

**OPEN-ENDED INTERGOVERNMENTAL WORKING GROUP ON THE
PREVENTION OF CORRUPTION
THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED
BY United States of America
Article 8, Paragraph 5
Asset and Interest Disclosure Systems
United States of America (ninth session)**

**II - Information requested from States parties in relation to asset and interest disclosure
(art. 8, para. 5)**

Please describe the measures your country has taken, if any, to ensure full compliance with article 8(5) of the Convention, and in particular to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

Information sought may include:

- Description of the objectives of the declaration system applicable to public officials (prevention of conflict of interest, illicit enrichment, or both [dual system]).
- Where such a declaration system is in place, you may wish to provide information on the following:
 - Types (categories) of public officials required to make declarations and approximate total number of persons submitting declarations;
 - Information that must be declared (assets, outside activities and employments, positions in companies, other associations, gifts and other benefits, liabilities, etc.);
 - Frequency of declarations required;
 - How declarations are submitted (in paper format, electronically, in person) and the entities to which they are submitted;
 - Availability of tools and advisory services that officials can use in order to comply with their disclosure-related obligations (guidelines for filling out forms, resources for learning about conflict of interest issues, resources for receiving tailored advice on specific conflict of interest situations, etc.);
 - Whether information is declared on assets of public officials' family members or members of public officials' households and under which circumstances such information is provided;
 - What mechanisms are in place for ensuring compliance with the obligation to disclose;
 - Whether there is public access to any of this information;

- Any mechanism in place to carry out the verification/monitoring of the content of declarations; including information on the verification mechanism, such as:
 - How many disclosures are verified;
 - What triggers verification (complaints, routine verification/ex-officio, notifications from other institutions, random selection, etc.);
 - What processes are involved in the verification/review process (checks for internal consistency, cross-checks with external databases, comparisons across years, identification of potential conflicts of interest, etc.);
 - What information can be accessed during the verification/review process (from public officials or public and private sector entities);
 - What happens once irregularities are identified (potential conflicts of interest, unjustified variations of wealth, inaccurate information, etc.);
- Whether and to what extent the content of disclosures or names of persons submitting declarations are made available to the public and other public sector entities and, moreover, how the information is made available (upon individual request, online, etc.);
- Number of trained staff dedicated to collection, compliance, providing advisory services to officials making disclosures publically available, verification, sending referrals to other entities; what types of sanctions are available in the declaration system (for non-submission, actual conflict of interest, false statement, illicit enrichment, etc.).

The United States has a comprehensive system of financial disclosure laws and regulations. In the executive branch, there are two systems: a public financial disclosure system for high-level officials, and a confidential financial disclosure system for lower-level officials who occupy positions with higher risk of conflicts of interest. The objective of both financial disclosure systems is the identification and prevention of conflicts of interest. Although a financial disclosure may reveal a violation of law or regulation, the primary purpose of disclosure is to assist agencies in identifying potential conflicts of interest between a filer's official duties and their private financial interests and affiliations. In 2016, there were over 25,800 public financial disclosure reports filed. In 2016, there were almost 370,000 confidential financial disclosure reports filed.

Public Financial Disclosure Reports:

The Ethics in Government Act of 1978 requires senior government employees, including the President, Vice President, heads of agencies, and others, to file public financial disclosure reports.¹ Individuals in positions that require public financial disclosure must file their disclosures upon entry into the position, annually, and then upon leaving the position. Certain individuals, such as candidates for nomination or election to the office of the President or Vice President, and certain Presidential nominees requiring Senate confirmation must file their disclosure within a period of time, but no later than 30 days before an election or within five days after nomination to a position. New entrants must file a report within 30 days of assuming office, if not earlier. Individuals must thereafter file an annual report every year by May 15, and again within 30 days of terminating their position.

New entrant, annual, and termination reports must include the following information (once threshold amounts are met):

¹ 5 U.S.C. app. § 101, et seq.

