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Personal Financial Disclosure Requirements for Public Officials

Senior governmental officials must file annual public disclosure reports that provide details on their personal finances (OGE Form 278e for the Executive Branch and form A or B for Congress). This disclosure requirement is in place as a means of discouraging and exposing possible conflicts of interest due to outside financial holdings.

The Ethics in Government Act of 1978 (EIGA) sets the financial disclosure requirements for members and employees of the government. Title I of the act requires that certain government officials file personal financial disclosure reports on an annual basis.¹ The reports of high-ranking officials are generally available to the public. Other government officials must file confidential financial disclosure reports and some lower level employees are not required to file any personal financial disclosure reports.

The Ethics in Government Act of 1978 put into law a monumental safeguard against government misconduct. EIGA's primary purpose is to enable citizens to hold government officials accountable for their outside financial interests. The act was passed in the wake of the Watergate scandals.

EIGA requires certain members and employees of government to list the sources and amounts of all earned and unearned income, assets, liabilities, asset transactions, gifts they received as well as any and all nongovernmental positions currently held. There are also regulations in place that require these civil servants to disclose certain financial details regarding their spouses and dependent children. Non-compliance with EIGA may result in prosecution by the Attorney General of the United States.

People Required to File Public Financial Disclosure Reports

The members of government required to submit annual reports include: the President, the Vice President, all members of the House and Senate, any member of the uniformed service who holds a rank at or above O-7, any employee of the executive branch who occupies a position at or above GS-15, the Postmaster General, the Deputy Postmaster General, each Governor of the Board of Governors of the U.S. Postal Service, the Director of the Office of Government Ethics, any civilian employee who holds a commission of appointment from the President, certain officers or employees of the Congress, certain judicial officers and employees, and any other officer or employee determined by the Office of Government Ethics to be of equal classification.² Individuals must file these reports on or before May 15 of each year.³

¹ 5 U.S.C. § 109 (a)(8)

² 5 U.S.C. § 101 (f)

In addition, Congressional or Presidential candidates must file no later than 30 days prior to an election.⁴ Lastly, individuals leaving their office or position are required to file a report covering the portion of the year up to the day they left within 30 days of their termination, unless they are transferring to another office or position described in subsection (f) of 5 U.S.C. § 101.⁵

Content of Reports Required for Representatives, Senators, and Executive Branch

A) Earned and Non-Investment Income

Reporting individuals must report the source, type, and amount of earned income from any source, except that of current employment by the U.S government, totaling \$200 or more. Reporting individual must also report the source and type of earned income for their spouse aggregating \$1000 or more during the reporting period.⁶

B) Assets and “Unearned” Income

Individuals filing reports must include the source, fair market value, type, and amount of income received from their assets and “unearned” sources of income. The asset or income source that is held for investment with a fair market value exceeding \$1,000 at the end of the reporting period, and any other reportable asset or source of income which generated more than \$200 in “unearned” income during the year must be disclosed.⁷ For members of the House it is emphasized that income includes dividends, interest, and capital gains, even if it is reinvested.⁸ Members of the Senate must differentiate between publicly traded assets and non-publicly traded assets.⁹

- Trusts

Financial disclosure must also be provided regarding qualified blind trusts and excepted trusts. Qualified blind trusts and excepted trusts must comply with specific guidelines and the value category of any interest of the individual filing a report must be disclosed.¹⁰ Fiduciary duties must be independent and unaffiliated with any interested party.¹¹

C) Positions Held Outside U.S Government

Individuals filing reports must include the positions they held outside of the U.S. government. Any positions held during the applicable reporting period with or without compensation must be disclosed. Positions that must be disclosed for both members of the Senate as well as the House include, but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership or other business

³ 5 U.S.C. § 101 (d)

⁴ 5 U.S.C. § 101 (c)

⁵ 5 U.S.C. § 101 (e)

⁶ http://clerk.house.gov/public_disc/2010formA.pdf

⁷ <http://ethics.house.gov/Media/PDF/2010%20Form%20A%20600.pdf>

⁸ <http://ethics.house.gov/Media/PDF/2010%20Form%20A%20600.pdf>

⁹ <http://ethics.senate.gov/downloads/pdffiles/cover1.pdf>

¹⁰ 5 U.S.C. § 102 (a)(8)

