
Justification Statement
for Information Request for the Confidential Financial Disclosure
Form for Special Government Employees
Serving on Federal Advisory Committees at the U. S. Environmental
Protection Agency
EPA ICR # 2260.01

Purpose

The purpose of this information collection request is to permit the United States Environmental Protection Agency (EPA or the Agency) to obtain personal information to assist it in selecting Federal advisory committee members for appointment as Special Government Employees (SGEs) in the most efficient and cost effective manner. EPA is committed to ensuring the highest levels of integrity and ethical conduct in its activities. To ensure that it selects SGEs for service who can uphold these ethical standards, EPA seeks to identify whether potential candidates present any insurmountable conflict of interest or impartiality concerns. EPA has determined that it needs specific information in order to evaluate whether candidates present potential conflicts of interest. Furthermore, the Agency has determined that this review should be conducted before a candidate is hired as an SGE and appointed as a member to a committee by EPA's Administrator or Deputy Administrator. To that end, Agency officials developed the "Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency," also referred to as Form 3110-48, as a tool to identify any potential areas of conflict or a lack of impartiality.

An SGE is a person who is retained, designated, appointed, or employed to perform, with or without compensation, for a period not to exceed 130 days during any period of 365 consecutive days, temporary duties for the Federal Government either on a full-time or intermittent basis. SGEs who provide advice to EPA are required to file the Form 3110-48 in lieu of the Office of Government Ethics form 450. Form 3110-48 has already been reviewed and approved for use by the Office of Government Ethics.

An advisory committee is defined by FACA as any committee, board commission council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup, that is established or utilized by the federal Government to obtain advice or recommendations and is not composed solely of full-time or permanent part-time federal officers or employees.

One benefit of federal advisory committees (FACs) is that EPA receives independent advice from members of the public and individuals who are experts in their fields. In addition, EPA is able to obtain diverse points of view about its priority issues, thereby ensuring that EPA is better able to make informed decisions. The FACs advise EPA and assist in vetting various options and issues. The use of FACs facilitates improved buy-in for EPA's decisions due to the experience, advice and consideration of the constituent members and their added value.

Justification

In June 2001, the Government Accountability Office (GAO) issued a report entitled “EPA’s Science Advisory Board Panels – Improved Policies and Procedures Needed to Ensure Independence and Balance.” GAO recommended that EPA develop policies and procedures that better identify and mitigate potential conflicts of interest and support the development of balanced panels. Recommendations included gathering the required conflict of interest information before a member is selected, specifically:

- Determine whether each panel will be reviewing a “particular matter” before selecting the panel in order to identify the financial conflict-of-interest requirements, if any, to which the panelists will be subject.
- Obtain and evaluate relevant background information on peer review panel candidates before appointing panel members. The evaluation should include explicitly discussing with potential panelists (1) items not adequately reported on the confidential financial disclosure form as well as items reported that could present conflicts of interest; (2) other information relevant to assessing impartiality, such as research conducted and previous public statements or positions on the matter being reviewed, interest of the employer or clients in the matter, participation in legal proceedings, work for chemical companies or other affected industries, and prior or current research grants that could be affected by the matter; and (3) whether they have any potential conflicts of interest related to the specific panel being established. Further, pertinent information obtained from discussions with panelists should be documented.

As part of that effort to respond to GAO’s recommendations, EPA developed a new and improved form for all of its scientific and technical committees special government employees.

EPA’s Designated Federal Officers (DFOs) who manage EPA Federal Advisory Committees (FACs) experienced great difficulty trying to use the OGE Form 450 to identify actual or potential conflicts of interest of potential candidates for Federal Advisory Committee membership. The OGE Form 450 was confusing for the proposed members and they did not identify all financial interests of possible concern. In response to the GAO’s recommendations, EPA developed the Form 3110-48 to ensure that all relevant financial interests are identified and considered during the member selection process. It is important for EPA to have this information collection in place because we continuously need to appoint new SGE members as new advisory committees are created or as members’ terms of appointment expire.

