

# **U.S. Office of Government Ethics**

## **OMB 83-I Supporting Statement**

### **OGE FORM 201-A REQUEST TO INSPECT OR RECEIVE ELECTRONIC COPIES OF EXECUTIVE BRANCH PERSONNEL PUBLIC FINANCIAL DISCLOSURE REPORTS, INCLUDING PERIODIC TRANSACTION REPORTS, FILED ON OR AFTER JANUARY 1, 2012**

#### **A. Justification**

**1.- 2.** Section 105(b) of the Ethics in Government Act of 1978 as amended (EIGA), 5 U.S.C. app., § 105(b), provides for access by members of the public to OGE Form 278 (and prior SF 278) public financial disclosure reports 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 OGE Form 278 (and prior SF 278) reports as specified under section 105(c) of EIGA, 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 EIGA), has provided for information on the OGE Form 201 application statement, the "Request to Inspect or Receive Copies of OGE Form 278/SF 278 Executive Branch Personnel Public Financial Disclosure Reports or Other Covered Records" that meets the statutory requirements for permitting access to these reports as well as other covered records.

On April 4, 2012 President Obama signed into law the Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act), Public Law No. 112-105 (2012). The STOCK Act establishes new requirements for executive branch ethics programs, ethics officials, and the 28,000 employees who currently file public financial disclosure reports pursuant to EIGA. Section 6 of the STOCK Act adds a new subsection 103(l) to EIGA. Effective July 3, 2012, subsection 103(l) requires that not later than 30 days after receiving notification of any transaction required to be reported under subsection 102(a)(5)(B) of EIGA, but in no case later than 45 days after such a transaction, a covered employee must file a report of the transaction. OGE has created the OGE Form 278-T for Federal employees subject to this requirement to complete periodic transaction reports. Section 11(a)(l) of the STOCK Act requires public financial disclosure reports filed in 2012 and thereafter to be made available to the public on agency Websites. Section 11(b) of the STOCK Act provides further that the mandatory requirements of 5 U.S.C. app. §§ 105(b)(2), which has governed and will continue to govern requests by mail, do "not apply" to the forms made available online.

The STOCK Act did not change the penalties for misuse of information in public financial disclosure reports found at 5 U.S.C. app. § 105(c)(1), or the authority of the OGE Director under section 402(b)(1) of EIGA to establish procedures for the public's access to public financial disclosure reports filed by executive branch employees. Pursuant to the Director's authority to require executive branch agencies to collect information before public

financial disclosure reports are made available to a requestor, OGE is proposing a new form 201-A to be used solely for providing online access to reports posted pursuant to the STOCK Act.

The proposed OGE Form 201-A would collect information from, and provide certain information to, persons seeking access to electronic copies of public financial disclosure reports, including periodic transaction reports, filed on or before January 1, 2012, and posted on line in accordance with Section 11(a) of the STOCK Act. Persons seeking to obtain a covered report in person or via mail, or a report filed prior to January 1, 2012, would still be required to complete an OGE Form 201. The proposed OGE Form 201-A would require less information than is currently required by the OGE Form 201. The proposed OGE Form 201-A would collect the requester's name, city, state, and country of residence, but would not require a physical or email address, the occupation of the requester, or whether the request was being made on behalf of another person. The proposed OGE Form 201-A will continue to require that the requester acknowledge his or her awareness of the legal uses of the information contained in public financial disclosure reports and the civil monetary penalties for persons who obtain or use a public financial disclosure report for a prohibited purpose. Unlike the OGE Form 201, the online proposed OGE Form 201-A will also alert requesters that intentional falsification of the information required by the request form may result in prosecution under 18 U.S.C. § 1001. Once a requester submits a completed online OGE Form 201-A, immediate access to the requested public financial disclosure report(s) is provided to the requester online. The submitted OGE Form 201-A request is then retained as a Federal record by the filer's employing agency and by OGE if the individual is PAS or an employee of OGE. The submitted OGE Form 201-A is itself subject to public access under the Freedom of Information Act.

The proposed OGE Form 201-A will be one of two information collection instruments controlled under OMB No. 3209-0002. The OGE Form 201 is currently covered by the same OMB control number.

The proposed OGE Form 201-A will include notice of a civil monetary penalty (CMP) of up to \$11,000 for obtaining or using a public financial disclosure report for a prohibited purpose. The CMP amount is current 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-A if, and when, the amount is changed during the period covered by this submission.

OGE is requesting a temporary 180-day, emergency clearance from OMB for the proposed OGE Form 201-A to comply with the STOCK Act deadline for posting covered financial disclosure reports on agency Websites. OGE believes that the following conditions meet the criteria for an emergency clearance, ensuring that the proposed form can be implemented beginning November 9, 2012:

(a) OGE has taken "all practicable steps to consult with interested agencies and members of the public in order to minimize the burden of the collection of information." 5 C.F.R. § 1320.13(c). Since the STOCK Act was signed into law April 4, 2012, OGE has consulted, almost daily, with interested agencies across the executive branch on all aspects of implementing the Act. OGE has met with members of several non-government organizations

and other members of the public to inform them of the STOCK Act requirements and OGE's plan to implement the Act. The new information collection instrument would require less information and be less burdensome than agencies and members of the public experience under the current access process utilizing the OGE Form 201.