¹¹ 5 U.S.C. § 102 (f)(3)(A)(i+ii), 5 U.S.C. § 102 (f)(3)(E) “interested party” means a reporting individual, his spouse, and any minor or dependent child

enterprise, any nonprofit organization, any labor organization, or any educational or other institution other than the United States. Individuals are not, however, required to report positions held in any religious, social, fraternal, or political entity and positions solely of an honorary nature.¹²

D) Payments Made to Charity In Lieu of Honoraria

Individuals filing reports must also disclose the source, date, and amount of honoraria¹³ received from any source and/or payments made to charitable organizations in lieu of honoraria aggregating \$200 or more in value.¹⁴ Members of the Senate as well as the House must also identify the activity (speech, article, or appearance), which generated the payment¹⁵. Furthermore, reporting individuals must also disclose the source and type of income from dividends, rents, interests, and capital gains which exceeds \$200 in amount along with a value-based numerical categorization of said income.¹⁶ Gifts received from any source other than a relative of the reporting individual and aggregating more than \$250 or more than the minimal value as established by section 7342 (a)(5) of title 5, United States Code, whichever is greater, must be disclosed (gifts valued at or below \$100 need not be aggregated).¹⁷ Any travel reimbursements aggregating more than \$250 or more than the minimal value as established by section 7342 (a)(5) of title 5, United States Code, whichever is greater, must also be disclosed along with the identity of the source, travel itinerary, and a description of the expenses.¹⁸

E) Transactions

Disclosure of any purchase, sale, or exchange transactions by the reporting individual, their spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded \$1,000. Periodic reports on transactions in securities exceeding \$1,000 are to be made within 30 days of receiving notification of the transaction, but no later than 45 days after such a transaction (OGE Form 278-T for the Executive Branch and Periodic Transaction Reports for Congress). Transactions in income producing real property must be made on the annual financial disclosures.¹⁹ In addition, transactions that resulted in a loss are required to be disclosed. However, transactions involving property used solely as the reporting individual's personal residence, or a transaction solely between them, their spouse, or their dependent child are not reported.²⁰ Candidates, principal assistants, shared employees, and individuals compensated below the senior staff rate are not required to fill out periodic transaction reports.²¹

¹² <http://ethics.senate.gov/downloads/pdf/cover1.pdf>,
<http://ethics.house.gov/Media/PDF/2010%20Form%20A%20600.pdf>

¹³ Honoraria is defined as a payment in recognition of acts or professional services for which custom or propriety forbids a price to be set.

¹⁴ 5 U.S.C. § 102 (a)(1)(A)

¹⁵ <http://ethics.senate.gov/downloads/pdf/cover1.pdf>
<http://ethics.house.gov/Media/PDF/2010%20Form%20A%20600.pdf>

¹⁶ 5 U.S.C. § 102 (a)(1)(B)

¹⁷ 5 U.S.C. § 102 (a)(2)(A)

¹⁸ 5 U.S.C. § 102 (a)(2)(B)

¹⁹ Jack Maskell, "The STOCK Act, Insider Trading, and Public Financial Reporting by Federal Officials," *Congressional Research Service*, April 18, 2013, 3.

²⁰ http://www.usoge.gov/forms/oge278/oge278_automated.pdf

²¹ U.S. House of Representatives Committee on Ethics, "Calendar Year 2018 Financial Disclosure Statements and Periodic Transaction Reports Instruction Guide," 5.

Under the STOCK Act, all government officials covered by the Ethics in Government Act are prohibited from “insider trading,” the trading of stocks for personal financial benefit using nonpublic information gained through their position or duties.²² Rules for dealing with conflicts on interest due to the ownership of a stock, however, are more stringent for executive officials and employees than legislative ones. In the case that an individual in the executive branch has a conflict of interest, the individual may be directed divest from those stocks or recuse themselves from the government matter if there is “substantial conflict.”²³ Divestiture from stocks and recusal from voting or speaking on government matters are not required from legislative officials and employees.²⁴

