

Surface Transportation Board

Written Procedures for the
Public and Confidential Financial
Disclosure Systems



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Revision History

Version Number	Date	Description	Primary Author(s)
1.0	3/3/2014	Final Version	Lee Gardner
1.1	July 2021	Modifications to reflect use of Office of Government Ethics (OGE) electronic filing system	Christopher Oehrle; Craig Keats
2.0	July 22, 2021	Final Release	Christopher Oehrle

Surface Transportation Board (STB or Board) directives are reviewed, at minimum, every five years and revisions are made as necessary to ensure that the strategy is still applicable to the STB environment and compliant with applicable federal laws, directives, policies, regulations, standards, and guidance. The revision history records dates of approval, recertification, and cancellation, as well as major and minor revisions to this directive. A brief summary of revisions will be noted. In the event this directive is cancelled, superseded, or supersedes another directive, that will also be noted in the revision history.

Approved by: _____
Managing Director

Date

1. **Purpose.**

The Ethics in Government Act of 1978, as amended, requires certain federal employees to file financial disclosure reports to determine whether they have a conflict of interest in carrying out their official duties. Certain of these reports (OGE Form 278e and 278T) are available to the public, where appropriate, while others (OGE Form 450) are kept confidential. Submission of a report and its availability to the public depends on the position occupied by the employee. These procedures describe how the STB collects, reviews, evaluates and, where appropriate, makes financial disclosure reports available to the public.

2. **Authority/Reference.** Ethics in Government Act of 1978, 5 U.S.C. app. 4 §§ 101 - 111.

3. **Policy.** It is the STB's policy to implement the laws and regulations governing public and confidential financial disclosure in a manner that is thorough, timely, and professional.

4. **Scope.** These procedures apply to all STB employees required to file financial disclosure reports (OGE Form 278e or 278-T public reports or OGE Form 450 confidential reports), and to members of the public requesting access to OGE Form 278e or 278-T public reports. The Designated Agency Ethics Official (DAEO) will implement, oversee, and enforce these procedures. The Alternate DAEO or a Board Ethics Official, where duly delegated to do so, may act on behalf of the DAEO, including performing the duties outlined in the procedures described below.

5. **Procedures.**

A. **Designation of Filers**

1. The DAEO will designate the public and confidential filers in accordance with the regulations at 5 C.F.R. §§ 2634.202 and 2634.904, respectively. Exceptions to the filing requirements will be made in accordance with the regulations at 5 C.F.R. §§ 2634.203.
2. The Section of Human Resources (HR) will notify the DAEO of new entrants to all covered positions. The DAEO will then notify these individuals of their obligation to file a report, which will be due within 30 days of the filer's entrance on duty (EOD) date to the covered position. HR will also promptly notify the DAEO of individuals who are to be detailed to these covered positions for more than 60 days. HR will notify the DAEO of all resignation requests and other terminations of individuals who are public filers as soon as practicable.
3. The DAEO, the DAEO's designee, or the ADAEO will maintain the master list of filers, with periodic update assistance from HR.
4. **OGE Form 278 public report filers:** Under 5 C.F.R. § 2634.202, the Office of Government Ethics (OGE) has provided agencies a complete listing of categories

of public filers. The following STB employees are required to file new entrant, annual, or termination public financial disclosure reports:

- a. employees in non-General Schedule (GS) positions for which the rate of basic pay is fixed at a rate equal to or greater than 120% of the minimum rate of pay for GS-15 of the GS (e.g., the Senior Executive Service (SES) or Executive Service (ES)); and
- b. the agency DAEO.

