

# U.S. Office of Government Ethics

## OMB 83-I Supporting Statement

### OG E FORM 201 REQUEST TO INSPECT OR RECEIVE COPIES OF SF 278 EXECUTIVE BRANCH PERSONNEL PUBLIC FINANCIAL DISCLOSURE REPORTS OR OTHER COVERED RECORDS

#### A. Justification

1.- 2. Section 105(b) of the Ethics in Government Act of 1978 as amended (the Ethics Act), 5 U.S.C. app., § 105(b), provides for access by members of the public to SF 278 public financial disclosure reports (which are generally publicly available for six years) upon the proper submission of a written application giving the name, occupation and address of the requester, the same information for others (if any) on whose behalf the request is made and an indication that there is notice of the prohibited uses of such SF 278 reports as specified under section 105(c) of the Ethics Act, 5 U.S.C. app., § 105(c). The Office of Government Ethics (OGE), as the supervising ethics office for the executive branch (see section 109(18)(D) of the Ethics Act), has provided for information on the OGE Form 201 application statement, the "Request to Inspect or Receive Copies of SF 278 Executive Branch Personnel Public Financial Disclosure Reports or Other Covered Records" that meets the statutory requirements for permitting access to SF 278 reports as well as other covered records. Other types of records covered by the same Ethics Act access procedures (as listed in part III of the form) are certificates of divestiture, certain publicly available qualified trust documents, section 208 waiver determinations (after removal of any information exempt from disclosure under the Freedom of Information Act), other access requests, OGE-approved gifts reporting waiver request cover letters, and OGE-approved public reporting waiver request cover letters for certain less than 130-day special Government employees.<sup>1</sup> The information collected on the form, and as provided in the underlying OGE regulation, is necessary and appropriate under the law. Copies of the cited statutory and regulatory provisions are appended.

The OGE Form 201, which is a locally reproducible form for executive branch department and agency use, has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (control # 3209-0002). The current paperwork approval is scheduled to expire February 28, 2010. OGE is requesting three-year paperwork approval from OMB. OGE is not proposing modifications to the form for this submission.

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<sup>1</sup> See sections 101(i), 102(a)(2)(C), (f)(5)(D) & (f)(7)(B) and 105(b) of the Ethics Act, 5 U.S.C., app., §§ 101 (i), 102(a)(2)(C), (f)(5)(D) & (f)(7)(B) and 105(b), and 18 U.S.C. § 208(d)(1), and OGE's implementing executive branch regulations at 5 C.F.R. §§ 2634.205(b)(4), 2634.304(f)(2), 2634.408(a)(1)(i), (a)(3) & (d), 2634.603(a), (c), (f) & (g), and 2634.1004, as well as appendixes A, B and C to part 2634, and OGE's branchwide implementing financial interests regulation at 5 C.F.R. § 2640.304.

Persons seeking access to SF 278s or other covered records must fill out the OGE Form 201 (or any substitute agency form). Such requesters include members of the press, public interest groups, other private citizens and other agencies and agency employees. The information requested on the application form is reviewed and used by agency ethics officials to determine that the applicant has complied with the requirements of the Ethics Act and OGE's regulations before allowing inspection and/or release of copies of requested SF 278 financial disclosure reports or other covered records. The application form itself is then retained by the executive agency concerned and, as noted, is itself subject to public access under the Ethics Act.

Part I of the OGE Form 201 includes notice of a civil monetary penalty (CMP) of up to \$11,000 for obtaining or using a SF 278 report to which access has been gained for a prohibited purpose. The CMP amount indicated on the current form does not require updating at this time, although OGE anticipates that this amount will be increased in the near future. OGE requests permission from OMB to automatically update the amount on the OGE Form 201 if and when the amount is changed during the 3-year period covered by this submission.

3. The OGE Form 201 is available on the OGE Internet Web site at <http://www.usoge.gov>. The form is a downloadable PDF version both fillable and printable that provides a locally reproducible form for use as needed by agencies and the public. In addition, OGE will continue to allow agencies to electronically duplicate the OGE Form 201, provided the electronic versions precisely duplicate the paper original. The basis for these electronic initiatives is to lessen burden and to facilitate dissemination and use of the form by agencies and requesters. Prior to the expiration of this proposed three-year extension, OGE may propose, and submit for OMB approval, a modified OGE Form 201 that will include additional technological enhancements, such as providing requestors with the option to submit the form electronically.

4. Not applicable. The access forms under section 105 of the Ethics Act and the other cited provisions of law and OGE's regulations are the sole source of the information needed to process access requests. OGE anticipates that most executive branch departments and agencies will continue using the OGE Form 201 access application form, but some agencies may already have developed their own forms (or may choose to do so), provided that all the statutory requirements are met.