F) Liabilities

Reporting individuals are required to report liabilities of over \$10,000 owed to any one creditor *at any time* during the reporting period by the individual, their spouse, or dependent child. The

reporting individual is required to report any liability of any business, investment pool, or other entity, in which them, their spouse, or their dependent child have an interest, unless: (1) the liability is incidental to the primary trade or business of the entity; (2) the entity is an excepted investment fund reportable in the publicly traded assets section; or (3) the entity is publicly traded and described in standard reference manuals for publicly traded entities reportable in the aforementioned section.²⁵

The President, Vice President, Members of Congress, nominees and incumbents in positions appointed by the President and confirmed by the Senate (other than Foreign Service officials below the rank ambassador, military personnel at or below grade 0-6, or special government employees) are required to disclose all mortgages for personal residences. They must include the name and address of the creditor, the type of liability (an initial mortgage or refinance, home equity loan, or home equity line of credit), the date it was incurred, the interest rate and any discount points used to pay down the rate, the term or duration, and the range of value.²⁶

G) Agreements or Arrangements

Detailed information must also be provided in regard to certain forms of agreements or arrangements that individuals filing reports may engage in. The parties involved, the terms and the date of such instances in which an individual filing a report is promised continued payment by a former employer other than the U.S. Government or future employment must be disclosed. In addition, any continued participation in an employee welfare or benefit plan maintained by a former employee is considered to be an arrangement that must be disclosed.

²² Maskell, “the STOCK Act,” 1.

²³ <https://www.oge.gov/web/oge.nsf/Resources/Resolving+Conflicts+of+Interest>

²⁴ <https://ethics.house.gov/financial-disclosure/policies-underlying-disclosure>

²⁵ <http://ethics.senate.gov/downloads/pdffiles/fdinstruct11.pdf>

²⁶ Maskell, “The STOCK Act,” 3; U.S. Senate Select Committee on Ethics “Financial Disclosure Instructions for Calendar Year 2018,” February 2019, 24.

Finally, any leave of absence during the period in which the individual filing a report is employed by the Government must also be disclosed.²⁷

H) Gifts, Travel Payments & Reimbursements

Reporting individuals are required to disclose expenses provided by a sponsor for travel aggregating more than \$390 during the reported period received by the individual, their spouse, or dependent child.²⁸ Both congress and the executive office members are required to disclose the name and address of the source, dates during which funding was received, and whether a family member accompanied the traveler at the sponsor's expense. Disclosure is required regardless of whether the individual was *paid directly or reimbursed* for travel expenses of gifts. Exclusions from disclosure include any funding received from the U.S Government, given to the individual's agency in connection with official travel, or received by the individual's spouse or dependent child totally independent of their relationship with the reporting individual.²⁹ Members of the House and Senate must differentiate between gifts and travel payments or reimbursements in separate sections.³⁰

I) Compensation in Excess of \$5,000 Paid by One Source

Reporting individuals are required to report sources of more than \$5,000 compensation received by the individual or their business affiliation for services provided directly by the individual during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any non-profit organization when you directly provided the services to the clients and/or customers of the firm that generated a fee or payment of more than \$5,000; excluding the U.S Government. The nature of duties performed or services rendered must also be reported.³¹ The information must cover two calendar years.

Value Categories

Disclosure of dollar amounts for Transactions, Liabilities, Personal Savings and Trusts must be given in the form of value categories.³²

- (A) greater than \$1,000 but not more than \$15,000;
- (B) greater than \$15,000 but not more than \$50,000;
- (C) greater than \$50,000 but not more than \$100,000;
- (D) greater than \$100,000 but not more than \$250,000;
- (E) greater than \$250,000 but not more than \$500,000;
- (F) greater than \$500,000 but not more than \$1,000,000;
- (G) greater than \$1,000,000 but not more than \$5,000,000;
- (H) greater than \$5,000,000 but not more than \$25,000,000;
- (I) greater than \$25,000,000 but not more than \$50,000,000; and
- (J) greater than \$50,000,000.

²⁷ <http://ethics.senate.gov/downloads/pdf/manual.pdf>

²⁸ "Financial Disclosure Instructions for Calendar Year 2018," U.S. Senate Select Committee on Ethics, February 2019, 21.

