

U.S. Office of Government Ethics

SUPPORTING STATEMENT FOR THE PROPOSED MODIFIED OGE FORM 278

EXECUTIVE BRANCH PERSONNEL PUBLIC FINANCIAL DISCLOSURE REPORT

A. Justification

1-2. Section 101 of the Ethics in Government Act of 1978 as amended (EIGA) 5 U.S.C. appendix, and OGE's implementing financial disclosure regulations at 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 OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report. Covered high-level executive department and agency officials fill out the OGE Form 278, 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 EIGA, as amended by the Stop Trading on Congressional Knowledge Act of 2012 (Pub. L. 112-105) (STOCK Act), and subpart C of 5 C.F.R. part 2634.

The OGE Form 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.

OGE is requesting a three-year renewal of approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) for a modified OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report form.

OGE proposes three changes to the existing OGE Form 278 paper version. OGE proposes to: 1) update the Privacy Act Statement and the legal authorities under which the information is collected; 2) update the triennial adjustment of the gifts/travel reimbursement reporting threshold when the adjusted amounts become effective in 2014; and 3) make minor updates to the instructions, the edition statement, and the Burden Statement. OGE also proposes to include in this renewal submission the new OGE Form 278e, an electronic version of the form to be implemented later in 2014, pursuant to the e-filing system mandated under section 11(b) of the STOCK Act.

Subsequent to the last authorization of the OGE Form 278 by OMB (three-year renewal under the PRA) in 2010, OGE amended the OGE/GOVT-1 Privacy Act system of records

(covering the OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report and other name-retrieved ethics program records). (See 76 FR 24489 (May 2, 2011), 77 FR 45353 (July 31, 2012), and 78 FR 73863 (December 9, 2013)). As a result, the Privacy Act Statement on page 11 of the form's instructions is affected. OGE proposes to update the Privacy Statement to reflect the current version of the OGE/GOVT-1 system of records.

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 financial report systems. (See 5 U.S.C. app. sections 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. Effective January 1, 2011, GSA raised the "minimal value" threshold under 5 U.S.C. 7342 to "\$350 or less" for the three-year period 2011-2013. (See 76 FR 30550-30551 (May 26, 2011)). Following GSA's action, OGE advised agencies of the adjusted thresholds. OGE also revised its financial disclosure regulation and the OGE Form 278 to reflect the increase in the thresholds for the reporting of gifts and travel reimbursements received from any one source to "more than \$350" for the aggregation level for reporting and to "\$140 or less" for the de minimis aggregation exception threshold. (See OGE Legal Advisory to designated agency ethics officials LA-11-05 (August 17, 2011) and 76 FR 38547-38548 (July 1, 2011)). OGE anticipates that in 2014 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 2014-2016. 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. Because 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 further threshold adjustments.

OGE also proposes to include in this renewal submission the new OGE Form 278e, an electronic version to be implemented later in 2014, pursuant to the e-filing system mandated under section 11(b) of the STOCK Act. The OGE Form 278e will collect the same information that both the current paper version of the OGE Form 278 collects, as well as the 14 e-filing systems that are currently in use in executive branch agencies. Although the OGE Form 278e will not collect any additional information, the application will produce a streamlined output report format that presents only the filer's inputs in given categories, and that does not report other categories not selected by the filer.

3. OGE will make the proposed modified OGE Form 278 paper version available to Federal employees and private citizen filers through the Forms Library section of OGE's Web site at www.oge.gov. This site provides two different electronic, fillable forms options for preparing the OGE Form 278 on a computer (in addition to a downloadable blank form). The OGE Form 278e e-filing version, when implemented in 2014, will be made accessible to authorized filers via an online web-based application.

