

U.S. Office Of Government Ethics

SUPPORTING STATEMENT FOR THE PROPOSED OGE FORM 278 (CURRENTLY SF 278)

EXECUTIVE BRANCH PERSONNEL PUBLIC FINANCIAL DISCLOSURE REPORT

A. Justification

1. - 2. Section 101 of the Ethics in Government Act of 1978 as amended (the Ethics Act), 5 U.S.C. appendix, and 5 C.F.R. part 2634, subpart B, require publicly available financial disclosure reports to be filed by certain officers and high-level employees in the executive branch. As the supervising ethics office for the executive branch, OGE is the sponsoring agency for the Standard Form 278 Executive Branch Personnel Public Financial Disclosure Report. Covered high-level executive department and agency officials fill out the SF 278 form, listing their outside income, assets, transactions, gifts/reimbursements, liabilities, non-Government employment agreements/arrangements, outside positions and certain compensation in excess of \$5,000 as specified in section 102 of the Ethics Act and subpart C of 5 C.F.R. part 2634.

The SF 278 reports are generally filed with the department or agency where the covered high-level official serves, will serve or used to serve. The reports are required upon entrance on duty, annually, and upon terminating Federal service. The executive branch filers are high-level position new entrants, Presidential nominees subject to Senate confirmation, candidates for President or Vice President, incumbents and those terminating such Government positions.

The Office of Government Ethics is requesting a 3-year renewal of approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act for the Executive Branch Personnel Public Financial Disclosure Report form. The first and second round paperwork notices published in the Federal Register noted that OGE intended to submit the SF 278 form with no changes. See 75 FR 13287 (March 19, 2010); 75 FR 30831-30832 (June 2, 2010). Subsequent to the publication of these notices, OGE proposes four non-significant changes to the form. First, withdrawal of the form from the General Services Administration (GSA) Standard Forms program, renaming the form the OGE Form 278; second, updating the triennial adjustment of the gifts/travel reimbursement reporting thresholds; third, updating revisions to the Privacy Act Statement; finally, reducing the amount of certain personally identifiable information (street addresses) collected on this form.

Every three years OGE issues final rule amendments that revise the executive branch financial disclosure regulation to increase the aggregation and exception thresholds for reporting of gifts, reimbursements and travel expenses for the public and confidential report systems. See 5 U.S.C. app. section 102(a)(2)(A) & (B). OGE's threshold adjustments are tied to the "minimal value" threshold of the Foreign Gifts and Decorations Act, as determined by GSA under 5 U.S.C. 7342. The SF 278 currently in use reflects the reporting threshold amounts in effect in 2000. Since 2002, OGE has asked agencies to notify filers of the SF 278 of the updated adjustments to the reporting thresholds for gifts and reimbursements. Effective January 1, 2008, GSA raised the "minimal value" threshold under 5 U.S.C. 7342 to \$335 or less for the three-year period 2008-2010. See 73 FR 15387-15388 (March 24, 2008). Following GSA's action, OGE advised agencies of the adjusted thresholds and revised its financial disclosure regulation to reflect the increase in the thresholds for SF 278 reporting of gifts and travel reimbursements received from any one source to "more than \$335" for the aggregation level for reporting and to "\$134 or less" for the de minimis aggregation exception threshold. See March 25, 2008 OGE memorandum to designated agency ethics officials (DO-08-010) and 73 FR 7475 (February 8, 2008). Both GSA and OGE rulemakings and OGE's memorandum are posted on the OGE Web site. Currently, OGE asks agencies to inform SF 278 filers of the current reporting thresholds. OGE requests permission to update those thresholds on the proposed OGE Form 278. OGE anticipates that in 2011 there will be another change (increase) by GSA in the definition of "minimal value" under the Foreign Gifts and Decorations Act for the three year period 2011-2013. As a result, the gifts and reimbursements overall and de minimis thresholds will most likely be raised from current levels about six months after OMB approves this request for paperwork renewal. Since the thresholds will likely be raised resulting in fewer items to report, OGE requests permission to adjust those thresholds on the form without any further paperwork clearance from OMB. Instead, OGE would notify OMB and provide it with a copy of the updated branchwide financial disclosure regulation when the threshold values are adjusted. At that time, OGE would also notify the executive branch departments and agencies and ask them to notify their public financial disclosure report filers of the further thresholds adjustment.