- Each individual asset held for the production of income and an indication of its value by category of amount
- Each source of investment income and the type and amount of income by category of amount
- Each source of earned income and the exact amount
- Each liability (by creditor) and the amount owed by category of amount
- Gifts and reimbursements for travel by source, including value or amount (annual and termination reports only)
- Purchases, sales, and exchanges of certain assets by date of transaction and category of amount (annual and termination reports only)
- Each position held outside of government (officer, director, trustee, partner, employee, etc.) and dates held
- Any continuing arrangement with a former or current employer or agreement for future employment, and the terms of that agreement or arrangement
- For individuals filing for the first time, the name of each major client for whom the individual has provided personal services

For most of these requirements, the individual must provide the same or similar information for a spouse and dependent children. Filers are also required to disclose their beneficial interests in trusts and other financial arrangements, such as private equity funds, unless an exemption applies. Individuals must report the value of their assets held for production of income by selecting an appropriate category or range of values. For example, valuation of asset categories begin with “None or less than \$1,001,” “\$1,001 to \$15,000,” “\$15,001 to \$50,000,” “\$50,001 to \$100,000,” and so on up to the last category of “over \$50,000,000.” The amounts specified within the categories for reporting the value of assets, investment income, and transactions all differ.

Additionally, employees in positions requiring public financial disclosures must file periodic transaction reports of certain personal financial transactions in stocks, bonds, and other securities.² These transaction reports are due within 45 days of the transaction or within 30 days of notification of the transaction. They are reviewed using similar criteria as other public financial disclosure reports and are made available to the public in the same way as other public financial disclosure reports. In 2016, over 12,000 transaction reports were filed.

OGE has created an executive branch-wide electronic filing system for the filing of public reports. This filing system, known as *Integrity*, is a web-based system developed and administered through OGE. *Integrity* was designed to help produce quality reports, enhance oversight, and promote transparency. As a result, *Integrity* incorporates a combination of data entry grids and context-dependent questions to help filers identify all of their reportable interests and to report those interests correctly. For example, first-time filers are routed through a series of questions that vary based on their entries in prior grids as well as their answers to prior questions. Thus, they help filers identify related financial investments that they may have overlooked. Although a large portion of reports are submitted using *Integrity*, some agencies also allow filers to use other electronic filing systems for public filing. Confidential filing is done either through individual agencies’ electronic filing systems or by using standard forms which are available on

² 5 U.S.C. app. § 103(l).

OGE's website. A process exists that allows agencies to seek permission from OGE to use a more tailored, alternative confidential form.³

To assist those who file or review public financial disclosure reports, OGE has created an interactive online Public Financial Disclosure Guide.⁴ This tool provides public filers and reviewers with helpful information, illustrations of sample language, definitions, and answers to frequently asked questions in plain language. The guide provides step-by-step instructions on how to fill out the public financial disclosure form and how to report specific types of financial holdings. The guide is an evolving document and easily updated since it is an online tool. OGE also provides tools for helping agencies identify who should file confidential financial disclosure reports⁵ as well as a comprehensive Confidential Financial Disclosure Guide.⁶

Availability of Public Reports:

Reports submitted by the President, Vice President, and for filers at the top two pay levels, such as Cabinet Secretaries, are posted online through the OGE website, and can be accessed without need for a request.⁷ All other public financial disclosure reports are available to the public upon request.⁸ Aside from those officials whose reports are posted on OGE's website, the public financial disclosure for officials requiring Senate confirmation, certain White House appointees, and the most senior ethics official at each agency (approximately 1,000 of the 25,800 reports filed) are available from OGE and can be requested electronically through submission of an online request form.⁹ The remaining public financial disclosure reports filed by executive branch employees are available from the employee's agency and can be obtained by completing a request form with the appropriate agency.¹⁰ To request a public financial disclosure report, a member of the public must submit an application with that person's name, occupation, and address, as well as any person who they are acting on behalf of, and must certify that they are aware of certain prohibitions on the use of these reports.¹¹ These prohibitions include that financial disclosure forms cannot be used for unlawful purposes, for commercial purposes (other than by news and communication media for dissemination to the general public), for determining or establishing a credit rating, or for use in the solicitation of money for any purpose.¹²

Confidential Reports:

³ 5 C.F.R. 2634.905.

⁴ Public Financial Disclosure Guide:

<https://www.oge.gov/web/oge.nsf/Public%20Financial%20Disclosure/EA3E32C7B5CA940E85257EF100778644?opendocument>

⁵ <https://www.oge.gov/Web/OGE.nsf/Resources/Form+450+Job+Aid>

⁶ [https://www.oge.gov/Web/OGE.nsf/Resources/Confidential+Financial+Disclosure+Guide+\(2016\)](https://www.oge.gov/Web/OGE.nsf/Resources/Confidential+Financial+Disclosure+Guide+(2016))

⁷ President and Vice President:

<https://extapps2.oge.gov/201/Presiden.nsf/President%20and%20Vice%20President%20Index?OpenView&ExpandView>; Cabinet officials and others: <https://extapps2.oge.gov/201/Presiden.nsf/PAS%20Index?OpenView>

⁸ 5 U.S.C. app. § 105(b)(1).

