

U.S. Office of Government Ethics

OMB 83-I Supporting Statement for the OGE Form 201

REQUEST TO INSPECT OR RECEIVE COPIES OF EXECUTIVE BRANCH PERSONNEL PUBLIC FINANCIAL DISCLOSURE REPORTS OR OTHER COVERED RECORDS

A. Justification

1.- 2. The Office of Government Ethics (OGE) Form 201 reflects the requirements of the Ethics in Government Act of 1978 as amended (EIGA), the Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act), and OGE's implementing regulations. See EIGA at 5 U.S.C. app. §§ 105(b) and (c), and 402(b)(1); the STOCK Act, Public Law 112-105 (April 4, 2012), as amended by Public Law 113-7 (April 15, 2013); and 5 C.F.R. §§ 2634.603(c) and (f) of OGE's executive branchwide regulations. 5 U.S.C. app. § 105(b) provides for access by members of the public to OGE Form 278/SF 278 public financial disclosure reports, including OGE Form 278-T Periodic Transaction Reports (collectively referred to as 278 reports or public financial disclosure reports). Public financial disclosure reports are generally publicly available for six years upon the proper submission of a written application giving the name, occupation and address of the requestor, 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 public financial disclosure reports as specified under section 105(c) of EIGA, 5 U.S.C. app. § 105(c). Under 5 U.S.C. app. § 402(b)(1) OGE is authorized to establish procedures for providing public access to public financial disclosure reports. 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, entitled "Request to Inspect or Receive Copies of Executive Branch Personnel Public Financial Disclosure Reports or Other Covered Records," that meets the statutory requirements for permitting access to public financial disclosure reports as well as other covered records. Other types of records covered by the same EIGA access procedures (as listed in part III of the OGE Form 201) 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.¹ The information collected

¹ See sections 101(i), 102(a)(2)(C), (f)(5)(D) & (f)(7)(B) and 105(b) of the Ethics in Government Act, 5 U.S.C. app. 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 appendices A, B and C to part 2634, and OGE's executive branchwide implementing financial interests regulation at 5 C.F.R. § 2640.304.

on the form, and as required by the underlying OGE regulation, is necessary and appropriate under the law.

The OGE Form 201, 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 November 30, 2013. OGE is requesting a three-year paperwork approval from OMB. OGE proposes several modifications to both the non-automated and automated versions of the form for this renewal submission: to modify the title of the form, to add a warning to requestors that intentional falsification of the information required by the form may result in prosecution under 18 U.S.C. §1001, and to update the Privacy Act Statement to include an additional routine use.

Persons seeking access to public financial disclosure reports or other covered records must fill out the OGE Form 201 (or any substitute agency form). Such requestors 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 OGE and other executive branch agency ethics officials to determine that the requestor has complied with the requirements of EIGA and OGE's regulations before allowing inspection and/or release of copies of requested public financial disclosure reports or other covered records. The application form itself is then retained by the executive branch agency concerned and, as noted, is itself subject to public access under EIGA.

The OGE Form 201 currently includes notice of a civil monetary penalty (CMP) of up to \$11,000 for improperly obtaining or using public financial disclosure reports or other covered records 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 referenced amount is changed during the three-year period covered by this submission.

3. A non-automated version of the OGE Form 201 is available on the OGE Website at <http://www.usoge.gov> as a downloadable PDF, both fillable and printable. This version provides a locally reproducible form for use as needed by agencies and the public. OGE will continue to allow agencies to electronically duplicate this version of the OGE Form 201, provided the electronic versions precisely duplicate the OGE version. OGE is proposing that this renewal submission to OMB also cover a new, fully automated version of the OGE Form 201. Initially launched in March 2012, the fully automated version is available only through the OGE Website. A requestor using the new automated access form is able to submit the completed request form online, and immediately obtain access to financial disclosure reports of most individuals who have been nominated by the President to executive branch positions requiring Senate confirmation (PAS officials) and individuals who have declared their candidacy for the Office of the President of the United States. The automated OGE Website version of the form also can be used by requestors to download or view a list of all OGE Form 201 requests for access to public financial disclosure reports for a specific filer that were provided through the

OGE Website. The basis for the electronic initiatives described above is to lessen the public burden and to facilitate dissemination and use of the access form by agencies and requestors.

