

# STB ADMINISTRATIVE ISSUANCE

**Issuance No.:** 7-155

**Date:** May 25, 2006

**Subject: Written Procedures for the Public and Confidential Financial Disclosure Systems**

1. **Purpose.** The Ethics in Government Act of 1978, as amended, requires certain employees in Federal government to file financial disclosure reports in order to determine whether the employees have a conflict of interest in carrying out their official duties. These reports are either available to the public (SF 278) or are kept confidential (OGE Form 450 and OGE Form 450-A). Submission of a report and its availability to the public depends on the position occupied by the employee. These procedures describe how to collect, review, evaluate and, where appropriate, make publicly available financial disclosure reports.

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

3. **Policy.** It is the policy of the Surface Transportation Board (STB) 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 either an SF 278 public report or an OGE Form 450 or 450-A confidential report, and to members of the public requesting access to SF 278 reports.

## 5. **Procedures.**

### A. **Designation of Filers**

1. The Designated Agency Ethics Official (DAEO) will designate the public and confidential filers in accordance with the regulations at 5 CFR 2634.202 and 2634.904, respectively. Exceptions to the filing requirements will be made in accordance with the regulations at 5 CFR 2634.203 and 2634.905 (see part E of these procedures).
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 notify the DAEO of individuals who are detailed to these covered positions for more than 60 days within 2 days of the employee's EOD. HR will notify the DAEO of all resignation requests and other terminations of individuals who are public filers as soon as practicable.

3. HR will maintain the master list of filers, with periodic update assistance from the DAEO.
4. **SF 278 public report filers:** 5 CFR 2634.202 provides a complete listing of public filers. The following STB employees are required to file new entrant, incumbent, 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));
  - b. employees whose positions are excepted from the competitive service by reason of being of a confidential or policy-making character (e.g., Schedule C positions);
  - c. employees who are administrative law judges appointed pursuant to 5 U.S.C. 3105;
  - d. the agency DAEO;
  - e. members of the uniformed services whose pay grades are at or above the O-7 grade.
5. **OGE Form 450 and 450-A confidential report filers:** 5 CFR 2634.904 provides a complete listing of confidential filers. The following STB employees are required to file new entrant or incumbent confidential financial disclosure reports:
  - a. all special Government employees (SGE), except those already required to file an SF 278, including those who serve on advisory committees; and
  - b. 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); members of the uniformed services whose pay grade is below O-7; and either
    - i. whose position has been designated because the STB concludes that the duties and responsibilities of the position require the employee 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 position has been designated because the STB concludes that the duties and responsibilities of the position 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 CFR 2634.906. The DAEO's decision on appeal is final.

#### **B. Distribution of Report Forms**

1. **Public report filers:** The DAEO will distribute by hard copy or email a notice that includes a Web link to the electronic versions of the SF 278 form to new entrant, incumbent and termination filers.
  - a. New entrant filers will receive the SF 278 within 5 workdays of their EOD to allow for timely filing of reports (due within 30 days of EOD to public filer positions) unless the employee is coming from another covered position within 30 days of EOD with the STB, in which case the new entrant will provide the STB DAEO with a copy of the filer's most recently submitted SF 278.
  - b. Incumbent filers will receive the SF 278 no later than March 15 of each year to allow for timely filing of reports by the May 15 due date.
  - c. Termination filers will receive the SF 278 within 5 workdays of termination to allow for timely filing of reports (due within 30 days of leaving a public filer position) unless an employee is moving to another covered position within 30 days of termination.
2. **Confidential report filers:** The DAEO will distribute by hard copy or email

a notice that includes a Web link to the electronic versions of the OGE Form 450 and 450-A (to be used only by eligible filers for a maximum of three consecutive years) to new entrant and incumbent filers.

- a. New entrant filers will receive the OGE Form 450 within 5 workdays of their EOD to allow for timely filing of reports (due within 30 days of EOD to confidential filer positions) unless an employee is coming from another covered position within 30 days of EOD with the STB, 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 filers will receive the OGE Form 450 or 450-A by October 1<sup>st</sup> to allow for timely filing of reports by the October 31<sup>st</sup> due date.