5. **OGE Form 450 confidential report filers:** Under 5 C.F.R. § 2634.904, OGE has provided agencies a complete listing of the types of positions whose occupants will be confidential filers. The following STB employees are required to file new entrant or incumbent confidential financial disclosure reports:

- a. employees in GS positions, employees in non-GS positions for which the rate of basic pay is fixed at less than 120% of the minimum rate of basic pay for GS-15 (e.g., U.S. Postal Service), and either
 - i. whose positions have been designated because the STB concludes that the duties and responsibilities of the positions require the employees to participate personally and substantially through decision or the exercise of significant judgment in the taking of government action regarding:
 - 1. contracting or procurement;
 - 2. administering or monitoring grants, subsidies, licenses, or other federally conferred financial or operational benefits;
 - 3. regulating or auditing any non-federal entity; or
 - 4. other activities in which the final decision or action will have a direct and substantial economic effect on the interests of any non-federal entity; or
 - ii. whose positions have been designated because the STB concludes that the duties and responsibilities of the positions require the employee to file such a report to avoid involvement in real or apparent conflict of interest, and to carry out the purposes behind any statute, executive order, rule, or regulation applicable to or administered by the employee (e.g., positions which involve investigating or prosecuting violations of criminal or civil law).

Any appeal of a designation as a confidential filer shall be presented by the employee to the DAEO, pursuant to 5 C.F.R. § 2634.906. The DAEO's decision on appeal is final.

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B. Distribution of Report Forms

1. **Public report filers:** Through OGE's electronic filing system, known as Integrity (located at www.integrity.gov), the DAEO will assign and send a notice of assignment (which filers will receive by email) that includes an internet link to Integrity, where public filers will electronically access, prepare and submit an OGE Form 278e, as follows:
 - a. New entrant public filers will receive an email with a link to Integrity, providing them with electronic access to OGE Form 278e, within 5 workdays of their EOD to allow for timely filing of reports. Those reports are due within the 30 days after EOD with the STB unless the employee is coming from another covered position held within the 30 days before EOD, in which case the new entrant will provide the STB DAEO with a copy of the filer's most recently submitted OGE Form 278e (or OGE Form 278 equivalent). New entrant public filers will also receive notice of the requirement that, in addition to their OGE Form 278e reports, they must file OGE Form 278-T reports when they conduct any transaction required to be reported under the Ethics in Government Act. 5 U.S.C. app. 4, § 102(a)(5)(B) or the Stop Trading on Congressional Knowledge (STOCK) Act. Once the new entrant public filer is employed and conducts such a transaction, he or she must submit an OGE Form 278-T in Integrity within 30 days after receiving notification of such transaction, but no later than 45 days after such transaction. Ethics in Government Act, 5 U.S.C. app. 4, § 103(l).
 - b. Incumbent public filers will receive an email with a link to Integrity, providing them with electronic access to OGE Form 278e, no later than March 15 of each year to allow for timely filing of reports by the May 15 due date. Incumbent public filers will be reminded of the requirement that, in addition to their annual OGE Form 278e report, they must file an OGE Form 278-T when they conduct any transaction required to be reported under the Ethics in Government Act. 5 U.S.C. app. 4, § 102(a)(5)(B). Upon conducting such a transaction, incumbent public filers must submit an OGE Form 278-T in Integrity within 30 days after receiving notification of such transaction, but no later than 45 days after such transaction. Ethics in Government Act, 5 U.S.C. app. 4, § 103(l).
 - c. Termination public filers will receive an email with a link to Integrity, providing them with electronic access to OGE Form 278e, within 5 workdays of termination to allow for timely filing of reports (due within 30 days after leaving a public filer position) unless an employee is moving to another covered position within 30 days after termination.
2. **Confidential report filers:** Confidential filers do not use the Integrity system., The DAEO will distribute by email a notice that includes an internet link to the electronic versions of the OGE Form 450.

- a. New entrant confidential filers will receive the OGE Form 450 within 5 workdays of their EOD to allow for timely filing of reports. Those reports are due within the 30 days after EOD with the STB, unless an employee is coming from another covered position held within the 30 days before EOD, in which case the new entrant will provide the STB DAEO with a copy of the filer's most recently submitted OGE Form 450.
- b. Incumbent confidential filers will receive the OGE Form 450 by January 15th to allow for timely filing of reports by the February 15th due date.

