements of the Reform Act, as incorporated into the revised SF 278 and its accompanying instructions which this Office issued last year. We have previously summarized them in OGE's DAEO-grams of December 18, 1989, and May 17, 1990, which discussed all changes made by the Ethics Reform Act of 1989. Additionally, these modifications were highlighted in OGE's Government Ethics Newsgram in the Winter/Spring 1990 edition and the Summer 1990 edition. We also issued a DAEO-gram on January 10, 1991, which summarized the changes in the revised SF 278; a DAEO-gram on April 9, 1991, which discussed procedures for collection of the late filing fee authorized by the Reform Act; and a DAEO-gram on December 19, 1991, which provided guidance on a further statutory amendment to the thresholds for reporting gifts and reimbursements, effective January 1, 1992.

The new uniform confidential financial disclosure system is based on the public system, to the extent practicable. A decision to link the two systems resulted from the comments which we received following our publication in the Federal Register of a proposed confidential disclosure rule on December 2, 1986, at 51 FR 43359-43365. Additionally, the Reform Act and Executive Order 12674 suggested a confidential system designed to complement the public system.

In furtherance of this purpose, the interim regulation sets out core information common to both the public and the confidential systems, including definitions of terms; statement of philosophy; and detailed disclosure guidance applicable to both systems, such as scope of reportable items, dollar thresholds, exclusions, illustrations, filing procedures, ethics agreements, filing extensions, review, and penalties. Separate subparts of the regulation offer specific guidance unique to each system, including who files, which financial information elements apply, reporting periods, due dates, and to whom completed reports may be released.

C. The New Confidential Disclosure System and Standard Form

The new uniform confidential financial disclosure system and standard form are designed to be comprehensive enough to satisfy the purposes of disclosure for covered middle grade employees and special Government employees and to achieve the goal of uniformity, yet simple enough not to unnecessarily intrude on employee privacy or create added review burdens for agencies. Although modeled after the public disclosure system, the new confidential disclosure system and standard form will be less extensive in several important respects. For example, the confidential system and form:

- will not require disclosure of any values or amounts;

- will require disclosure of purchases, sales, and exchanges of assets (transactions);
- will require separate detailed disclosure of sources of earned income exceeding \$5,000;
- will require termination reports.

The new confidential disclosure system and standard form will, when effective on October 5, 1992:

- establish a uniform confidential disclosure system and a single standard disclosure form throughout the executive branch for both regular and special Government employees who are covered, with supplementation by agencies only when necessary for unique circumstances or special agency responsibilities, as approved by OGE;
- establish dollar thresholds for confidential disclosure which parallel the public system (the current confidential system generally has no de minimus exclusions);
- specify confidential disclosure elements to include assets, income sources, gifts, liabilities, private employment agreements and arrangements, and outside positions, reflecting an expansion which was recommended by Congress and GAO;
- expand the confidential reporting period from the current snapshot of interests held on the reporting date to coverage of the preceding one year period for both new entrant and annual reports;
- continue the current practice of requiring confidential disclosures covering the filer, spouse and children on certain schedules, but make it parallel with the public system which applies to dependent children, not minor children; and delete the current requirement for disclosures covering other "blood relatives who are residents of the employee's immediate household";
- standardize the confidential reporting due dates throughout the executive branch, with new entrant reports to be filed not later than 30 days after entering a covered position (or earlier if the agency needs disclosures to determine suitability), and annual reports due October 31 each year for the period through September 30;

(Note: In response to agency comments expressed at OGE's three-day ethics conference last fall, an October due date for annual confidential reports is being established to ease agency review burdens by avoiding overlap with the collection and review of the SF 278 public financial disclosure reports, which are due in May each year.)

- require annual reports of all covered confidential filers if the incumbent serves more than 60 days in the 12 months preceding September 30;
- continue the current practice of requiring all new entrants in covered positions to file, regardless of anticipated length of service;
- continue the current practice of allowing agencies to designate which positions, within the pay grade limitations, require confidential disclosure filing, using similar criteria as in the current system: positions involving personal and substantial participation in certain

sensitive agency responsibilities; continue the current practice of covering all special Government employees, unless they file public reports or are specifically exempted by their agency; and cover certain public filers where agencies determine, with OGE approval, that supplemental confidential information is necessary;

- establish general pay grade boundaries for those positions with sensitive responsibilities which agencies can designate as confidential filers at GS-15 and below (plus comparable grades) and 0-6 and below, without the current GS-13 floor (Note: This floor had been waived by OGE under the current system, for agencies who so requested).

D. The Phase-in Process

To the extent feasible, we want to minimize overlaps between, or gaps in, reporting periods as the new confidential reporting system is phased in. Agencies may choose to proceed with any planned annual confidential disclosure collections under their current system during the next few months prior to the new uniform system's effective date, in which case OGE will not object if they wish to waive the filing requirement under the new system for October 31, 1992.

Alternatively, agencies may choose to suspend all future annual filings under their current confidential disclosure system, in anticipation of collecting under the new system on October 31. As necessary, we will provide additional guidance to ease the transition process and to advise agencies on eliminating their superseded confidential disclosure regulations and forms.

We anticipate that the new standard form can be approved and adequately stocked by GSA in time for agencies to begin using it when the confidential disclosure provisions of the new interim regulation take effect on October 5, 1992. As soon as it has been approved and stocked by GSA, we will advise you as to how it may be requisitioned. The enclosed draft copy of the proposed standard form is NOT to be used for financial disclosure collections prior to October 5; it is being provided solely for your examination in connection with our submission to OMB for paperwork reduction approval.