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Financial Disclosure in the U.S. Government: Frequently Asked Questions

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SUMMARY

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Financial Disclosure in the U.S. Government: Frequently Asked Questions

Federal government officials and employees, when taking official action, are expected to "put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department" (H.Con.Res. 975 [1958], 72 Stat. B12). Using these guiding principles, Congress enacted the Ethics in Government Act of 1978 (EIGA), which created the current government ethics program to "preserve and promote the integrity of public officials and institutions" (P.L. 95-521, 92 Stat. 1824 [1978]).

Although federal officials may have outside personal "interests" that might present conflicts of interest, the EIGA and corresponding regulations focus specifically on regulating outside, personal *financial* interests. As amended, the EIGA (5 U.S.C. Appendix §§101-112) requires, among other things, covered employees to file annual financial disclosure statements that report "income, gifts, liabilities, property—both real property and business-related personal property—positions in business enterprises and other organizations and also any agreements relating to post-Government employment."

The annual financial disclosure statements serve as the basis of the government's review and analysis of covered individuals' real and perceived conflicts of interest. After a brief discussion of conflict of interest and federal ethics laws, this report answers several frequently asked questions about ethics and financial disclosure in the U.S. government. The questions are as follows:

- What is financial disclosure?
- Who files financial disclosure?
- When are financial disclosure forms submitted?
- What information is included in a financial disclosure statement?
- What are Periodic Transaction Reports (PTR)?
- Can an individual receive an exemption from financial disclosure?
- How are financial statements used by government agencies to identify and remediate conflicts of interest?
- Can the public get copies of financial disclosure forms?

For more information on financial disclosure and ethics in government, see CRS In Focus IF12019, *Executive Branch Ethics and Financial Disclosure Administration: The Role of Designated Agency Ethics Officials (DAEOs)*, by Jacob R. Straus; CRS In Focus IF11904, *Financial Disclosure: Identifying and Remediating Conflicts of Interest in the Executive Branch*, by Jacob R. Straus; and CRS Testimony TE10073, *Examining Stock Trading Reforms For Congress*, by Jacob R. Straus.

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History of Conflicts of Interest in Government

In the *Federalist Papers*, Alexander Hamilton addressed the potential for rulers to abuse their power at the expense of the collective good. He wrote

> Men of this class, whether the favorites of a king or of a people, have in too many instances abused the confidence they possessed; and assuming the pretext of some public motive, have not scrupled to sacrifice the national tranquility to personal advantage or personal gratification.[1]

Hamilton's observations about the potential for conflicts of interest among leaders are still of concern for government decisionmakers. In an attempt to discourage financial conflicts of interest, American public service is predicated on the principle that decisions, advice, and recommendations made by public officials ought to be free from personal financial interests.[2] In 1958, the House Committee on the Judiciary's Subcommittee No. 5 described the balance between officers' and employees' personal and government interests. It said

> Every Federal employee serves not one but many masters. He is allied with a whole complex of interests and groups, which may conflict among themselves. His loyalty to his family, his church, his lodge, his trade association or union, his veterans' organization, and his political party do not per se disqualify him for service to his Government. Nor does conflict of interest sterilize the Federal employee in his direct dealings with the Government. Like any other citizen, he is free to protest his tax bill, and to prosecute his own claims against the United States.
>
> Manifestly, the principle proscribing conflicts of interests is aimed not at these normal multiple allegiances of employee-citizens or at direct controversies between them and their employer-Government, but only at such activities as will impair the integrity of the Federal service and deprive the Government of the full performance for which it has bargained.[3]

Historically, the federal government dealt with financial conflicts of interest using an ad hoc approach, adopting statutes "one at a time, over a long period of time, in response to specific evils which, from time to time were important political issues."[4] One of the first conflict of interest laws was enacted after a Civil War-era procurement scandal to prohibit "a Government official interested in the pecuniary profits of a business entity from acting as an officer or agent of the United States for the transaction of business with that business entity."[5]

Since the late 1950s, interest has increased in ethics, beginning with Congress's adoption of a general Code of Ethics for Government Service in the 85th Congress (1957-1958).[6] Then, in the

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[1] Alexander Hamilton, "Federalist No. 6: Concerning Dangers from Dissensions Between States," *The Federalist Papers*, at https://guides.loc.gov/federalist-papers/text-1-10#s-lg-box-wrapper-25493272.

[2] U.S. Congress, House Committee on the Judiciary, *Bribery, Graft, and Conflicts of Interest*, report to accompany H.R. 8140, 87th Cong., 1st sess., July 20, 1961, H.Rept. 87-748, pp. 4-6. (Hereinafter, House Committee on the Judiciary, *Bribery, Graft, and Conflicts of Interest* (1961)).

[3] U.S. Congress, House, Committee on the Judiciary, *Federal Conflict of Interest Legislation: A Staff Report to Subcommittee No. 5, parts I and II*, 85th Cong., 2nd sess., March 1, 1958, p. 1.

[4] House Committee on the Judiciary, *Bribery, Graft, and Conflicts of Interest* (1961), pp. 3-4

[5] House Committee on the Judiciary, *Bribery, Graft, and Conflicts of Interest* (1961), p. 4. In 1861, Congress created a prohibition and penalties on Members of Congress for "taking considerations for procuring contacts" [12 Stat. 577, Chapter 180, (1862)]. In 1863, the same prohibitions and penalties that applied to Members of Congress were extended to "any agent of the Government of the United States." [12 Stat. 696, Chapter 61 (1863)].

[6] 72 Stat. B12, H.Con.Res. 175. The standards included in the Code of Ethics for Government Service are still recognized as continuing ethical guidance in the House and Senate. They are, however, not legally binding because the code was adopted by congressional resolution, not by public law. The Code of Ethics for Government Service is cited

early 1960s, President John F. Kennedy stated that not all government employees were placing the interests of the United States ahead of their own. In a special message to Congress, he stated that

> in the past two decades, incidents have occurred to remind us that the laws and regulations governing ethics in government are not adequate to the changed role of the Federal Government, or to the changing conditions of our society. In addition, many of the ethical problems confronting our public servants have become so complex as to defy easy common sense solutions on the part of men of good will seeking to observe the highest standards of conduct, and solutions have been hindered by lack of general regulatory guidelines. As a result many thoughtful observers have expressed concern about the moral tone of government, and about the need to restate basic principles in their application to contemporary facts.[7]

In part because of the absence of a government-wide ethics law, President Kennedy responded to past incidents of unethical behavior by issuing an executive order.[8] This executive order included provisions for behavior by government employees that would generally mirror the principle of government employees putting the government ahead of their own interests.[9] President Kennedy's executive order was followed by ethics executive orders issued by his successors,[10] eventually followed by the passage of the Ethics in Government Act of 1978 (EIGA).[11]

Federal Financial Disclosure Laws

Federal government officials and employees, when taking official action, are expected to place "loyalty to the Constitution, laws and ethical principles above private gain."[12] To prevent real and perceived financial conflicts of interest, federal law prohibits government employees from participating "personally and substantially" in any covered activity in which the employee or the employee's spouse, minor child, general partner, or previous organization has a financial interest.[13] In a May 1977 message to Congress, President Jimmy Carter announced the release of

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by many House and Senate investigations. For example, see U.S. Congress, House Committee on Standards of Official Conduct, *Investigation of Certain Allegations Related to Voting on the Medicare Prescription Drug, Improvement, and Modernization Act of 2003*, 108th Cong., 2nd sess., H.Rept. 108-722, October 4, 2004, p. 38.