### C. Filing Instructions

1. **Place of filing:** All public and 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 reports:
  - a. New entrant reports shall be submitted 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 reports shall be submitted within 30 days after termination of employment. Filers must sign and date the report **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 reports shall be submitted on or before May 15<sup>th</sup> of each year, but not earlier than January 1<sup>st</sup>.
3. **Time of Confidential Report Filing:** The following due dates apply to new entrant and incumbent reports:
  - a. New entrant reports shall be submitted within 30 days of a filer's EOD (unless a new entrant left another covered confidential 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 reports shall be submitted on or before October 31<sup>st</sup> of each year, but not before October 1<sup>st</sup>.
- c. SGEs shall file confidential reports marked as “new entrant” each year within 30 days of their reappointment or redesignation as an SGE for a new 365-day period. SGEs are not eligible to file the Form 450-A.
- d. 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. Exclusions From Filing Requirements**

1. **Public Filers:** Pursuant to 5 CFR 2634.203, the Director of OGE may exclude certain individuals from filing public reports. The DAEO shall transmit to OGE a description of the position(s) to be considered for exclusion, as well as identification of the individual currently occupying the position. Exclusions must be requested prior to due dates for reports employees would otherwise have to file. OGE’s decision on review of the exclusion will be conclusive.
2. **Confidential Filers:** Pursuant to 5 CFR 2634.905, the DAEO may exclude certain individuals or class of individuals, including SGEs, from all or a portion of the confidential filing requirements. Such exclusions are based on the following determinations that:
  1. the duties of a position make remote the possibility of a

conflict of interest, or

2. the duties of a position involve such a low level of responsibility that filing a report is unnecessary because of a substantial degree of supervision and review over the position or the inconsequential effect any such conflict would have on the integrity of the Government.

**F. Process for Reviewing Reports**

1. **Responsibility:** All reports must be date-stamped immediately upon receipt in the ethics office. For public reports, the date should be recorded in the box marked "Agency Use Only" on the cover page of the SF 278. For confidential reports, the date should be recorded in the box marked "Date received by Agency" on the cover page of the OGE Form 450. The ethics office will maintain a record of all filers, due dates, and extensions. The DAEO will issue reminder notices to filers when necessary. All reports must be reviewed within 60 days of the receipt date.
2. **Review:** The DAEO, Alternate DAEO or both will review and certify the financial disclosure reports. The Alternate DAEO will certify the DAEO's report. Except for SF 278 reports which must be submitted to OGE under 5 CFR 2634.602(c)(1), there will be one level of review. The reviewing official will review the reports for completeness, conflicts of interest and violations of laws, rules and regulations in accordance with 5 CFR 2634.605. The reports will be signed by the reviewing official upon satisfaction of completeness and absence of 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, then the filer must submit the requested information no later than 3 work days 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 record the date of the request.
4. **Amending and revising reports:** If the amendments are relatively minor, then the reviewing official may make them by handwritten notation, provided that permission from the filer is received. The reviewing official should make a note on the report to the effect that the amendments were authorized by the filer and should include the date the amendments were made. If the amendments are extensive, then the page of the report with the amendments should be resubmitted by the filer.
5. **Procedure when a possible violation is noted:** If the reviewing official

concludes that the information disclosed on the report may reveal a violation of the laws and regulations specified in 5 CFR 2634.605(b)(1)(ii), then the filer must be notified. 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 do the following:

- 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 approved by the DAEO in writing, all remedial action shall be completed within three months of being notified by the DAEO of the 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 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.

G. **Penalties**

1. **Failure to file or falsifying reports:** 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 the following:

- a. The Board's Chairman or other appropriate official may take administrative action, including adverse action under 5 CFR Part 752, against any public or confidential filer for the reasons stated Part G, section 1 of these Procedures.
  - b. The Attorney General may bring the following:
    - i. a civil action against a public filer for the reasons stated in Part G, section 1 of these Procedures; 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 SF 278 that is more than 30 days late will require payment of the \$200 late filing fee, payable to the U.S. Treasury, as specified in 5 CFR 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 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, which made the delay reasonably necessary. 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.
3. **Delinquent confidential reports:** If an OGE Form 450 or 450-A 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 the DAEO will contact the filer's immediate supervisor for appropriate action.

#### **H. Storage of and access to reports**

1. **Place:** The DAEO shall maintain custody of public and confidential financial disclosure reports. The reports shall be maintained in a locked file drawer or room.

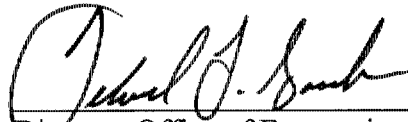


2. **Retention and disposal:** Both public and confidential report shall be retained by the agency for a period of six years after receipt (unless needed for ongoing investigation).
3. **Public access:** Members of the public may apply to obtain access to public reports. OGE Form 201 shall be used to apply for access. The DAEO shall respond to applications pursuant to 5 CFR 2634.603. Public access to SF 278 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 or 450-A confidential reports except pursuant to a Federal court order or as otherwise provided under the Privacy Act.

6. **Responsibility/Action Required.** The DAEO and the Director of HR are responsible for carrying out the procedures described above.

7. **Inquiries.** Questions should be directed to the STB DAEO.

8. **Effect on Other Issuances.** This issuance overrides any prior agency issuance on this subject.



Director, Office of Economics, Environmental  
Analysis and Administration