C. FILING INSTRUCTIONS

1. **Place of filing:** All public reports shall be submitted through Integrity (www.integrity.gov). All confidential reports shall be submitted to the STB DAEO. Questions or requests for assistance in preparing or filing financial disclosure reports should be directed to the DAEO.
2. **Time of Public Report Filing:** The following due dates apply to new entrant, termination, and incumbent public reports:
 - a. New entrant public reports (using OGE Form 278e) shall be electronically submitted in Integrity within 30 days of a filer's EOD (unless a new entrant left another covered public position within 30 days prior to assuming a position at the STB, in which case the new entrant shall provide the DAEO with a copy of the most recent report filed in the previous covered position).
 - b. Termination public reports (using OGE Form 278e) shall be submitted electronically in Integrity within 30 days after termination of employment from a position requiring the filing of a public report. Filers must submit the report in Integrity **no earlier** than the last day of service in the position. No termination report is required if the employee is assuming another public filer position within 30 days of termination from the STB.
 - c. Incumbent public reports (using OGE Form 278e) shall be submitted electronically in Integrity on or before May 15th of each year, but not earlier than January 15th.
 - d. Incumbent transaction public reports (using OGE Form 278-T) shall be submitted electronically in Integrity when required (as referenced in part B, section l.b. of these Procedures).
3. **Time of Confidential Report Filing:** The following due dates apply to new entrant and incumbent confidential reports:

- a. New entrant confidential reports shall be submitted within 30 days of a filer's EOD (unless a new entrant left another covered confidential-filer position within 30 days of assuming a position at the STB, in which case the new entrant shall provide the DAEO with a copy of the most recent report filed in the previous covered position).
- b. Annual confidential reports shall be submitted between January 15th and February 15th of each year.
- c. No termination reports are required for confidential filers.

D. Filing Extensions

1. **Public Filers:** The DAEO may, for good cause shown, grant to a public filer or class of public filers an extension of up to 45 days. Filers should notify the DAEO in writing of the need for an extension as soon as possible and include the specific reason(s) for the extension. If additional time is needed, then filers must submit a written request to the DAEO, who may grant an additional extension of up to 45 days. Filing extensions cannot total more than 90 days from the original due date for filing. The DAEO must approve or deny requests in writing and keep copies of such correspondence in the employee's official report file.
2. **Confidential Filers:** The DAEO may, for good cause shown, grant to a confidential filer or class of filers a filing extension or several extensions totaling no more than 90 days.

E. PROCESS FOR REVIEWING REPORTS

1. **Responsibility:** All reports must be signed and dated to reflect the date of receipt by the ethics office. The agency's ethics office will maintain a record of all filers, due dates, and extensions. The DAEO will issue reminder notices to filers when necessary. The ethics office must review all reports within 60 days of the receipt date.
2. **Review:** Although he consults with the DAEO as necessary, as a general matter the ADAEO is responsible for reviewing the public financial disclosure reports filed under the Integrity system. There will be one level of review, except for OGE Form 278e reports, which must be submitted to OGE for review under 5 C.F.R. § 2634.602(c). The reviewing official will review the reports for completeness, conflicts of interest, and violations of laws, rules, and regulations in accordance with 5 C.F.R. § 2634.605. The reports will be signed by the reviewing official once that official determines that they are complete and that they have no conflicts of interest.
3. **Additional information needed from filer:** If a reviewing official determines that additional information from the filer is needed before the report can be certified,

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then the filer must submit the requested information no later than 5 workdays after the date of the request. A reviewing official should make a notation in the comments section of the report that additional information is pending and should record the date of the request. An extension of time for the filer to submit the requested information may be granted upon good cause.