[7] U.S. President (Kennedy), "Special Message to the Congress on Conflict-of-Interest Legislation and on Problems of Ethics in Government," *Public Papers of the Presidents of the United States: John F. Kennedy, 1961*, p. 326.

[8] U.S. President (Kennedy), Executive Order 10939, "To Provide a Guide on Ethical Standards to Government Officials," 26 *Federal Register* 3951, May 5, 1961.

[9] For example, see previous laws to restrict individuals from working on the same matters in the private sector after their government service that they worked on for the government (today, 18 U.S.C. §207) in U.S. Congress, Senate Committee on the Judiciary, *Conflicts of Interest*, hearing on H.R. 8140, 87th Cong., 2nd sess., June 21, 1962, pp. 57-58, 62-63, 65, and 68.

[10] See, U.S. President (Lyndon B. Johnson), Executive Order 11222, "Prescribing Standards of Ethical Conduct for Government Officers and Employees," 30 *Federal Register* 6469, May 11, 1965; and U.S. President (Nixon), Executive Order 11590, "Applicability of Executive Order No. 11222 and Executive Order No. 11478 to the United States Postal Service and of Executive Order No. 11478 to the Post Rate Commission," 36 *Federal Register* 7831, April 23, 1971. Following the enactment of the Ethics in Government Act of 1978, each President has issued an ethics executive order. For more information on these orders, see "Other Guidance and Policy," and "Executive Branch Ethics Pledges," in CRS Report R44974, *Ethics Pledges and Other Executive Branch Appointee Restrictions Since 1993: Historical Perspective, Current Practices, and Options for Change*, by Jacob R. Straus.

[11] P.L. 95-521, 92 Stat. 1824 (1978); 5 U.S.C. Appendix §§101-112.

[12] 5 C.F.R. §2635.101(a).

[13] 18 U.S.C. §208. For a further discussion of the history of financial conflict of interest laws, see House Committee on the Judiciary, *Bribery, Graft, and Conflicts of Interest* (1961), pp. 12-13; and U.S. Congress, Senate Committee on the

information on his financial interests and said he would require the same of his appointees to "assure that [the] ... government is devoted exclusively to the public interest."[14] In 1978, Congress enacted the EIGA, which created the current ethics program to "preserve and promote the integrity of public officials and institutions."[15]

As amended,[16] the EIGA requires, among other things, covered employees to file annual financial disclosure statements that report "income, gifts, liabilities, property—both real property and business-related personal property, positions in business enterprises and other organizations and also any agreements relating to post-Government employment."[17] As one study phrased it, "the Ethics in Government Act of 1978 [is] a reflection of one of our nation's most fundamental aspirations for government: that official decisions should be made in the interests of the common good, not in the narrow self-interests of the individuals in power."[18]

On April 4, 2012, President Barack Obama signed the Stop Trading on Congressional Knowledge (STOCK) Act.[19] The STOCK Act, as amended, affirms that Members of Congress, congressional employees, and other federal officials are not exempt from "insider trading" laws and regulations.[20] The STOCK Act also amended the EIGA to require covered individuals (primarily those who already file financial disclosure statements) to file periodic transaction reports with their supervising ethics office within 30 days of receiving notification of a covered financial transaction (e.g., sales and purchases of stocks, bonds, commodity futures, and other securities that exceeded $1,000) and no later than 45 days after the transaction.[21] Periodic transaction reports are filed in the same manner as the covered official's annual financial disclosure.

Judiciary, *Strengthening the Criminal Laws Relating to Bribery, Graft, and Conflicts of Interest, and for Other Purposes*, report to accompany H.R. 8140, 87th Cong., 2nd sess., September 29, 1962, S.Rept. 87-2213, pp. 13-14.

[14] U.S. President (Carter), "Ethics in Government," *Public Papers of the Presidents of the United States: Jimmy Carter*, vol. Book 1-January 20 to June 24, 1977, pp. 786-788.

[15] P.L. 95-521, 92 Stat. 1824 (1978); 5 U.S.C. Appendix §§101-112.

[16] 5 U.S.C. Appendix §§101-112.

[17] U.S. Congress, House Committee on the Judiciary, *Ethics in Government Act of 1977*, report to accompany H.R. 1, 95th Cong., 1st sess., November 2, 1977, H.Rept. 95-800, p. 16.

[18] Beth Nolan, "Removing Conflicts from the Administration of Justice: Conflicts of Interest and Independent Counsels Under the Ethics in Government Act," *Georgetown Law Journal*, vol. 79, no. 1 (October 1990), p. 2.

[19] P.L. 112-105, 126 Stat. 291 (2012). The STOCK Act was renamed the Representative Louise McIntosh Slaughter Stop Trading on Congressional Knowledge Act by P.L. 115-277 (132 Stat. 4167 [2018]).

[20] For more information on insider trading, see CRS In Focus IF11966, *Insider Trading*, by Jay B. Sykes. The STOCK Act (P.L. 112-105, §12) also prohibits individuals who file financial disclosure statements from participating in Initial Public Offerings (IPOs). In a March 2014 legal advisory, OGE reiterated that "Section 12 of the STOCK Act, codified at section 21A(i) of the Securities Exchange Act of 1934, 15 U.S.C. §78u-1(i) (Securities Exchange Act), provides that '[a]n individual described in section 101(f) of the Ethics in Government Act of 1978 may not purchase securities that are the subject of an initial public offering ... in any manner other than is available to members of the public generally.'" See Office of Government Ethics, "Participation in Initial Public Offering by Certain Employees," legal advisory, LA-14-02, March 7, 2014, at https://www.oge.gov/Web/OGE.nsf/0/E3826710209769F4852585BA005BEC76/$FILE/29e20ef2652d455e9242bd382b0acd882.pdf. In a February 2019 memorandum to House Members, officers, and employees, the House Ethics Committee noted that "while interpretation and enforcement of the STOCK Act regarding participation in IPOs is chiefly within the jurisdiction of the SEC and Department of Justice, the opinion of the Committee is that, as drafted, the STOCK Act prohibits only the filer from participating in IPOs, but not the filer's spouse or dependent child, assuming the assets used for the purchase and the securities purchased are wholly owned by the spouse or dependent child, separate and independent of the filer." See U.S. Congress, House Committee on Ethics, *Summary of Activities One Hundred Sixteenth Congress*, 116th Cong., 2nd sess., December 31, 2020, H.Rept. 116-703, p. 47, note 18. (Hereinafter House Ethics Committee, *Summary of Activities*, 116th Congress).

[21] P.L. 112-105, §6(a). For more information, see U.S. Congress, House, Committee on Ethics, "Reminder of STOCK

Frequently Asked Questions

What is financial disclosure?