In 2003, OGE updated the OGE/GOVT-1 Privacy Act system of records notice (covering SF 278 Public Financial Disclosure Reports and other name-retrieved ethics program records). See 68 FR 3097-3109 (January 22, 2003), as corrected at 68 FR 24744 (May 8, 2003). As a result, the Privacy Act Statement, which includes summaries of the routine uses on page 11 of the instructions on the SF 278, is affected. As explained in OGE memorandum DO-03-015 and the SF 278 notice posted on the OGE Web site, the system notice update added three new routine uses applicable to SF 278 reports. Currently, OGE asks agencies to inform filers of the routine uses updates. OGE proposes including the three additional new routine uses on the proposed OGE Form 278. In addition, in response to OMB Memorandum M-07-16 (encouraging the reduction of personally identifiable information collected "to the minimum necessary for the proper performance of documented agency function") OGE proposes minor changes to the forms' instructions to eliminate respondents' need to report street addresses except on the cover sheet of the form.

3. OGE will make the proposed OGE Form 278 available to Federal employees and private citizen filers through the Forms, Publications and Other Ethics Documents section of OGE's Web site at www.usoge.gov. This site will provide two different fillable options for preparing the OGE Form 278 on a computer (in addition to a downloadable blank form).

At present there are approximately sixteen executive branch agencies offering the option to electronically file the public financial disclosure report using internal agency systems. OGE believes that eventually, once electronic filing systems become familiar to filers and are implemented throughout the executive branch, electronic filing of this form will shorten the time required to complete and submit the form. However, in those agencies currently offering electronic filing of the form, this option is generally not available to private citizen filers before entering Federal service, or to private citizen former employees filing their final, termination report after leaving Federal service. Moreover, the electronic filing option is available to only a limited number of Federal employee filers compared to the total number of filers of the current SF 278 throughout the executive branch. OGE does not believe that the limited agency implementation of electronic filing initiatives significantly impacts any of its branchwide figures reporting burden or costs to respondents or costs to the Federal Government as provided in this current paperwork submission. For now, there is a rough balance between anticipated future time and cost savings with the need for additional time and expenditures to implement and adjust to new systems of form completion, collection and review. Please see also Item 14, Costs to the Federal Government.

4. Not applicable. The proposed OGE Form 278 is the only executive branchwide form used for high-level employee public financial disclosure under title I of the Ethics in Government Act and OGE's implementing regulations.

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

6. Not applicable. The collection frequency is required by title I of the Ethics in Government Act and 5 C.F.R. part 2634, subpart B of the OGE executive branchwide regulations thereunder. (See also items 1-2 above.)

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

8. The information requested on the report form is required by the above-noted provisions of the law and OGE's implementing regulations at 5 C.F.R. part 2634. OGE provided a first round Federal Register paperwork notice concerning its intention to submit a request for a three-year extension of approval for the SF 278. See 75 FR 13287 (March 19, 2010). No comments were received from the public or agencies in response to this notice. A second round Federal Register paperwork notice has also been

published with any comments to be sent to OMB by July 2, 2010. See 75 FR 30831-30832 (June 2, 2010).

OGE continually seeks comments from individuals and agencies 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. In addition, OGE remains open to any suggestions for improvement received in the course of public comment on the second round Federal Register paperwork notice. Comments received by OGE subsequent to this request for approval will be considered for the next paperwork renewal cycle.

9. Not applicable. Respondents received no payments or gifts.

10. There is no assurance of confidentiality to the filers of this financial report form. The proposed OGE FORM 278 is a public financial disclosure form, available to the public for a six-year period upon the submission of a proper Ethics Act access request form (OGE Form 201) in compliance with the provisions of section 105 of the Ethics Act and OGE's implementing regulations at 5 C.F.R. § 2634.603.