⁹ <https://www.oge.gov/web/oge.nsf/Presidential+Appointee+&+Nominee+Records>

¹⁰ OGE Form 201:

<https://www.oge.gov/web/OGE.nsf/OGE%20Forms/CFB7B3F7AB6CCFFF85257EA7004DD17F?opendocument>

¹¹ 5 U.S.C. app. § 105(b)(2).

¹² 5 U.S.C. app. § 105(c).

Certain employees who are less senior but whose positions pose a risk of potential conflicts of interest file new entrant and annual confidential financial disclosure reports. Employees required to file these reports exercise discretion in sensitive areas such as contracting, procurement, the administration of grants and licenses, and regulating or auditing non-federal entities. Once it is determined that an employee is in a position requiring confidential reporting, the employee must file within 30 days upon entering into the position and must file a new report annually thereafter by February 15th each year. Confidential filers are not required to submit termination reports. Confidential financial disclosure reports require similar information as the public financial disclosure reports, including information on a spousal and dependent child assets, but do not require the listing of the values of assets, income, liabilities, and gifts, or the listing of certain interests such as cash bank accounts and diversified mutual funds that are unlikely to give rise to a conflict of interest. Confidential reports are not available to the public, but are reviewed and certified by agency ethics officials in the same way that public financial disclosure reports are. While not publicly available, these reports can also be obtained by an appropriate investigative or prosecutorial authority if needed.

Verification:

The primary purpose of the financial disclosure system in the executive branch is to proactively identify and prevent conflicts of interest. Public and confidential reports are therefore structured to facilitate a conflict of interest review. These reports are not net worth statements and they are not audited. Every financial disclosure report is subject to both a technical review to ensure that the financial disclosure is in compliance with the disclosure laws and a conflict of interest review for compliance with the ethics laws and to identify potential conflicts of interest and establish a mitigation strategy.

The review of financial disclosure reports is primarily conducted by the agency ethics officials in the agency where the employee is located. The review is to be conducted within 60 days of the date of filing.¹³ For high-level officials, such as the President, Vice President, agency heads, certain White House Officials, and DAEOs, reports are secondarily reviewed by OGE. Once OGE receives the report from the agency, OGE has 60 days to review it.¹⁴ Importantly, the financial disclosure reports of individuals who are nominated to positions requiring Presidential appointment and Senate confirmation (PAS) are reviewed by the agency, OGE, and the White House prior to the individual's appointment.

As technical review of reports sets the stage for the conflicts review, it is imperative to ensure that the filer has correctly reported all relevant information so that a full conflicts review can take place. Although disclosures are to be taken at "face value" unless there is a patent omission or ambiguity, or the reviewer has independent knowledge that something is incorrect, in practice reviewers are generally proactive in engaging with filers to ensure that all disclosures have been accurately made. This is particularly true for the review of reports under OGE jurisdiction. During the technical review, typically the agency (and if applicable, OGE) works with the individual filer, asking the individual a variety of questions to clarify the entries on the report and helping the individual to ensure that all required information is properly disclosed. This process is often iterative and can take multiple rounds. The agency will also consult publicly-available resources such as finance websites, search engines, and

¹³ 5 C.F.R. § 2634.605.

¹⁴ 5 C.F.R. § 2634.605.

government websites. The goal is to understand the nature of the individual's financial holdings because different assets have different disclosure requirements. This information also informs the conflicts review. Likewise, publicly-available background information about the individual might trigger the reviewer to ask additional questions of the individual. If inaccuracies are found, the agency and OGE are authorized to require additional information be made by the filer, which becomes part of the report.

The agency (and if applicable, OGE) will then carry out a conflict-of-interest review. The conflicts review focuses on reviewing the financial disclosures and the duties of the filer's position to identify the potential for conflicts of interest under the ethics statutes and regulations. This review does not rely upon the subjective view of the reviewer as to what might constitute a conflict of interest. Rather, the review focuses on whether an employee may have holdings or outside positions and relationships that might trigger one of the ethics laws, and to establish remedial measures that would prevent those conflicts of interest from arising.