4. **Amending and revising reports:** If the amendments are relatively minor, then the reviewing official may make them, if authorized by the filer. The reviewing official should make a note within the report that the amendments were authorized by the filer, including the date the amendments were made. If the amendments are extensive, then the report with the amendments should be resubmitted by the filer.
5. **Procedure when a possible violation is noted:** The filer must be notified whenever the reviewing official concludes that the information disclosed on the report may reveal a violation of the laws and regulations specified in 5 C.F.R. § 2634.605(b)(5). The filer will have the opportunity to respond either orally or in writing. If the response fails to show that the filer is in compliance with these laws and regulations, then the reviewing official should:
 - a. Notify the filer of the problem;
 - b. Provide the filer with an opportunity for personal consultation, if practicable;
 - c. Inform the filer, in writing, of the remedial action needed; and
 - d. Set a date for the appropriate remedial action to be completed. Unless extended by the DAEO in writing, all remedial action shall be completed within three months of notification by the DAEO of the filer's need to take action. If the filer complies with the request for remedial action in the time allotted, then the DAEO should indicate in the comments section of the report what remedial action has been taken and should then sign and date the report. If the filer does not comply by the date set in the written request, then the DAEO shall notify the Board's Chairman, or the Director of OGE, as appropriate, for referral to the Attorney General.
6. **Remedial action:** Such action may include the following, as appropriate:
 - a. written recusal from the matter under the filer's official responsibility that causes the conflict of interest;
 - b. divestiture of a conflicting interest;
 - c. resignation (from an outside position);
 - d. waiver (18 U.S.C. 208(b)(1) or (3));

- e. qualified blind or diversified trust;
- f. restitution; or
- g. transfer, reassignment, or limitation of duties.

F. Penalties

1. **Failure to file or falsifying a report:** The Board may take adverse administrative action against an individual for the reasons stated in this paragraph. The Board's Chairman or the Director of OGE, as appropriate, shall refer to the Attorney General the name of any individual when there is reasonable cause to believe that such individual has willfully failed to file a required financial disclosure report or information required on such report, or has willfully falsified any information required to be reported. Administrative actions and actions brought by the Attorney General may include:
 - a. The Board's Chairman or other appropriate official may take administrative action, including adverse action under 5 C.F.R. Part 752, against any public or confidential filer.
 - b. The Attorney General may bring:
 - i. a civil action against a public filer; and
 - ii. a criminal action against a public or confidential filer for supplying false information on any financial disclosure report.
2. **Delinquent public reports:** Any public filer whose OGE Form 278e or OGE Form 278-T is more than 30 days late will be required to pay a \$200 late filing fee, payable to the U. S. Treasury, as specified in 5 C.F.R. § 2634.704. Upon determination that the report is late, the DAEO shall notify filers in writing of the procedures for paying the fee or requesting a waiver.
 - a. A waiver of the late filing fee may be sought by submitting a written request (including supporting documentation) to the DAEO. The DAEO may waive the late fee upon determination that the filing delay was caused by extraordinary circumstances, including the agency's failure to notify the filer of the requirement to file a report. The DAEO should respond to the request in writing and place a copy of the response in the employee's report file. The DAEO may consult with OGE prior to approving a waiver of the late fee. The late fee is in addition to other sanctions that may be imposed for late filings.
3. **Delinquent confidential reports:** If an OGE Form 450 is more than 30 days late,

then the DAEO shall contact the filer, advise the filer of the fact that the report is overdue, and specify a date for submission of the report. If the report is not submitted by the specified date, the DAEO will contact the filer's immediate supervisor for appropriate action.

G. STORAGE OF AND ACCESS TO REPORTS

1. **Place:** The DAEO shall maintain custody of confidential financial disclosure reports. The reports shall be maintained electronically or in a locked file drawer or room. Public financial disclosure reports are maintained in Integrity by OGE.
2. **Retention and disposal:** Confidential reports shall be retained by the agency for a period of six years after receipt (unless needed for ongoing investigation). Public reports are retained on Integrity.
3. **Public access:** Members of the public may apply to obtain access to public reports. OGE Form 201 shall be used to apply for access. The DAEO shall respond to applications pursuant to 5 C.F.R. § 2634.603. Public access to OGE Form 278e and OGE Form 278-T reports shall not be permitted until 30 days after receipt of the report by the DAEO. No member of the public may have access to OGE Form 450 confidential reports except pursuant to a federal court order or as otherwise provided under the Privacy Act.
6. **Responsibility/Action Required.** The DAEO (or a duly-delegated and authorized agency ethics official) and the Director of HR are responsible for carrying out the procedures described above.
7. **Inquiries.** Questions should be directed to the STB DAEO (or Alternate DAEO or a delegated Board Ethics Officer).