²⁹ http://www.usoge.gov/forms/oge278/oge278_automated.pdf

³⁰ <http://ethics.senate.gov/downloads/pdf/cover1.pdf>, http://clerk.house.gov/public_disc/2010formA.pdf

³¹ http://www.usoge.gov/forms/oge278/oge278_automated.pdf

³² 5 U.S.C. § 102 (d)(1)

Filing Reports

All financial disclosure reports must be filed with an appropriate ethics official, but most executive branch reports matriculate through the Office of Government Ethics (OGE). The reporting individual is required to file their report with the designated agency ethics official at the agency by which he is employed or will become employed.³³ The President, Vice President, and independent counsel shall file reports with the Director of the OGE.³⁴ Reports submitted by the Director of the OGE himself, are filed with the OGE and then immediately made available to the public.³⁵ Other members of the Executive Branch that are required to file reports with the OGE include:³⁶

- the Postmaster General
- the Deputy Postmaster General
- the Governors of the Board of Governors of the United States Postal Service
- designated agency ethics officials
- candidates for the office of President or Vice President
- officers and employees in (and nominees to) offices or positions which require confirmation by the Senate or by both Houses of Congress other than individuals nominated to be judicial officers

* The Director of the OGE then forwards a copy of the nominee's report to the appropriate congressional committee for consideration during the nomination process.

Aside from the OGE, there are other ethics oversight officials responsible for reviewing the financial disclosure reports of certain government employees. Those who are candidates for nomination or election to the office of President or Vice President must file a report with the Federal Elections Commission (FEC).³⁷ Reports submitted by members of the United States uniformed services must be filed with the Secretary of their respective branch of service.³⁸

Reports by congressional officials are handled by the appropriate congressional office. Certain reports must be filed with the Clerk of the House of Representatives, including those of:³⁹

- a Representative in Congress
- a Delegate to Congress
- the Resident Commissioner from Puerto Rico
- an officer or employee of the Congress whose compensation is disbursed by the Chief Administrative Officer of the House of Representatives
- an officer or employee of the Architect of the Capitol
- United States Capitol Police
- the United States Botanic Garden
- the Congressional Budget Office
- the Government Printing Office
- the Library of Congress

³³ 5 U.S.C. § 103 (a)

³⁴ 5 U.S.C. § 103 (b)

³⁵ 5 U.S.C. § 103 (d)

³⁶ 5 U.S.C. § 103 (c)

³⁷ 5 U.S.C. § 103 (e)

³⁸ 5 U.S.C. § 103 (f)

³⁹ 5 U.S.C. § 103 (h)(1)(A)(i)(I)

- the Copyright Royalty Tribunal
- an individual described in section 101 (c) who is a candidate for nomination or election as a Representative in Congress, a Delegate to Congress, or the Resident Commissioner from Puerto Rico

* Within seven days of the filing date, the Clerk must send a copy of the report to the House Committee on Standards of Official Conduct.⁴⁰

There are also certain financial disclosure reports that must be filed with the Secretary of the Senate, including those of:⁴¹

- a Senator
- an officer or employee of the Congress whose compensation is disbursed by the Secretary of the Senate
- an officer or employee of the Government Accountability Office
- the Office of Technology Assessment
- the Office of the Attending Physician
- an individual described in section 101 (c) who is a candidate for nomination or election as a Senator

* Within seven days of the filing date, the Secretary of the Senate must send a copy of the report to the Senate Select Committee on Ethics.⁴²

Violations

Financial disclosures filed by individuals from each branch of government are subject to review from separate regulatory bodies. These bodies can refer to the Attorney General the name of any individual that has failed to file their reports or deliberately filed false reports.⁴³ Failing to report can result in a fine in any amount up to \$50,000.⁴⁴ Knowingly and willfully falsifying any information that an individual is required to report can result in a fine up to \$50,000, imprisonment for no more than a year, or both.⁴⁵ Regulatory bodies include the Committee on Standards of Official Conduct, the Office of Governmental Ethics and the Judicial Conference.⁴⁶ An individual who files a report more than 30 days after it is due must pay a penalty of \$200 when he or she files the report, unless the Committee waives the penalty.⁴⁷