(b) The PRA permits an agency to submit a request for emergency clearance when the collection of information "is needed prior to the expiration of time periods established under the PRA; is essential to the mission of the agency; and the agency cannot reasonably comply with the normal clearance procedures under this part because, among other reasons, the use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information or is reasonably likely to cause a statutory or court ordered deadline to be missed." 5 C.F.R. § 1320.13(a). OGE has determined that the proposed OGE Form 201-A meets this standard. The STOCK Act deadline for agencies to post public financial disclosure reports is clearly shorter than the time required for regular processing under the PRA. Given OGE's role as an oversight agency setting policy for the executive branch ethics program, it is essential to OGE's mission to ensure that agencies not only comply with the new provisions of the STOCK Act, but also ensure that requesters who seek online access to public financial disclosure reports posted pursuant to the STOCK Act are aware of the prohibitions on the misuse of the form, as detailed in 5 U.S.C. app. § 105(c). The use of emergency clearance procedures is necessary here to prevent a statutory deadline to be missed. 44 U.S.C. § 3507(j); 5 C.F.R. § 1320.13(a)(2)(iii). Furthermore, if this form were required to go through the normal clearance process, it would disrupt the orderly collection of information from requesting persons, which is important to the financial disclosure program. 5 C.F.R. §§ 1320.13(a)(1)(ii) and 1320.13(a)(2)(iii). OGE has followed guidelines for the emergency clearance process at section 1320.13 including a notice to be published in the *Federal Register* required by 5 C.F.R. 1320.5(a)(1)(iv). This notice was published November 1, 2012 (77 FR 66075).

**3.** The proposed OGE Form 201-A will be available only in an electronic format in an automated Web-based application on the OGE Internet Website at <http://www.oge.gov>. The electronic form will be filled out and can only be submitted online via OGE's Website. The basis for the information collected is to provide immediate access to the documents requested in compliance with the STOCK Act and to minimize burden to the public.

**4.** Not applicable. The proposed OGE Form 201-A access form will be the sole source of the information needed to process access requests under provisions of the cited laws and OGE's regulations.

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

**6.** Not applicable. This form is submitted by persons wanting to obtain access, from time to time, to certain financial disclosure reports and other covered records described in items 1.-2. above.

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

**8.** OGE has the authority under 5 U.S.C. app. § 402(b)(1) of the EIGA to require executive branch agencies to collect such information before requested public financial reports are made available to the requester. OGE published a *Federal Register* notice November 1, 2012 (77 FR 66075) indicating its intention to request from OMB emergency clearance for a temporary 180-day approval for the proposed OGE Form 201-A. Due to the time constraints of implementing this proposed new form, a five-day period for comments from the public and agencies was provided. OGE remains open to any suggestions for improvement that may be received in the course of public comment. Comments will be taken into consideration when OGE submits a subsequent request to OMB for a three-year authorization.

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 *Advisory* memoranda sent to Designated Agency Ethics Officials. Visitors to the OGE Internet Website 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 in its regular PRA submission for a 3-year authorization.

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

**10.** There is no assurance of confidentiality as to the proposed OGE Form 201-A. Rather, the form itself is publicly available for a period of six years in accordance with the provisions of the FOIA.

**11.** All of the information required to be provided on the proposed OGE Form 201-A is deemed necessary by OGE for online access by requestors to OGE Form 278 and OGE Form 278-T public financial reports filed on or after January 1, 2012.

**12.** No statistics of previous usage for the proposed OGE Form 201-A are available upon which to base an estimated annual number of respondents because this information collection is a new form. However, OGE estimates that an average of 1,246 OGE Form 201-As will be submitted via OGE's Internet Website automated application annually by members of the public (primarily by news media, public interest groups and private citizens). OGE's annual estimate is based upon the number of requests OGE has received for access to public financial disclosure reports of presidential appointees confirmed by the Senate through OGE's Website via the new automated OGE Form 201 access request form. OGE received 408 requests during the six-month period from the initial launch of the new automated OGE Form 201 in March through August 2012. OGE then added the total number of access requests received by all other executive branch agencies, for a similar length of time, during the most recent period (calendar year 2011) for which executive branch wide statistics are available, which was 215 such requests. The total number of access request forms received by all executive branch agencies, including OGE, in a 6 month period totaled 623. This number was multiplied by two to provide the estimate of 1,246 annual respondents. The estimated average amount of time to complete the form, including review of the instructions, is five minutes. Thus, the estimated annual public burden for the OGE Form 201-A is 104 hours (1,246 forms X 5 minutes per form).

**13.** The private sector capital and other economic cost burden to respondents for the proposed OGE Form 201-A is estimated to be "zero." Nearly the entire annual cost burden is borne by the Federal Government.

**14.** The annual cost estimate to the Federal Government to implement the proposed OGE 201-A is not available at this time. An annual cost estimate will be provided in the subsequent submission for three-year approval under the PRA.

**15.** Not applicable.

**16.** Not applicable.

**17.** Not applicable.

**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 .