Financial disclosure is the primary method "used to identify potential or actual conflicts of interest."[22] Pursuant to the EIGA, covered employees (as well as presidential nominees and candidates for Congress and the presidency) file financial disclosure reports "to prevent conflicts of interest by providing for a systematic review of the financial interests of both current and prospective employees."[23] The EIGA and Office of Government Ethics (OGE) regulations require covered employees to file annual financial disclosure reports[24] and periodic transaction reports (PTR) as necessary.[25]

Who files financial disclosure statements?

The EIGA identifies who is required to file a financial disclosure statement.[26] Two types of financial disclosure exist: public disclosure and confidential disclosure. The type of disclosure required of a government official or employee depends on the nature and level of their office or position.

Public disclosure is required of "senior officials in the executive, legislative, and judicial branches of government to ... [report] their finances as well as other interests outside the Government."[27] Public financial disclosure filings are available for public inspection.[28] Public filers include[29]

- the President, including candidates;[30]
- the Vice President;

Act Requirements, Prohibition Against Insider Trading & New Certification Requirements," June 11, 2020, at https://ethics.house.gov/sites/ethics.house.gov/files/wysiwyg_uploaded/STOCK%20Act%206.11.2020%20Final.pdf; and U.S. Congress, Senate, Select Committee on Ethics, "STOCK Act Requirements for Senate Staff," June 15, 2012, at https://www.ethics.senate.gov/public/_cache/files/e63d0a27-19b2-4bf3-b26e-9073ff179e3e/stock-act-requirements-for-senate-staff-1-.pdf. Covered filers are required by the EIGA to "report on their annual FD Statement each purchase, sale, or exchange transaction involving real property held for investment, stocks, bonds, commodities futures, or other securities (including cryptocurrencies and options) made by the filer, their spouse, or dependent child when the amount of the transaction exceeds $1,000. For sales transactions, the $1,000 threshold is based on the total dollar value of the transaction, not the gain or loss made on the sale." See House Ethics Committee, *Summary of Activities*, 116th Congress, p. 44.

[22] U.S. Department of Justice, "Financial Disclosure," at https://www.justice.gov/jmd/financial-disclosure.

[23] U.S. Office of Government Ethics (OGE), "Financial Disclosure," at https://www.oge.gov/Web/OGE.nsf/ethicsofficials_financial-disc?OpenForm.

[24] 5 U.S.C. Appendix §101; 5 C.F.R. §2634.201.

[25] 5 U.S.C. Appendix §103(l).

[26] 5 U.S.C. Appendix §101.

[27] U.S. Congress, Senate Committee on Appropriations, *Avoiding Conflicts of Interest at the National Institutes of Health*, 108th Cong., 2nd sess., January 22, 2004, S.Hrg. 108-710, p. 25, at https://www.govinfo.gov/content/pkg/CHRG-108shrg92255/pdf/CHRG-108shrg92255.pdf.

[28] 5 U.S.C. Appendix §101.

[29] 5 C.F.R. §2634.202.

[30] 5 U.S.C. Appendix §101(c). Also, see OGE, "Who Files, Where They File, and How to Access Their Documents," at https://oge.gov/web/OGE.nsf/accessdocs_disclosure-quickstart?OpenForm.

- executive branch employees, including Special Government Employees (SGE) who are classified above GS-15 of the General Schedule or at a "rate equal to or greater than 120% of the minimum rate of basic pay for GS-15";
- uniformed servicemembers paid at or in excess of O-7;
- administrative law judges;
- executive branch employees who are in a position "excepted from the competitive service by reason of being of a confidential or policy-making character";
- the Postmaster General, the Deputy Postmaster General, each Governor of the United States Postal Service Board of Governors;
- the Director of OGE and each agency's designated agency ethics officer;
- civilian employees employed in the Executive Office of the President and holding a commission of appointment from the President;
- Members of Congress, including candidates for Congress;[31] and
- judicial officers and employees.[32]

As discussed in more detail below, public financial disclosures are subject to public scrutiny. For the President, Vice President, and appointees at Level 1 or Level 2 of the Executive Schedule, public financial disclosure forms are posted to OGE's website.[33] Presidentially appointed, Senate-confirmed officials also file public financial disclosure forms that can be obtained through OGE by filing OGE Form 201.[34] All other covered public officials (e.g., agency officials who are classified above GS-15 of the General Schedule or at a "rate equal to or greater than 120% of the minimum rate of basic pay for GS-15") file financial disclosures with their respective agencies,[35] and their financial disclosure forms can be requested from the agency.[36]

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[31] 5 U.S.C. Appendix §101(c).

[32] 5 U.S.C. Appendix §101(f). Members of Congress are defined at 5 U.S.C. Appendix §109(12) and include Senators, Representatives, Delegates, and the Resident Commissioner from Puerto Rico. Judicial officers are defined at 5 U.S.C. Appendix §109(10) and include "the Chief Justice of the United States, the Associate Justices of the Supreme Court, and the judges of the United States courts of appeals, United States district courts, including the district courts in Guam, the Northern Mariana Islands, and the Virgin Islands, Court of Appeals for the Federal Circuit, Court of International Trade, Tax Court, Court of Federal Claims, Court of Appeals for Veterans Claims, United States Court of Appeals for the Armed Forces, and any court created by Act of Congress, the judges of which are entitled to hold office during good behavior." Judicial employees are defined at 5 U.S.C. Appendix §109(8) and include "any employee of the judicial branch of the Government, of the United States Sentencing Commission, of the Tax Court, of the Court of Federal Claims, of the Court of Appeals for Veterans Claims, or of the United States Court of Appeals for the Armed Forces, who is not a judicial officer and who is authorized to perform adjudicatory functions with respect to proceedings in the judicial branch, or who occupies a position for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule."

[33] OGE, "Presidential and Vice Presidential Financial Disclosure Reports," at https://extapps2.oge.gov/201/Presiden.nsf/President%20and%20Vice%20President%20Index; and OGE, "Public Financial Disclosure Reports," at https://extapps2.oge.gov/201/Presiden.nsf/PAS%20Index?OpenView. Presidential and vice presidential candidates are also required to file public financial disclosure statements. Their statements can be found at OGE, "Presidential Candidates," at https://oge.gov/web/oge.nsf/Presidential%20Candidates?OpenView.

[34] OGE, "OGE Form 201," at https://extapps2.oge.gov/201/Presiden.nsf/201+Request?OpenForm.

[35] This would include members of the Senior Executive Service (SES), whose minimum rate of basic pay is 120% of the rate for GS-15, step 1 (see 5 U.S.C. §5382).

[36] For example, the Department of Housing and Urban Development provides instructions on how to access HUD public filers whose reports are filed with the agency. The process, as outlined on the agency's financial disclosure webpage, includes submitting an OGE Form 201 to the agency's ethics office. For more information, see U.S.

In the legislative branch, covered individuals in the House and Senate are required to file annual financial disclosure statements with the Clerk of the House of Representatives and the House Ethics Committee,[37] or the Secretary of the Senate and Senate Select Committee on Ethics,[38] respectively. In the judicial branch, covered individuals file with the Administrative Office of the United States Courts.[39]

Unlike public filers, individuals required to file confidential financial disclosure filings are not specifically defined by the EIGA.[40] Instead, whether an individual is required to file confidential financial disclosures is determined by level of pay, type of work done, and level of responsibility. Confidential financial disclosure filers generally

- are classified at or below GS-15 or do not meet the pay or classification threshold for public filing;
- participate in certain government activities related to contracting; procurement; or administering or monitoring grants, subsidies, licenses, or other federally conferred financial or operational benefits; and
- engage in certain activities related to decisionmaking or the approval of decisions, making recommendations, conducting investigations or audits, or rendering advice or opinions.[41]

Confidential financial disclosure filings are filed with the individual's agency, and are not available for public inspection.[42]

When are financial disclosure forms submitted?