At present, there are approximately 14 executive branch agencies offering the option to electronically file the OGE Form 278 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 OGE Form 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 published a first round notice of its intent to request paperwork clearance for a modified OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report. (See 78 FR 55079 (September 9, 2013)). OGE received one response to that notice from an executive branch agency ethics official who requested that OGE modify the language of the filer's certification. The current certification requires the filer to certify that statements made on the form and all attached schedules are true, complete, and correct to the best of the filer's knowledge. The agency official commented that the certification should also include a statement that there are no potential conflicts or that conflicts have been identified. This agency submitted the same comment in response to OGE's request for public comments about the proposed renewal under the Paperwork Reduction Act of an unmodified OGE Form 450, the confidential financial disclosure report for employees of the executive branch. The filer's certification on the OGE Form 450 is very similar to the filer's certification on the OGE Form 278. OGE declined to adopt this recommendation for the OGE Form 450 because OGE deemed the existing

certification to be appropriate. OGE also declines to adopt this suggestion with regard to the OGE Form 278. Neither the Ethics in Government Act, 5 U.S.C. app. sections 101-111, nor the financial disclosure regulation, 5 CFR part 2634, requires the filer to certify that he or she has no conflicts of interest. A certification that is made once a year, such as the proposed one, is ineffective. The analysis of whether a filer has conflicts of interest must continue throughout a filer's executive branch employment and is not limited to the date on which the filer signs a financial disclosure report. No conflicts may exist on the date that the filer signs the report. A conflict, however, may arise six months later if, for example, the filer is faced with participating in a particular matter that has a direct and predictable effect on one of the companies in which the filer owns stock. Once a conflict arises, it is the responsibility of the filer to seek the advice of an ethics counselor to determine the appropriate remedy for the conflict. A second round Federal Register notice has also been published with any comments to be sent to OMB by February 20, 2014. (See 79 FR 3383-3384 (January 21, 2014)).

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 site and various social media applications, and Legal 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 any 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 by OGE as a result of these various means of availability will be considered by OGE for the next paperwork renewal cycle in three years.

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 EIGA 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 regulations is specified by current law for public 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 2010 through 2012, OGE estimates that an average of approximately 27,872 OGE Form 278 reports are filed annually at departments and agencies throughout the executive branch. (Questionnaire response totals for 2013 are not yet available). This estimate is based on the number of reports filed executive branchwide for 2010 through 2012 (27,783 in 2010, and 28,263 in 2011, and 27,571 in 2012) for a total of 83,617, with that number then divided by three to give the projected annual average of 27,872 reports. Most of those executive branch filers are current Federal employees at the time that they file. However, OGE estimates that

about 1,394, or about 5 percent, of the branchwide total of public financial disclosure report filers over each of the next three years (2014-2016) 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.

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 4,182 hours. The estimated annualized hour burden cost to private citizen respondents is \$400,000. This estimate is based on the average annual number of private citizen filers multiplied by an average filer wage rate of \$97 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 to the Federal Government is comprised of: a) 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 OGE Form 278 report forms; b) estimated annual cost to the Government, in wages (fully loaded), for the time spent by an estimated 26,500 annual Federal employee filers, multiplied by the estimated three hours required to complete the form; and c) estimated annual costs to OGE to process those OGE Form 278 report forms reviewed by OGE, and to develop, monitor, and provide advisory and training support to executive branch departments and to agency ethics programs administering the OGE Form 278 report program.

OGE estimates that during the 2014-2016 period the annual cost to Government will be \$23,000,000. This amount, ten per cent more than the \$21,000,000 estimated for the 2011 through 2013 period, covers the modest increase of approximately two thousand additional forms filed annually in the executive branch during a period when the rates of wages and other costs have not increased significantly. At present there are approximately 14 executive branch agencies (using 10 different electronic systems) that provide filers with the option to electronically file, and ethics officials to review the report forms. OGE does not collect information from executive branch departments and agencies on expenditures related to the development and implementation of electronic filing systems for the OGE Form 278. Therefore, technology costs are not included in the estimated total annual cost of the disclosure report form to the Federal Government provided above. OGE believes that eventually, once electronic filing systems are implemented throughout the executive branch, electronic filing of the form will shorten the time required of filers to complete and submit, and

for ethics officials to review and certify the report. However, at this time it is not possible to make a meaningful estimate of cost efficiencies realized through e-filing systems currently in use and the future implementation of the OGE Form 278e.

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 Method

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