Public Access

Any agency that possesses these reports must make them available to the public. The financial disclosure reports and periodic transaction reports for the President, Vice President, Members of Congress, candidates to Congress, and Presidential appointed and Senate confirmed officials on the Executive Schedule I and Executive Schedule II are required to be posted online. An interested citizen can search these reports online by the name of individuals and download them from electronic filing systems by the [Clerk of the House of Representatives](#), the [U.S. Senate](#), and

⁴⁰ 5 U.S.C. § 103 (j)(1)

⁴¹ 5 U.S.C. § 103 (h)(1)(A)(i)(II)

⁴² 5 U.S.C. § 103 (j)(2)

⁴³ 5 U.S.C. § 104 (b)

⁴⁴ 5 U.S.C. § 104 (a)(1)

⁴⁵ 5 U.S.C. § 104 (a)(2)(B)(i)

⁴⁶ 5 U.S.C. § 104 (b)

⁴⁷ 5 U.S.C. § 104 (d)

the [Office of Governmental Ethics](#). The public reports of all other legislative and executive officers and employees covered by the Ethics in Government Act are not required to be posted online.⁴⁸ To obtain these reports, an interested citizen would need to submit an application to the appropriate agency, including their name, occupation and address.⁴⁹ The reports filed by Members of Congress are to be kept for a period of six years after the date a person is no longer a Member. Reports filed by other officers and employees are to be retained for six years after receipt.⁵⁰ The Nominee reports of individuals whom the Senate did not confirm are releasable for only one year after the individual is no longer under Senate consideration. Periodic transaction reports are available until the related annual or termination report has passed its period of availability.⁵¹

Certain senior government employees' reports, however, are exempt from public availability. This exemption applies to the Office of the Director of National Intelligence, the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, and the National Security Agency.⁵² In addition, if the President deems a disclosure of any individual engaged in intelligence activities as revealing of sensitive information that compromises national interest, that disclosure would be exempted from public availability.⁵³ Other reports not available to the public are confidential financial disclosures required of employees compensated below the senior level and whose duties create a higher risk of conflict of interest. These are held for review by the employing agency. All other officials and employees compensated below the senior level are not required to file any financial reports.⁵⁴

The Center for Responsive Politics also provides an on-line database that contains information from personal financial disclosure reports.⁵⁵ However, it should be noted that any use of the information from the reports in an unlawful manner is subject to prosecution by the Attorney General.⁵⁰ Unlawful activity includes any commercial purpose that exceeds general dissemination to the public as well as any calculation of credit ratings or solicitation of money for any political, charitable or other purpose.⁵⁶

Because the reports can only be searched by the name of individuals, it is difficult to determine which government officials are engaging in corrupt financial activity such as insider trading. The online databases should be made searchable, sortable and downloadable to make monitoring of stock trading activity more robust and in real time. The requirements for which government officials and employees need to be included in the online disclosure systems is furthermore inadequate. These systems should be expanded to include the disclosures of senior congressional staff, many of whom are active traders with access to inside information. In addition, the lack of direct emphasis on the disclosure of finances stemming from housing and unearned income as well as the value categories that result in wide ranging amounts distorts the true value of finances for government employees. The lack of feasible accessibility for the public and the

⁴⁸ Maskell, "The STOCK ACT," 6.

⁴⁹ 5 U.S.C. § 104 (b)(2)

⁵⁰ Maskell, "The STOCK ACT," 6.

⁵¹ 5 U.S.C. § 105 (a)(1)

⁵² U. S. Office of Government Ethics, *Public Financial Disclosure Guide*, December 2018, 271.

⁵³ 5 U.S.C. § 105 (a)(1)

⁵⁴ <http://www.opensecrets.org/pfds/index.php>

⁵⁵ U.S. Office of Government Ethics, "A Brief Introduction to the U.S. Executive Branch Financial Disclosure System," last updated March 7, 2018.

⁵⁶ 5 U.S.C. § 105 (c)(2)

⁵⁷ 5 U.S.C. § 105 (c)(1)

gaping loopholes in the Ethics in Government Act of 1978 make for an insufficient check on government corruption. In order to ensure a responsible level of transparency and accountability, public financial disclosure must be made more reliable and accessible to all Americans.

Prepared by Caralyn Esser, Bryan Kappe and Prateek Reddy, Public Citizen (May 2019)