



United States
Office of Government Ethics
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DO-03-021

MEMORANDUM

TO: Designated Agency Ethics Officials

FROM: Jack Covalleski
Deputy Director for Agency Programs

SUBJECT: Financial Disclosure Reporting Requirements for Special Government Employees

For those special Government employees (SGE) with fixed schedules (i.e., the number of workdays each year are generally known by the agency), who also meet the public reporting pay criteria, the financial disclosure reporting requirements are straightforward. For those SGEs, however, who shift during their term of office from working less than 61 days to working more than 60 days in any calendar year, the filing requirements become much more complicated. The purpose of this memo is to set forth guidance to agencies that have SGEs. This memo explains the filing criteria and uses scenarios to further illustrate how the criteria should be implemented. This memo also provides a recommended approach for avoiding administrative burdens and eliminating the possibility of an SGE public filer filing both types of financial disclosure reports in a 12-month period.

Definition of an SGE

An SGE is someone who provides a temporary service to the Federal Government with or without compensation for not more than 130 days during a consecutive 365-day period. The individual can be brought on board through retention, designation or appointment and can fulfill his temporary duties either full-time or intermittently (i.e., he can work every day for 130 days or work one day a week for 52 weeks).¹

¹ A full discussion of what constitutes an SGE can be found in DAEOgram DO-00-003, dated February 15, 2000, "Summary of Ethical Requirements Applicable to Special Government Employees."

Filing Criteria and Requirements

As a general rule, all SGEs file either a public (SF 278) or confidential (OGE Form 450) financial disclosure report.

Public Financial Disclosure Report

An SGE is defined as a public filer if he is expected to perform the duties of the office for more than 60 days in a calendar year and he meets the pay conditions for public filing. When those two criteria are met, the SGE will comply with the filing requirements levied on non-SGE employees, i.e., he will file a new entrant report within 30 days of taking office, an annual report on the following May 15 and a termination report on or before 30 days after terminating public service. An SGE who files an SF 278 during a year is not required to subsequently file a new entrant OGE Form 450 during that same year.² Additionally, an SGE nominated for a PAS position, even if he is not expected to meet the workday filing criteria, may be required by the Senate confirmation committee to file an initial nonpublic nominee SF 278 report, which is treated as a new entrant report. This report becomes publicly available only after it becomes known that the SGE has worked more than 60 days in the calendar year.

If an SGE meets the pay threshold but the agency is uncertain about his expected number of workdays, the Office of Government Ethics (OGE) recommends that agencies request the SGE file a modified new entrant SF 278. This modified SF 278 differs from the typical new entrant report in that the filer would only list on Schedule A the assets held that meet either the income or asset value reporting requirements; the filer would not include information about asset and income values. Also, the filer would only report the general description of any liabilities held on Schedule C, Part I. The modified report would be treated as confidential until the SGE exceeds 60 workdays in the calendar year. At that point, the SGE would be required within 15 days after the 60th workday to update the modified new entrant report, reflecting any change in finances and adding the asset and income values for all items on Schedule A, in addition to the liabilities values and terms on Schedule C, Part I. Once the report has been updated, it becomes public.

² See 5 C.F.R. §§ 2634.904(b) and 2634.903(a).

This recommended approach should save the filer time and possible frustration of filing two different reports in a calendar year. However, agencies cannot require filers to follow this recommended approach. If an agency chooses not to implement this recommendation or a filer opts out of filing a modified new entrant SF 278, then the SGE would initially file a new entrant OGE Form 450. The SGE would also file a new entrant SF 278 once he has exceeded 60 workdays during the calendar year.

Confidential Financial Disclosure Report

An SGE, including one serving on an advisory committee, is normally a confidential filer if he is not a public filer.³ As such, an SGE will file a new entrant OGE Form 450 no later than 30 days after assuming the new position or office. However, any SGE that serves on an advisory committee must file his report prior to rendering any advice, or no later than the first committee meeting. An SGE confidential filer is never required to file an annual OGE Form 450. Instead, the SGE confidential filer will file a new entrant report either upon his reappointment or redesignation as an SGE or upon the anniversary of his initial appointment. To avoid the administrative burden of managing these potentially numerous due dates, OGE recommends that agencies use May 15 for their SGE report filing anniversary date. Choosing this date gives confidential OGE Form 450 filers the same reporting deadline as public SF 278 SGE filers. It also places all SGE reporting deadlines on the same date as all non-SGE annual public report filers. If an agency chooses not to implement this recommendation, then it will collect new entrant OGE Form 450s from its SGEs on the variously occurring anniversary/reappointment dates.

SGE Filing Scenarios

The following scenarios describe the filing requirements and process for SGE confidential and public filers using both the current statutory and regulatory filing requirements and, if applicable, OGE's recommended approach of collecting modified confidential new entrant SF 278s along with using May 15 as the SGE's reestablished anniversary reporting date.

- An SGE is appointed January 2, 2002, meets the public reporting pay criteria, and is expected to work more than

³ Id.

60 days during 2002. He files a new entrant SF 278 within 30 days of his appointment. Because he has performed the duties of the office for more than 60 days during calendar year 2002, he must also file an incumbent SF 278 by May 15, 2003. A new entrant OGE Form 450 would not be required on his anniversary date.