5. Not applicable. This collection of information does not impact small businesses or other small entities.

6. Not applicable. This form is filed by persons wanting to obtain access, from time to time, to SF 278 financial disclosure reports and other covered records. (See also items 1.-2. above.)

7. No special circumstances exist as outlined in the instructions for this item.

**8.** The information on the proposed modified OGE Form 201 is required by the above-noted provisions of law and OGE's implementing regulations at 5 C.F.R. part 2634. OGE provided a first round Federal Register notice November 17, 2009. See 74 FR 59185-59186. As noted in the second round Federal Register notice January XX, 2010, OGE did not receive any comments in response to the first round notice. OGE remains open to any suggestions for improvement that may be received in the course of public comment on the second round notice.

OGE continually seeks comments from persons outside the agency concerning the impact of its information collection instruments upon filers and agency ethics programs. OGE provides opportunities for comment at ethics conferences and symposia. OGE routinely alerts professionals in the ethics community to recently published OGE Federal Register paperwork notices via the Ethics News and Information Listserv and "DAEOgram" memoranda sent to designated agency ethics officers. Visitors to the OGE Internet Web site are provided the opportunity to contact OGE with comments or suggestions. Any ongoing comments received as a result of that availability or otherwise will be considered by OGE for the next paperwork renewal cycle in three years.

**9.** Not applicable. No payments or gifts have been provided to respondents.

**10.** There is no assurance of confidentiality as to the OGE Form 201. Rather, the form itself is publicly available for a period of six years upon a proper Ethics Act request in accordance with the provisions of the Ethics Act and OGE's implementing regulations noted in items 1.-2. above.

**11.** All of the information required on the OGE Form 201 and in the underlying regulation is deemed necessary by OGE for proper requests by persons seeking access to SF 278s and other covered records as well as agency review for purposes of ensuring compliance with the statutory and regulatory requirements for permitting access and determining the records requested.

**12.** OGE estimates that an average of 450 OGE Form 201s will be filed throughout the executive branch each year by members of the public (primarily by news media, public interest groups and private citizens) during the period 2010 through 2012. This figure is based on the number of OGE Form 201s filed at OGE by members of the public (155 for 2006, 138 for 2007 and 79 for 2008) and those filed at other departments and agencies in the executive branch (138 for 2006, 135 for 2007 and 127 for 2008) as reported on OGE's annual agency ethics program questionnaire. The three-year annual average was then adjusted to reflect the typical, significant increase in the number of OGE Form 201s filed by the public during and following a Presidential transition. During the first half of the 2009 Presidential transition year, 310 forms were filed with OGE. (OGE does not have, at this time, recent statistics covering the number of forms filed with other departments and agencies in the executive branch). Using these figures, OGE estimates that there will be an annual average of 450 forms submitted to OGE and the other executive branch departments and agencies for the years 2010 through 2012. The estimated average amount of time to complete the form, including review of the instructions, remains at 10 minutes. Thus, the estimated annual public burden for the OGE Form 201 (throughout the

executive branch) is 75 hours (450 forms X 10 minutes per form – number rounded down). This is an increase from the current estimated burden of 61 hours.

**13.** The private sector capital and other economic cost burden to respondents for the OGE Form 201 is estimated to be "zero." Almost all the total annual cost burden is borne by the Federal Government and the agency ethics officials who review and process the relatively simple and short access forms. (See also the discussion in items 12. & 14. above.)

**14.** The annual cost to the Federal government to implement the OGE 201 for the executive branch is now estimated to be approximately \$98,000. This estimate is based on the anticipated number of access form filers and the estimated time needed for agencies to review and process the forms, including providing copies (or inspection) of requested records.

**15.** The total burden hours reported have increased over the past three years in the average number of public access requests processed annually by the executive branch, from 365 for the three year period (2003-2005) to 450 on average over the immediate past three years (2006-2008). The total burden hours are now estimated at 75 (450 forms x 10 minutes per form), versus 61 hours three years ago due to the increased number of public access.

**16.** Not applicable.

**17.** OGE requests permission not to display the expiration date on the OGE Form 201 as proposed for modification so that it may continue to be used beyond the three-year paperwork approval period requested, subject to appropriate further OMB approval, if the form is not sooner modified.

**18.** Certification items (c), (f) and (i) are not applicable to this information collection.

## **B. Collections of Information Employing Statistical Methods**

Not applicable. This collection of information does not employ statistical methods .