For current covered employees, financial disclosure forms must be filed by May 15 each year.[43] Newly hired covered employees must file within 30 days of appointment,[44] and nominees must complete their forms within five days of the White House's transmission of their nomination to the Senate.[45] Candidates for federal office (i.e., President, Vice President, House of Representatives, and Senate) are required to file financial disclosure forms with their supervising

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Department of Housing and Urban Development, "Financial Disclosure Reports," at https://www.hud.gov/program_offices/general_counsel/Financial_Disclosure_Reports.

[37] U.S. Congress, House, Office of the Clerk of the House of Representatives, "Financial Disclosure Reports," at https://disclosures-clerk.house.gov/PublicDisclosure/FinancialDisclosure; and U.S. Congress, House, Committee on Ethics, "Financial Disclosure," at https://ethics.house.gov/financial-disclosure.

[38] Senate Rule XXXIV. U.S. Congress, Senate, Secretary of the Senate, "Senate Public Financial Disclosure (Senate Rule 34), Public Disclosure," at https://www.senate.gov/pagelayout/legislative/g_three_sections_with_teasers/lobbyingdisc.htm; and U.S. Congress, Senate, Select Committee on Ethics, "Financial Disclosure," at https://www.ethics.senate.gov/public/index.cfm/financialdisclosure.

[39] Administrative Office of the United States Court, "Judiciary Financial Disclosure Regulations," at https://www.uscourts.gov/rules-policies/judiciary-policies/ethics-policies/financial-disclosure-report-regulations.

[40] 5 U.S.C. Appendix §107.

[41] 5 C.F.R. §2634.904(a)(1). Special government employees (SGEs; 18 U.S.C. §202) are generally required to file confidential financial disclosure reports (5 C.F.R. §2634.901).

[42] 5 U.S.C. Appendix §107. For guidance on identifying confidential filers, see U.S. Office of Government Ethics, "Identifying Confidential Filers," at https://www.oge.gov/web/OGE.nsf/0/3A3A75454693D79C852585B6005A17B8/$FILE/New%20Form%20450%20Job%20Aid.pdf.

[43] 5 U.S.C. Appendix §101(d); 5 C.F.R. §2634.201(a).

[44] 5 U.S.C. Appendix §101(a); 5 C.F.R. §2634.201(b).

[45] 5 U.S.C. Appendix §101(b)(1); 5 C.F.R. §2634.201(c).

ethics offices within a specified period.[46] Generally, this is within 30 days of declaring their candidacy or May 15, whichever is earlier.[47]

What information is included in a financial disclosure statement?

The EIGA requires covered employees to file annual financial disclosure statements that report "income, gifts, liabilities, property—both real property and business-related personal property—positions in business enterprises and other organizations and also any agreements relating to post-Government employment."[48] Each financial disclosure must include "a brief description of any interest in property held by the filer at the end of the reporting period in a trade or business or for investment or the production of income, having a fair market value in excess of $1,000."[49]

According to the EIGA, a covered official, whether filing a public or confidential financial disclosure statement, provides information on their, their spouse's, and their dependent children's interests in property,[50] income,[51] transactions,[52] gifts and reimbursements,[53] liabilities,[54]

[46] 5 U.S.C. §7353(d)(1). The supervising ethics office for candidates is generally the office that supervises the position the candidate would hold if elected. For the presidential and vice presidential candidates, financial disclosure reports are filed with the Office of Government Ethics and the Federal Election Commission (FEC). Also see OGE, "Who Files, Where They File, and How to Access Their Documents," at https://oge.gov/web/OGE.nsf/accessdocs_disclosure-quickstart?OpenForm. For Senate candidates, financial disclosure reports are filed with the Senate Select Committee on Ethics through the Secretary of the Senate. For House candidates, financial disclosure reports are filed with the House Ethics Committee through the Clerk of the House of Representatives. Also see U.S. Congress, Secretary of the Senate, Office of Public Records, "Financial Disclosure," *Public Disclosure*, at https://www.senate.gov/pagelayout/legislative/g_three_sections_with_teasers/lobbyingdisc.htm; and U.S. Congress, Clerk of the House of Representatives, "For Congressional Candidates," *Financial Disclosure Reports*, at https://disclosures-clerk.house.gov/PublicDisclosure/FinancialDisclosure.

[47] 5 U.S.C. Appendix §101(c), 5 C.F.R. §2634.201(d).

[48] U.S. Congress, House Committee on the Judiciary, *Ethics in Government Act of 1977*, report to accompany H.R. 1, 95th Cong., 1st sess., November 2, 1977, H.Rept. 95-800, p. 16.

[49] 5 C.F.R. §2634.301(a).

[50] 5 C.F.R. §2634.301. Interests in property include "(1) Real estate; (2) Stocks, bonds, securities, and futures contracts; (3) Mutual funds, exchange-traded funds, and other pooled investment funds; (4) Pensions and annuities; (5) Vested beneficial interests in trusts; (6) Ownership interests in businesses or partnerships; (7) Deposits in banks or other financial institutions; and (8) Accounts receivable." 5 C.F.R. §2634.301(b). The regulations also include a list of exemptions. See 5 C.F.R. §2634.301(c).

[51] 5 C.F.R. §2634.302. Income is generally the official's private income of $200 or more (including earned and unearned income such as dividends, rents, interest, and capital gains) and the source of such income. 5 U.S.C. Appendix §102(a)(1). OGE regulations divided income into noninvestment—"(1) Salaries, fees, commissions, wages and any other compensation for personal services (other than from United States Government employment); (2) Retirement benefits (other than from United States Government employment, including the Thrift Savings Plan, or from Social Security); (3) Any honoraria, and the date services were provided, including payments made or to be made to charitable organizations on behalf of the filer in lieu of honoraria; and (4) Any other noninvestment income, such as prizes, awards, or discharge of indebtedness"—and investment income—"characterized as dividends, rent, interest, capital gains, or income from qualified or excepted trusts or excepted investment funds." 5 C.F.R. §2634.302(a)-(b).

[52] 5 C.F.R. §2634.303. Financial transactions include purchases, sales, or exchanges exceeding $1,000 in value, of income-producing property, stocks, bonds, mutual funds, exchange traded funds, or other securities.

[53] 5 C.F.R. §2634.304. Gifts are reported if they are received from private sources over a certain amount (including reimbursements for travel over threshold amounts). 5 U.S.C. Appendix §102(a)(2).

[54] 5 C.F.R. §2634.305. Include liabilities owed to creditors exceeding $10,000. Information on mortgages on personal residences must be disclosed by the President, Vice President, Members of Congress, and nominees and incumbents in most presidentially appointed and Senate-confirmed positions. 5 U.S.C. Appendix §102(a)(3).

agreements and arrangements,[55] and outside positions.[56] Guidance on financial disclosure forms is provided by the employee's supervising ethics office.[57]

What are Periodic Transaction Reports?