4. Not applicable. The OGE Form 201 access form, under section 105 of EIGA and the other cited provisions of law and OGE's regulations, is the sole source of the information needed to process access requests. Subsequent to the enactment of the STOCK Act of 2012, OGE obtained emergency approval from OMB for the temporary use of the OGE Form 201-A to cover access to certain public financial disclosure reports. (The OGE Form 201-A is also controlled under OMB number 3209-0002.) Amendments to the STOCK Act in 2013 obviated the OGE 201-A. This OGE Form 201 renewal submission, when approved by OMB, will cover providing access to the OGE Form 278-T Periodic Transaction Reports mandated by the STOCK Act, as amended. OGE anticipates that most executive branch departments and agencies will continue using the non-automated version of the OGE Form 201 access application form. Agencies choosing to develop their own forms must ensure that all the statutory requirements for providing access to public financial disclosure forms and other covered records 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 requesting access, from time to time, to executive branch public 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 on April 26, 2013. See 78 FR 24749-24750. As noted in the second round *Federal Register* notice of September 13, 2013, OGE received and fully addressed comments received from two agencies in response to the first round notice. See 78 FR 56704-56705. No comments were received concerning specific cost or burden hour issues for the OGE Form 201. OGE is not aware of any suggestions for improvement that may have been received by the OMB Desk Officer for OGE during 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, the OMB Max Website and various social media applications, and Advisory Memoranda sent to designated agency ethics officers. Visitors to the OGE Website are provided the opportunity to contact OGE with comments or suggestions. In addition, OGE has remained open to suggestions for improvement received in the course of public comment on the first and second round paperwork notices published in the

Federal Register. Any ongoing comments received as a result of these means of availability 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 request in accordance with the provisions of the EIGA 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 public financial disclosure reports and other covered records as well as for 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 870 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 2013 through 2015. This figure is based on the number of OGE Form 201s filed at OGE by members of the public (101 for 2010, 125 for 2011 and 1,072 for 2012) and those filed at other departments and agencies in the executive branch (380 for 2010, 496 for 2011 and 438 for 2012) as reported on OGE's annual agency ethics program questionnaire. The total number of OGE Form 201s submitted in 2010 is 481; in 2011 is 621; and in 2012 is 1,510, for a total of 2,612 forms submitted over the three-year period. That total divided by three provides the basis for an estimated annual average of 870 forms filed over the next three-year period. The estimated average amount of time to complete the form, including review of the instructions, remains at 10 minutes for both the non-automated and automated versions of the form. Thus, the estimated annual public burden for the OGE Form 201 (throughout the executive branch) is 145 hours (870 forms X 10 minutes per form). This annual hour burden, a significant increase from the current estimated annual burden of 75 hours, is the result of the increased use of the OGE Form 201 access form by the public. The chief contributing factor to the increased use of the form is the availability, since March 2012, of the new, fully automated form via the OGE Website.

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.

14. The annual cost to the Federal Government to implement the OGE Form 201 for the executive branch to provide, under EIGA, access to public financial disclosure reports is now estimated to be approximately \$200,000. This estimate is based on the anticipated number of access form filers and the estimated time needed for OGE and agencies to review and process the forms, including providing copies (or inspection) of requested records. The estimated annual cost to the Federal Government does not include OGE's costs to design and develop the fully automated Website application version of the form implemented in 2012.

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 some 450 for the three year period (2006-2008) to 870 on average over the immediate past three years (2010-2012). The total burden hours are now estimated at 145 (870 forms x 10 minutes per form), versus 75 hours three years ago, because the number of public access requests has increased. The chief contributing factor to the increased use of the form is the availability, since March 2012, of the new, fully automated 201 form via the OGE Website.

16. Not applicable.

17. OGE requests permission to not display the expiration date on the OGE Form 201 as proposed 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 information collection does not employ statistical methods .