If a reviewing official identifies a potential conflict of interest between a filer's official duties and the filer's private financial interests and affiliations, the agency (and if applicable, OGE) work with the individual to determine what steps that individual must take in order to avoid conflicts with the financial interests, outside positions, relationships, and activities listed on the report. The steps required may include one of or a combination of the following actions: divestiture of conflicting assets; resignation from positions; a limitation on certain outside activities; a public agreement to recuse from taking actions on certain specific matters that may come before the individual; and/or an agreement to ask for a waiver in certain limited circumstances. The creation of a blind trust might be an available action, but it is never required.

Nominees who are under consideration for PAS positions are also required to reduce to writing all commitments that they will take to avoid potential conflicts of interest in an "ethics agreement." Once the individual is appointed, OGE, along with the agency in which the person has been appointed, monitors this agreement to ensure that the steps agreed upon have been taken by the individual. Usually those steps are required to be completed within 90 days of appointment.

OGE ensures compliance with the commitments made in an individual's ethics agreement by requiring the individual to provide a written certification of their compliance to their agency and to OGE.¹⁵ This written certification of ethics agreement compliance is then posted on OGE's website. If an individual fails to timely file a certificate of compliance, OGE will note that the individual has not filed his or her certificate on OGE's website. An employee who has made a material misrepresentation or omission on the certification form may be subject to disciplinary action or criminal prosecution for making a false certification or writing.¹⁶ Employees other than those in PAS positions may also be required to enter into an oral or written ethics agreement with their agency, and those commitments are monitored by their agency.¹⁷

¹⁵[https://www.oge.gov/Web/OGE.nsf/Program%20Management%20Advisories/FE2806B77B2B5AA68525811D007051D3/\\$FILE/PROGRAM%20ADVISORY%20AND%20EA%20CERTIFICATION%20\(May%202017\).pdf?open](https://www.oge.gov/Web/OGE.nsf/Program%20Management%20Advisories/FE2806B77B2B5AA68525811D007051D3/$FILE/PROGRAM%20ADVISORY%20AND%20EA%20CERTIFICATION%20(May%202017).pdf?open)

¹⁶ 18 U.S.C. § 1001.

¹⁷ 5 C.F.R. § 2634.801, et seq.

Once the review is complete, reviewing officials within each agency (and if applicable, OGE) certify and maintain these reports for a period of six years.¹⁸

Enforcement:

Failing to file a public or confidential financial disclosure report, making false statements or omissions on a financial disclosure report, and falsifying information on a financial disclosure report are punishable as criminal offenses.¹⁹ The Department of Justice can also seek a civil penalty for an individual who has knowingly and willfully falsified or failed to file or report information required on a public financial disclosure report.²⁰ An individual who files a public financial disclosure report late can also be subject to a \$200 late fee.²¹ In addition, failure to file, filing reports late, or falsifying or failing to report information may result in other corrective action or discipline, up to and including termination.²²

Please outline the actions required to ensure or improve the implementation of the measures described above and any specific challenges you might be facing in this respect.

Examples of the types of challenges States parties may face include:

- Challenges related to developing and adoption of the legal framework of assets and interest disclosure system;
- Challenges related to the functioning of the asset and interest disclosure system and in particular:
 - Challenges related to submission of the declarations;
 - Challenges related to verification of the declarations;
 - Challenges related to the follow up and to imposing sanctions;
 - Challenges related to the transparency of the regime; and
- Challenges related to resource limitations, lack of capacity, etc.

The United States does not have any challenges to report at this time.

Do you consider that any technical assistance is required in order to allow you to fully implement this provision? If so, what specific forms of technical assistance would you require?

- **Legislative assistance:** Please describe the type of assistance
- **Institution-building:** Please describe the type of assistance
- **Policymaking:** Please describe the type of assistance
- **Capacity-building:** Please describe the type of assistance
- **Research/data-gathering and analysis:** Please describe the type of assistance
- **Facilitation of international cooperation with other countries:** Please describe the type of assistance
- **Others:** Please specify

¹⁸ 5 U.S.C. app. § 105(d).

¹⁹ 18 U.S.C. § 1001; 5 U.S.C. app. § 104 (applicable to public financial disclosure reports only).

²⁰ 5 U.S.C. app. § 104.

²¹ 5 U.S.C. app. § 104.

²² 5 C.F.R. § 2634.701

States parties are also encouraged to provide a description of any such assistance already being provided, including donor information.

The United States does not require technical assistance with regard to implementation of this provision.