The STOCK Act, enacted in 2012, requires the prompt reporting of certain financial transactions.[58] The law requires both public and confidential filers to report financial transactions (e.g., stocks, bonds, commodity futures, and other securities) that exceed $1,000 within 30 days after the official is notified of a covered transaction in stocks, bonds, or other such securities (but no later than 45 days after the date of the transaction).[59] The PTRs are filed with the employee's agency, as are annual financial disclosure statements.

When can an individual receive an exemption from financial disclosure requirements?

Waivers to certain conflicts of interest provisions are available by law, regulation, or executive order.[60] For example, the EIGA provides for the availability of waivers for reporting requirements under certain circumstances. The law states

> §101. Persons required to file
>
> (i) The supervising ethics office for each branch may grant a publicly available request for a waiver of any reporting requirement under this section for an individual who is expected to perform or has performed the duties of his office or position less than one hundred and thirty days in a calendar year, but only if the supervising ethics office determines that-
>
> (1) such individual is not a full-time employee of the Government,
>
> (2) such individual is able to provide services specially needed by the Government,

[55] 5 C.F.R. §2634.306. Reported agreements include for future employment or leaves of absence with private entities, continuing payments from or participation in benefit plans of former employers. 5 U.S.C. Appendix §102(a)(7).

[56] 5 C.F.R. §2634.307; 5 U.S.C. Appendix §102(a)(6).

[57] Guidance on financial disclosure is provided by the government's supervising ethics offices—the Office of Government Ethics, the House Ethics Committee, the Senate Select Committee on Ethics, and the Administrative office of the Courts. Guidance can be found at OGE, *Public Financial Disclosure Guide*, at https://www.oge.gov/Web/278eGuide.nsf; OGE, *Confidential Financial Disclosure Guide: OGE Form 450* (January 2019), at https://www.oge.gov/web/OGE.nsf/0/A685AEC70F057115852585B6005A202F/$FILE/Confidential%20Fin%20Disc%20Guide_Jan2019.pdf; U.S. Congress, House, Committee on Ethics, *Financial Disclosure Guidance*, at https://ethics.house.gov/financial-disclosure; U.S. Congress, Senate, Select Committee on Ethics, "Chapter 5: Financial Disclosure," *Senate Ethics Manual*, 108th Cong., 1st sess., S.Pub. 108-1, pp. 124-137, at https://www.ethics.senate.gov/public/_cache/files/f2eb14e3-1123-48eb-9334-8c4717102a6e/2003-senate-ethics-manual.pdf#page=136; and Administrative Office of the U.S. Courts, *Filing Instructions for Judicial Officers and Employees*, at https://www.uscourts.gov/sites/default/files/financial_disclosure_filing_instructions_0.pdf.

[58] P.L. 112-105, §6, 126 Stat. 291 (2012).

[59] Covered filers are required by the EIGA to "report on their annual FD Statement each purchase, sale, or exchange transaction involving real property held for investment, stocks, bonds, commodities futures, or other securities (including cryptocurrencies and options) made by the filer, their spouse, or dependent child when the amount of the transaction exceeds $1,000. For sales transactions, the $1,000 threshold is based on the total dollar value of the transaction, not the gain or loss made on the sale." U.S. Congress, House Committee on Ethics, *Summary of Activities One Hundred Sixteenth Congress*, 116th Cong., 2nd sess., December 31, 2020, H.Rept. 116-703, p. 44.

[60] Waivers are available under Executive Order 13989, "Ethics Commitments by Executive Branch Personnel," 86 *Federal Register* 14, January 25, 2021, at https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01762.pdf; 18 U.S.C. §208(b)(1); 5 C.F.R. §2635.502(d); and 5 C.F.R. §2635.503(c).

> (3) it is unlikely that the individual's outside employment or financial interests will create a conflict of interest, and
>
> (4) public financial disclosure by such individual is not necessary in the circumstances.[61]

Waivers from certain EIGA and other financial conflict of interest provisions (18 U.S.C. §208) can be granted, in certain circumstances, by the covered official's Designated Agency Ethics Officer (DAEO) upon review of the filer's financial disclosure statement.[62] OGE has issued regulations and guidance on waiver eligibility.[63] For example, an individual might receive a waiver for "financial interests which are too remote or too inconsequential to affect the integrity ... of the employee,"[64] if after review the DAEO determines that such a wavier applies. The issuance of a waiver as a remediation tool is generally separate from exemptions to filing financial annual disclosure statements.[65]

In recent years, agencies have reported to OGE on waivers to the criminal conflict of interest provisions provided in 18 U.S.C. §208(b)(1) and §208(b)(3).[66] **Table 1** reports the number of waivers issued pursuant to the criminal conflict of interest laws from 2017 through 2021.

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[61] 5 U.S.C. Appendix §101(i).

[62] 18 U.S.C. §208(b); and 5 C.F.R. §2640. OGE, "Memorandum dated February 23, 2007, from Robert I. Cusick, Director to Designated Agency Ethics Officials Regarding Waivers Under 18 U.S.C. §208," OGE 07x4, at https://www.oge.gov/Web/OGE.nsf/0/92CB9ED267120B37852585BA005BECF7/$FILE/07x4.pdf.

[63] For example, see OGE, "Guidance on Waivers under 18 U.S.C. §208(b), Authorizations Under 5 C.F.R. §2635.502(d), and Waivers of Requirement's under Agency Supplemental Regulations," DO-10-005, April 22, 2010, at https://www.oge.gov/Web/OGE.nsf/News+Releases/EFBD5D596B4B50A1852585BA005BECAC/$FILE/438cb0a3fe89437e877ef22c26c6fada4.pdf. In addition to waivers to EIGA and other financial conflict of interest provisions, recent presidential administrations have issued executive orders that attempted to restrict the potential for conflicts of interest by imposing additional restrictions on certain appointees. These restrictions have mostly limited appointees' ability to use the "revolving door," and generally governed the movement of federal employees from the government to the private sector and vice versa, but did not impose further financial disclosure-related requirements. For example, see U.S. President (Biden), Executive Order 13989, "Ethics Committees by Executive Branch Personnel," 86 *Federal Register* 7029, January 20, 2021; U.S. President (Trump), Executive Order 13770, "Ethics Commitments by Executive Branch Appointees," 82 *Federal Register* 9333, January 28, 2017; U.S. President (Obama), Executive Order 13490, "Ethics Commitments by Executive Branch Personnel," 74 *Federal Register* 4673, January 21, 2009; and U.S. President (Clinton), Executive Order 12834, "Ethics Commitments by Executive Branch Appointees," 58 *Federal Register* 5911, January 22, 1993. For further information on the executive order ethics pledges, see CRS Report R45946, *Executive Branch Service and the "Revolving Door" in Cabinet Departments: Background and Issues for Congress*, by Jacob R. Straus.

[64] 5 C.F.R. §2640.101.

[65] OGE, "List of Conflict of Interest Remedies and Exemptions," *Conflict Analysis & Resolution*, p. 1, at https://extapps2.oge.gov/Training/OGETraining.nsf/xsp/.ibmmodres/domino/OpenAttachment/training/ogetraining.nsf/36415ABB5DA68F7B852585030070EE25/Body/COI%20Remedies%20and%20Exemptions.pdf.