The Form 3110-48 is completed by candidates for membership as SGEs on EPA federal advisory committees. The form is completed as part of the member selection process and before they are invited to serve as a member of a FAC at EPA. The Form 3110-48 is reviewed by the Committee’s Designated Federal Officer, and the Program Office Deputy Ethics Official to determine whether there is a financial conflict of interest between the proposed member’s public responsibilities and private interests/activities and whether there is any appearance of a lack of impartiality. In some cases, the Alternate Designated Agency Ethics Official also reviews the form. As GAO recommended, it is important to collect this information before the potential member is appointed to the advisory committee, because if a conflict of interest is identified after the person is appointed, the Agency may have to terminate the person’s membership and identify

another person who to serve on the committee. This is potentially embarrassing to both the Agency and the appointed member. It is also important to know upfront that a candidate could serve if appointed, as the appointment process is time consuming and, as required by the Federal Advisory Committee Act, the Agency must ensure that the advisory committee is balanced in the points of view represented. If a conflict is identified after a person is appointed to an advisory committee as an SGE, additional time is needed to select a replacement and the Agency loses valuable time and expertise in receiving the advice it needs. Also important is the fact that finding replacement members creates a burden of additional cost and staff hours. Using the Form 3110-48 benefits EPA by increasing efficiency and saving time and money.

Currently 10 of EPA's 24 Federal Advisory Committees (FACs) appoint members as SGEs and have need to use the Form 3110-48. This number may increase as new committees are added, or decrease as committees are terminated. EPA has approximately 276 SGEs at this time.

Confidentiality of Information provided on the Form 3110-48:

Title I of the Ethics in Government Act of 1978 (the Act), 5 USC App., Executive Order 12674, and 5 CFR Part 2634, Subpart I, of the Office of Government Ethics regulations require the reporting of financial information that is relevant to the administration and application of the criminal financial conflict of interest laws, administrative standards of conduct, and agency-specific statutory and program-related restrictions. The primary use of the information collected on this form is to allow EPA to conduct the conflicts reviews in accordance with applicable Federal laws and regulations. The information reported on the Form 3110-48 is "confidential" and required to be withheld from the public pursuant to Section 107(a) of the Act. Agency personnel shall not publicly release the reports on the information contained therein except that disclosures may be pursuant to (1) a Federal, State or local law enforcement agency if the disclosing agency becomes aware of a violation or potential violation of law or regulation; (2) a court or party in a court or Federal administrative proceeding if the Government is a party or in order to comply with a judge-issued subpoena; (3) a source when necessary to obtain information relevant to a conflict of interest investigation or decision; (4) the National Archives and Records Administration or the General Services Administration in records management inspections; (5) the Office of Management and Budget during legislative coordination on private relief legislation; and (6) in response to a request for discovery or for the appearance of a witness in a judicial or administrative proceeding, if the information is relevant to the subject matter. The confidential report will not be disclosed to any requesting person unless authorized by law.

EPA requires SGEs who are new to a federal advisory committee to complete parts 2-9 of Form 3110-48 before participating in a Committee activity. Subsequently, SGEs must file reports annually to report on the previous calendar year. For these annual reports, the SGEs must complete parts 2-8. In addition, they must complete Part 1 ("Statement regarding any change since annual submission of the form") and Part 9 ("Identification of any other information related to conflicts of interest or appearance of a lack of impartiality") before participating in any new advisory activity. Filers must provide sufficient information about outside interests and activities so that EPA DFOs and ethics officials can make an informed judgment regarding any conflict of interest or appearance of lack of impartiality. EPA staff may contact proposed SGEs to obtain additional information if necessary to determine whether there is a conflict between an SGE's public responsibilities and him/her or his/her spouse's private interests and activities.

EPA seeks to collect the information in “Attachment A,” which is the Confidential Financial Disclosure for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency (Form 3110-48). This information collection request will be needed on a continual basis.

Again, it is imperative that Form 3110-48 be approved to satisfy the GAO recommendations that EPA gather the required Conflict of Interest information before a member is selected to improve the EPA’s policies and procedures to better identify and mitigate potential conflicts of interest and support the development of balanced membership. EPA must have this information collection in place so that the EPA doesn’t lose continuity in appointing new Special Government (SGE) members, as new advisory committees are created, or as members’ terms of appointment expire. If a conflict is identified after an SGE is appointed to an advisory committee, the SGE and the EPA face embarrassment and additional time is needed to select a replacement while EPA loses valuable time and expertise. Using the Form 3110-48 before member appointments benefits EPA by increasing efficiency, thus saving time and money.