11. All of the information required on this report form and in the underlying regulation is specified by current law for financial disclosure reporting by filing individuals and conflict of interest review by executive branch departments and agencies.

12. Based on OGE's annual agency ethics program questionnaire responses for 2006 through 2008, OGE estimates that an average of approximately 25,736 SF 278 report forms are filed annually at departments and agencies throughout the executive branch. (Questionnaire response totals for 2009 are not yet available.) This estimate is based on the number of reports filed branchwide for 2006 through 2008 (25,551 in 2006, and 25,812 in 2007, and 25,846 in 2008) for a total of 77,209, with that number then divided by three to give the projected annual average of 25,736 reports. Most of those executive filers are current Federal employees at the time that they file. However, OGE estimates that about 1,300, or about 5 percent, of the branchwide total of public financial disclosure report filers over each of the next three years (2010-2012) will be members of the public. This annual estimate includes (a) private citizen Presidential nominees to executive branch positions subject to Senate confirmation (and their private representatives — lawyers, accountants, brokers and bankers); (b) other private citizen prospective new entrants to reportable positions; (c) those who file termination reports (or combination annual and termination reports) from such positions after their Government service ends; and (d) Presidential and Vice Presidential candidates. In the previous reporting period, OGE factored into the estimate an additional 3,900 private citizen filers in anticipation of the 2008 Presidential election and following transition. The estimated

number of filers in this submission for the 2010-2012 reporting period is lower because the figures do not provide for an increase in filers to cover a presidential transition.

The estimated average amount of time to complete the report form, including review of the instructions and gathering of needed information, remains the same as previously reported, at three hours. Thus, the overall estimated annual public burden for the report form for the private citizen/representative nominee and terminee filers processed in executive branch agencies, and those report forms processed by the OGE, including private citizen Presidential and Vice Presidential candidates report forms, is 3,900 hours. The estimated annualized hour burden cost to private citizen respondents is \$351,000. This estimate is based on the average annual number of private citizen filers multiplied by an average filer wage rate of \$90 per hour (equal to a mid-level Senior Executive Service (SES) salary, fully loaded).

13. For the Executive Branch Personnel Public Financial Disclosure Report form, OGE estimates annual burden hours and annual burden hours cost, not annual cost burden to the respondents.

14. The estimated total annual cost of the form to the Federal Government is \$21,000,000. This figure is comprised of: a) \$11,400,000, a percentage of the total estimated annual cost of salaries (fully loaded) for all full-time and part-time ethics officials employed by executive branch departments and agencies to distribute, track, review for accuracy and completeness, resolve conflict issues, and certify the SF 278 report forms (6,200 full- and part-time ethics employees in the salary range of SES to GS-7); b) \$6,600,000 estimated annual cost to the Government for the time spent by an estimated 24,400 annual Federal employee filers (\$90 per hour average wage of a mid-level SES salary, fully loaded, multiplied by the estimated three hours required to complete the form); and c) \$2,800,000 estimated annual costs to OGE to process those SF 278 report forms reviewed by OGE, and to develop, monitor, and provide advisory and training support to executive branch department and agency ethics programs administering the SF 278 financial reports program.

At present there are approximately sixteen executive branch agencies (using ten different electronic systems) that provide filers with the option to electronically file, and ethics officials to review the report forms. OGE believes that eventually, once electronic filing systems become familiar to filers and are implemented throughout the executive branch, electronic filing of the form will shorten the time required to complete and submit, and ethics officials to review and certify the report. At this time it is not possible to gather data from multiple systems with which to make a meaningful estimate of cost efficiencies realized. Furthermore, OGE does not track agencies' expenditures to develop and implement electronic filing systems for this form. These technology costs are not included in the estimated total annual cost of the disclosure report form to the Federal Government provided above.

15. Not applicable. There were no program changes or adjustments for items 13 or 14.

16. Not applicable.

17. OGE requests continued permission not to display the expiration date on the proposed OGE Form 278 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.