[66] 18 U.S.C. §208 prohibits employees from participating in any particular government matter that has a direct and predictable effect on their personal financial interests. For more information, see 5 C.F.R. §2640. In June 2017, OGE issued a report on the issuance of certain waivers and authorizations from executive branch agencies for executive branch appointees between May 1, 2016, and April 30, 2017. OGE, *Data Call for Certain Waivers and Authorizations*, PA-17-02, April 18, 2017, at https://www.oge.gov/Web/OGE.nsf/0/0FBCBBA2F3949979852585BA005BEC45/$FILE/PA-17-02.pdf. The data call asked for waivers under five authorities: Executive Order (E.O.) 13770 (issued by President Trump), E.O. 13490 (issued by President Obama), 18 U.S.C. §208(b)(1), 5 C.F.R. §2635.502(d), and 5 C.F.R. §2635.503(c). Both President Trump's and President Obama's executive orders were subsequently repealed. E.O. 13770 was repealed by E.O. 13983 (86 *Federal Register* 6835) and E.O. 13490 was repealed by E.O. 13770 (82 *Federal Register* 9333).

[66] See CRS Insight IN10721, *Office of Government Ethics: Role in Collecting and Making Ethics Waivers Public*, by Jacob R. Straus; and OGE, "Certain Waivers and Authorizations Issued Between May 1, 2016-April 30, 2017," June 2, 2017, at https://oge.gov/Web/OGE.nsf/Resources/Certain+Waivers+and+Authorizations+issued+between+May+1,+2016+-+April+30,+2017.

Table 1. Number of Waivers Issued by Agencies Pursuant to 8 U.S.C. §208(b)(1), 18 U.S.C. §208(b)(3)

Year	18 U.S.C. §208(b)(1) and 18 U.S.C. §208(b)(3) Waivers
2017	340
2018	117
2019	459
2020	409
2021	409

Sources: CRS Review of Office of Government Ethics annual questionnaires for CY2016-CY2020. Office of Government Ethics, *CY17 Annual Agency Ethics Program Questionnaire: A Snapshot of the Executive Branch Ethics Program*, June 5, 2018, revised August 29, 2018, pp. 3, 32, at https://www.oge.gov/web/oge.nsf/0/87394876D4CD3D708525865300703F1E/$FILE/2017%20AQ%20summary%20FINAL%20(rev.8.10.18).pdf; *Results from the 2018 Annual Agency Ethics Program Questionnaire: A Snapshot of the Executive Branch Ethics Program*, Revised August 5, 2019, pp. 7, 19, at https://www.oge.gov/web/oge.nsf/0/5C524EAA4E38E9B48525865300703F25/$FILE/2018%20AQ%20summary%20doc%20FINAL%207.11.19%20(minor%20typo%20corrected%2012.5.19).pdf; *Results from the 2019 Annual Agency Ethics Program Questionnaire: A Snapshot of the Executive Branch Ethics Program*, pp. 6-7, at https://www.oge.gov/web/oge.nsf/0/44B8C70719A52E3A852586530070037C/$FILE/2019%20AQ%20Summary%20Report%20FINAL.pdf; *Results from the Annual Agency Ethics Program Questionnaire, CY 2020: A Snapshot of the Executive Branch Ethics Program*, Updated August 31, 2021, pp. 9-11, 22, at https://www.oge.gov/web/OGE.nsf/0/BF327B2CC50A959D8525870C00663796/$FILE/AQ%20Summary%20Report%20January%202022%20correction.pdf; and *Results from the Annual Agency Ethics Program Questionnaire: A Snapshot of the Executive Branch Ethics Program, 2021*, pp. 23, 38, at https://www.oge.gov/web/OGE.nsf/0/6821279B9FD1B90E85258871005FC68D/$FILE/Annual%20Questionnaire%20Summary%20Report%20(CY%202021).pdf.

a. Data from 2017 to 2020 reflect waiver provisions in Executive Order (E.O.) 13770, "Ethics Commitments by Executive Branch Appointees," 82 *Federal Register* 9333, January 28, 2017 (repealed by E.O. 13983, "Revocation of Executive Order 13770," 86 *Federal Register* 6835, January 19, 2021). Data for 2021 reflect waiver provisions in E.O. 13989, "Ethics Commitments by Executive Branch Personnel," 86 *Federal Register* 7029, January 25, 2021. For more information on executive order ethics pledges, see CRS Report R44974, *Ethics Pledges and Other Executive Branch Appointee Restrictions Since 1993: Historical Perspective, Current Practices, and Options for Change*, by Jacob R. Straus.

How are financial disclosure statements used by government agencies to identify and remediate conflicts of interest?

Once a covered employee files a financial disclosure report with their supervising ethics office, the DAEO reviews the filing to ensure its completeness and to identify holdings or liabilities that might violate or appear to violate federal law, executive orders, or agency-specific statutes or regulations.[67] This review must be completed within 60 days.[68]

Following the review, the DAEO certifies the filing. If the DAEO does not believe they have enough information to certify the filing or if the filing is incomplete, they can ask the filer for additional information. For certain executive branch filers (e.g., the DAEO, nominees and appointments requiring presidential appointment and Senate confirmation, and employees of the

[67] 5 C.F.R. §2634.605.

[68] 5 C.F.R. §2634.605.

Executive Office of the President), filings are forwarded by the agency to OGE for final certification.[69]

If upon review the DAEO determines a conflict of interest exists, they can, if necessary, negotiate an ethics agreement with the filer to remedy the conflict.[70] Remediation efforts are case specific, with the DAEO generally instructed to consider the employee's circumstances and position when identifying and remediating potential conflicts of interest.[71] Any remediation decision is generally a negotiation between the DAEO and the filer.[72] Remediation options may include disqualification (recusal), divestiture, resignation or reassignment, waiver, or the establishment of a qualified blind or diversified trust.[73] For example, for presidential nominees, OGE advises that

> The process begins when the prospective official completes a financial disclosure report. Once filed, ethics officials in the agency where the filer intends to serve, the White House, and OGE work together to identify potential conflicts. These potential conflicts are addressed using an ethics agreement where appointees detail, in writing, the actions they will take to resolve the conflicts. Such actions may include selling certain financial holdings and resigning from outside positions. Unless otherwise specified in the ethics agreement, appointees agree to take the specified actions within 90 days of confirmation by the Senate.[74]

Should a filer appeal or request a waiver provision the EIGA provides guidance. For example, 18 U.S.C. §208 "does not provide for an appeal or review of the employing agency's decision" in identifying a conflict of interest and coming to a remediation agreement with the employee.[75]

Generally, there are five common methods for remediating a financial conflict of interest. They are disqualification (recusal), divestiture, waivers, blind or diversified trusts, and reassignment/resignation.

Disqualification (recusal)

Government decisionmaking generally requires impartiality.[76] An identified conflict of interest may be remediated through recusal. In this case, the filer would not participate in a "particular

[69] OGE, "4.09: Forwarding Reports to OGE," *Public Financial Disclosure Guide for Ethics Officials*, at https://www.oge.gov/Web/278eGuide.nsf/2cf9ac792bc0654a85257ea1005f838a/76f395192e485e8885257f46004f0966?OpenDocument.

[70] 5 C.F.R. §2634.802(a). OGE, "Ethics Agreements: Where Ethics Obligations Become Action," July 24, 2019, at https://www.oge.gov/Web/OGE.nsf/Leadership%20Notes/29C259912C91CCEC852585B6005A22BF?opendocument.

[71] 5 C.F.R. §2634.605. For more information, see CRS In Focus IF11904, *Financial Disclosure: Identifying and Remediating Conflicts of Interest in the Executive Branch*, by Jacob R. Straus; and CRS In Focus IF12019, *Executive Branch Ethics and Financial Disclosure Administration: The Role of Designated Agency Ethics Officials (DAEOs)*, by Jacob R. Straus.

[72] OGE, "Responsibilities of the Designated Agency Ethics Official (DAEO)," *Resources for Ethics Officials*, at https://www.oge.gov/Web/OGE.nsf/ethicsofficials_conflict-resolution.

[73] 5 C.F.R. §2634.605(b)(6). OGE, "Analyzing Potential Conflicts of Interest," at https://www.oge.gov/Web/OGE.nsf/a716ba6e5e826838852585ae005546c0/f029088beda3de04852585b6005a1e0e?OpenDocument.

[74] OGE, "Ethics Agreements: Where Ethics Obligations Become Action," July 24, 2019, prepared by Dale Christopher, Deputy Director for Compliance, at https://www.oge.gov/Web/OGE.nsf/Leadership%20Notes/29C259912C91CCEC852585B6005A22BF?opendocument.

[75] OGE, "Letter to an Employee dated March 12, 1992," 92x10, March 12, 1992, at https://www.oge.gov/web/oge.nsf/0/2F65F14F58BB23D2852585BA005BEEB5/$FILE/6715ac41f43649cbb87164444b2cbae42.pdf.

[76] 5 C.F.R. §2635.501.

matter" involving specific parties that would affect the financial interests of the filer or a member of their household (spouse or dependent child).[77]

Divestiture

If recusal is not reasonable in a given circumstance, a filer also has an option to divest (e.g., sell) the asset that puts the filer in conflict with their governmental function. Often, divesture can occur without financial harm. In limited cases, the filer can request a certificate of divestiture to "minimize the burden that would result from paying capital gains tax on the sale of assets to comply with conflict of interest requirements."[78]

Waivers

As mentioned above, in certain situations, waivers can be granted for conflicts of interest. Federal law and regulation provide conditions when waivers might be given.[79] For example, an individual might receive a waiver for "financial interests which are too remote or too inconsequential to affect the integrity ... of the employee."[80] The issuance of a waiver as a remediation tool is separate from exemptions to filing financial annual disclosure statements.[81]

Blind or diversified trusts

In some circumstances, employees may use a qualified blind trust or a qualified diversified trust "to reduce real or apparent conflicts of interest."[82] Qualified blind trusts are specific instruments that may be used to remediate real or perceived financial conflicts of interest.[83] Authorized in the EIGA, qualified blind trusts

> confer on an independent trustee and any other designated fiduciary the sole responsibility to administer the trust and to manage trust assets without participation by, or the knowledge of, any interested party or any representative of an interested party. This responsibility includes the duty to decide when and to what extent the original assets of the trust are to be sold or disposed of, and in what investments the proceeds of sale are to be reinvested.[84]

The establishment of a qualified blind trust requires permission from a covered official's supervising ethics office. Should a qualified blind trust be established to remediate a financial conflict of interest, the covered official "gives up the management of the assets to an independent trustee, who makes investment decisions for the individual's benefit without the individual's knowledge."[85] Further, the trustee must

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[77] 5 C.F.R. §2634.104.

[78] 5 C.F.R. §2634, Subpart J.

[79] 18 U.S.C. §208(b); and 5 C.F.R. §2640.

[80] 5 C.F.R. §2640.101.

[81] OGE, "List of Conflict of Interest Remedies and Exemptions," *Conflict Analysis & Resolution*, p. 1, at https://extapps2.oge.gov/Training/OGETraining.nsf/xsp/.ibmmodres/domino/OpenAttachment/training/ogetraining.nsf/36415ABB5DA68F7B852585030070EE25/Body/COI%20Remedies%20and%20Exemptions.pdf.

[82] 5 C.F.R. §2634.401

[83] 5 C.F.R. §2634.401.

[84] 5 C.F.R. §2634.401(a).

[85] U.S. Congress, Senate Select Committee on Ethics, *Qualified Blind Trusts*, 114th Cong., 1st sess., September 2015, p. 1, at https://www.ethics.senate.gov/public/_cache/files/286a4cf9-5aab-40ef-9a6c-bf2278e79e38/qualified-blind-trusts-guide—october-2020.pdf.

> be an independent financial institution, lawyer, certified public accountant, broker, or investment advisor; there may be no restrictions on the disposal of the trust assets; [and] the trust instrument must limit communications between the trustee and interested parties.[86]

A qualified blind trust can serve as a way to "immunize" a public official "from potential conflicts of interest stemming from assets held in the trust because the ... [official]-beneficiary would have no knowledge of the impact of official actions on [their] personal financial interests."[87] If a covered official places their assets in a qualified blind trust, they are separated from the day-to-day decisionmaking about their holdings, which can serve to remedy potential conflicts that might arise from decisionmaking that could impact their individual holdings.

Proponents of blind trusts argue that "the use by Members of QBTs [qualified blind trusts] would adequately address the serious concerns about congressional insider trading."[88] Additionally, one proponent advocates that Congress "require Members of Congress and their spouses to divest a broad array of investments with no exception for those held before taking office. Then, require Members to put any remaining assets in a blind trust."[89] According to this view, this action would "eliminate opportunities for insider trading and insulate Members from the perception that they are making decisions based on benefits to their own financial interest and at the expense of the public's interest."[90]

Those who argue against the use of blind trusts say, among other arguments, that the "early use of blind trusts may have originated from a desire to give the public appearance that a policymaker was avoiding conflicts of interest without actually blinding the policymaker to an asset that stood to influence the execution of official duties. Legislation establishing qualified blind trust rules has not solved this problem."[91]

Reassignment/resignation

If a conflict of interest cannot be remediated, or if the filer does not want to recuse or divest and a waiver is not available, the employee could resign or request a transfer, a reassignment, or a limitation of duties.

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[86] U.S. Congress, House Committee on Ethics, "Trusts," *Specific Disclosure Requirements*, at https://ethics.house.gov/financial-dislosure/specific-disclosure-requirements.

[87] National Conference of State Legislators, "Blind Trusts," at https://www.ncsl.org/research/ethics/blind-trusts.aspx.

[88] Testimony of Donna M. Nagy, C. Ben Dutton Professor of Business Law, Indiana University Maurer School of Law, in U.S. Congress, Committee on House Administration, *Examining Stock Trading Reforms for Congress*, 117th Cong., 2nd sess., April 7, 2022, p. 3, at https://docs.house.gov/meetings/HA/HA00/20220407/114485/HHRG-117-HA00-Wstate-NagyD-20220407.pdf. Dr. Nagy's testimony also notes that "the placement of accumulated assets into QBTs is only a minimally effective anti-conflict measure because the trust will not actually be blind to the Member unless and until the trustee sells off all the original assets and purchases new ones in their place" (p. 3).

[89] Testimony of Liz Hempowicz, director of public policy, Project on Government Oversight, in U.S. Congress, Committee on House Administration, *Examining Stock Trading Reforms for Congress*, 117th Cong., 2nd sess., April 7, 2022, p. 5, at https://docs.house.gov/meetings/HA/HA00/20220407/114485/HHRG-117-HA00-Wstate-HempowiczL-20220407.pdf.

[90] Testimony of Liz Hempowicz, p. 5.

[91] Megan J. Ballard, "The Shortsightedness of Blind Trusts," *University of Kansas Law Review*, vol. 56 (October 2007), p. 53.

Can the public get copies of financial disclosure forms?

Certain financial disclosure documents submitted by public filers are available for public inspection.[92] The point of access to public filers' financial disclosure and PTR forms depends on the filer. For the top approximately 60 filers in the executive branch (President, Vice President, presidential candidates, and filers in Level I and Level II of the Executive Schedule), forms (annual filings, ethics agreements, STOCK Act PTRs, and certificates of divestiture, as appropriate) can be downloaded directly from the OGE website.[93] For other presidentially appointed, Senate-confirmed (PAS) public filers, the filers are listed on the OGE website, but access to their disclosure reports requires that the requester file an OGE Form 201 with OGE.[94] For all other public filers (non-PAS), the request for financial disclosure records is made to the employee's agency using OGE Form 201.[95]

In the legislative branch, financial disclosure forms for Members of Congress and congressional candidates can be accessed on the Clerk of the House of Representatives' (for House Members) website and on the Senate Public Records website.[96] In the judicial branch, recent amendments to the EIGA require the Administrative Office of the United States Courts to post certain financial disclosure reports for judicial officers, bankruptcy judges, and magistrate judges online.[97]

Confidential financial disclosure statements are not available for public inspection.[98] **Table 2** provides a guide to accessing financial disclosure statements and documents.

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[92] 5 U.S.C. appendix §105(b). Requesters are required to certify that they will not use the reports for prohibited commercial, credit rating, or solicitation purposes.

[93] OGE, "Officials' Individual Disclosures Search Collection," at https://www.oge.gov/web/OGE.nsf/Officials%20Individual%20Disclosures%20Search%20Collection?OpenForm.

[94] OGE, "OGE Form 201," at https://extapps2.oge.gov/201/Presiden.nsf/201+Request?OpenForm; and https://www.oge.gov/web/oge.nsf/0/FE125A54B5831BEA852585B6005A2413/$FILE/OGE%20Form%20201%20(Approved%20OMB%202020).pdf.

[95] For example, see U.S. Department of the Interior, "Requests for Financial Disclosure Reports (OGE Form 201)," at https://www.doi.gov/ethics/requests-financial-disclosure-reports-oge-form-201.

[96] U.S. Congress, Clerk of the House of Representatives, "Financial Disclosure Reports," at https://disclosures-clerk.house.gov/PublicDisclosure/FinancialDisclosure; and U.S. Congress, Senate Office of Public Records, "Financial Disclosure," at https://www.senate.gov/pagelayout/legislative/g_three_sections_with_teasers/lobbyingdisc.htm.

[97] P.L. 117-125, 135 Stat. 1205 (2022). Pursuant to the EIGA, a judicial official "means the Chief Justice of the United States, the Associate Justices of the Supreme Court, and the judges of the United States courts of appeals, United States district courts, including the district courts in Guam, the Northern Mariana Islands, and the Virgin Islands, Court of Appeals for the Federal Circuit, Court of International Trade, Tax Court, Court of Federal Claims, Court of Appeals for Veterans Claims, United States Court of Appeals for the Armed Forces, and any court created by Act of Congress, the judges of which are entitled to hold office during good behavior" (5 U.S.C. appendix §109(10)). Also see Administrative Office (AO) of the United States Courts, "Judiciary Financial Disclosure Regulations," at https://www.uscourts.gov/rules-policies/judiciary-policies/ethics-policies/financial-disclosure-report-regulations; and AO, "§170 Definitions," *Guide to Judiciary Policy*, p. 6, at https://www.uscourts.gov/sites/default/files/guide-vol02d.pdf.

[98] Generally, the confidential reporting requirements apply to certain "rank and file" employees who are compensated below the threshold rate of pay for public disclosures (GS-15 or below, or less than 120% of the basic rate of pay for a GS-15), and who are determined by the employee's agency to perform duties or exercise responsibilities in regard to government contracting or procurement, government grants, government subsidies or licensing, government auditing, or other governmental duties which may particularly require the employee to avoid financial conflicts of interest. 5 C.F.R. §2634.904(a); 5 C.F.R. §2634.905.

Table 2. Types of Financial Disclosure Filers and Access to Documents

Type of Filer	Approximate Number	Access
	Executive Branch	
Executive Schedule I and II[a] Presidentially Appointed, Senate Confirmed (PAS)[b] Appointees (Public)	60	OGE Website
Other PAS Appointees (Public)	1,000	OGE Form 201
Other Public Filers	20,000	OGE Form 201
Confidential Filers	—	Not Available
	Legislative Branch	
Members of Congress[c]	541	Clerk of the House Website Senate Public Records Website
Congressional Candidates	—	Clerk of the House Website Senate Public Records Website
Covered Staff (Confidential)	—	Not Available
	Judicial Branch	
Judicial Officers[d]	—	Administrative Office of the U.S. Courts Website
Judicial Employees	—	If Public, Administrative Office of the U.S. Courts Website
Other Covered Employees (Confidential)	—	Not Available

Source: CRS discussion with OGE staff; and OGE, "Officials' Individual Disclosures Search Collection," at https://www.oge.gov/web/OGE.nsf/Officials%20Individual%20Disclosures%20Search%20Collection?OpenForm.

a. Positions paid under Executive Schedule Level I are listed at 5 U.S.C. §5312. Positions paid under Executive Schedule Level II are listed at 5 U.S.C. §5313. For calendar year 2022, Executive Schedule pay can be found at Office of Personal Management, "Salary Table No. 2022-EX, Rates of Basic Pay for the Executive Schedule (EX)," at https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2022/EX.pdf.

b. For more information on the positions that are filled through presidential appointment with Senate confirmation, see CRS Report RL30959, *Presidential Appointee Positions Requiring Senate Confirmation and Committees Handling Nominations*, by Christopher M. Davis and Michael Greene.

c. Members of Congress include Senators, Representatives, the Resident Commissioner from Puerto Rico, and Delegates from the District of Columbia and the U.S. Territories (U.S. Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands).

d. Judicial officers, as defined in the EIGA, "means the Chief Justice of the United States, the Associate Justices of the Supreme Court, and the judges of the United States courts of appeals, United States district courts, including the district courts in Guam, the Northern Mariana Islands, and the Virgin Islands, Court of Appeals for the Federal Circuit, Court of International Trade, Tax Court, Court of Federal Claims, Court of Appeals for Veterans Claims, United States Court of Appeals for the Armed Forces, and any court created by Act of Congress, the judges of which are entitled to hold office during good behavior." 5 U.S.C. appendix §109(10).

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