- An SGE is appointed January 2, 2002, meets the public reporting pay criteria, and is not expected to work more than 60 days during the calendar year. He files a new entrant OGE Form 450 within 30 days of his appointment. Because he does not exceed 60 workdays during calendar year 2002, he files another new entrant OGE Form 450 in 2003 within 30 days of his January 2, 2003 reappointment date.
- An SGE is appointed January 2, 2002, meets the public reporting pay criteria, and is expected to work more than 60 days during calendar year 2002. He files a modified new entrant SF 278 within 30 days of his appointment. At the end of the calendar year, it turns out that he worked less than 61 days. Therefore, his filing requirement for 2002 is satisfied. Because he is not expected to work more than 60 days during calendar year 2003, he is then required to file a new entrant OGE Form 450 within 30 days of his January 2, 2003 anniversary date. He would not be required, however, to file either a termination SF 278 or an annual SF 278 in 2003.
- An SGE is appointed on July 15, 2002, meets the pay criteria for public filing, and is not expected to work more than 60 days during the calendar year. The SGE files a new entrant OGE Form 450 within 30 days of her appointment. In 2003 she is again not expected to work more than 60 days so she files another new entrant OGE Form 450 within 30 days of her July 15 anniversary date. It turns out, however, that the SGE works more than 60 days during 2003. At that point, her status changes to a public financial disclosure report filer, and she is required to file a new entrant SF 278 within 15 days of September 16, which was her 61st workday. Thus, during 2003 the SGE ends up filing both types of reports in the same year.

Using the recommended OGE approach for handling this scenario simplifies matters. The SGE files a modified new entrant SF 278 within 30 days of her July 15, 2002 appointment date. This report remains confidential because the SGE did not

exceed 60 workdays during 2002. Because the agency has for practical reasons decided to use May 15 as the SGE's anniversary date in the future, she files another modified new entrant SF 278 on May 15, 2003. Because the SGE works more than 60 days during 2003, her May 2003 filed SF 278 must be updated, with values added, to become a public report. She has no additional reporting requirement in 2003. In May 2004 the SGE files an incumbent SF 278.

- A term-appointment SGE is a public report filer, and serves a three-year term from August 2, 2000 through December 31, 2003. He files a new entrant SF 278 within 30 days of his August 2, 2000 appointment date, and subsequently files incumbent public reports in both May 2001 and 2002, having worked more than 60 days during each previous calendar year. However, during 2002 he works fewer than 61 days. Therefore, no incumbent SF 278 is required in 2003 and he is also not required to file a new entrant OGE Form 450 until his August anniversary date. During 2003 he again works more than 60 days, passing that mark on September 3. Within 15 days of that date he again files a new entrant SF 278. In addition, when his term expires on December 31, 2003, he will be required to file a termination SF 278 within 30 days of that date.

Using the recommended OGE approach for handling this scenario reduces the filing requirements. A term-appointment SGE is a public report filer, and serves a three-year term from August 2, 2000 through December 31, 2003. He files a new entrant SF 278 within 30 days of his August 2, 2000 appointment date and subsequently files incumbent public reports in both May 2001 and 2002 because he worked more than 60 days during each previous calendar year. However, during 2002 he works fewer than 61 days. Because the agency has for practical reasons decided to use May 15 as the SGE's anniversary date, he files a modified new entrant SF 278 on May 15, 2003. During 2003, however, he again works more than 60 days, passing that mark on September 3. His May 2003 modified new entrant SF 278 is then updated with values added and becomes a public report. When his term expires on December 31, 2003, he files a termination SF 278 within 30 days of that date. (Note: If this SGE is a PAS official who initially has filed a nominee report with OGE, the agency would forward to OGE each year only the incumbent SF 278s but not any subsequent new entrant report filings.)

- An SGE is appointed on January 5, 2002, meets the pay criteria for public filing, and is not expected to work more than 60 days during 2002. The SGE files a new entrant OGE Form 450 within 30 days of his appointment, and a subsequent new entrant OGE Form 450 in 2003 within 30 days of his January 5th anniversary date because he worked less than 61 days during 2002, and is expected to do so again in 2003. The SGE works more than 60 days during 2003, and his status changes to a public financial disclosure report filer. However, the agency does not become aware that he worked more than 60 days until shortly after the year ended in early January 2004. The SGE files a new entrant SF 278 within 15 days of being notified by the agency, and an incumbent SF 278 on May 15, 2004. (As a practical matter, in lieu of filing two separate reports, the SGE may complete a combined new entrant/incumbent SF 278, covering the combined reporting periods for each report, and submitting the report by the due date for the new entrant report.)

Using the recommended OGE approach for handling this scenario slightly simplifies matters. An SGE is appointed on January 5, 2002, meets the pay criteria for public filing and is not expected to work more than 60 days during 2002. The SGE files a modified new entrant SF 278 within 30 days of appointment on February 4. The agency has decided to use May 15 as the SGE's anniversary filing date in the future. The SGE works less than 60 days in 2002, and is expected to do so again in 2003. He subsequently files another modified new entrant SF 278 on May 15, 2003. The SGE works more than 60 days during 2003, and his status changes to a public financial disclosure report filer. However, the agency does not become aware that he worked more than 60 days until shortly after the year ended in early January 2004. His May 2003 modified new entrant SF 278 must be updated with values added and becomes public. He files an incumbent SF 278 by May 15, 2004.

Conclusion

An SGE who meets the pay threshold for a public filer generally is required to file either a confidential or public financial disclosure report and may even be subject to multiple filing requirements during a calendar year. SGEs who work more than 60 days will file new entrant public reports and may also file annual and termination SF 278s. SGEs may also have to file new

entrant confidential financial disclosure reports on the anniversary date of their appointment or designation if they do not work more than 60 days in the previous calendar year. To avoid the administrative burden of managing the dual reporting cycles for SGEs and to eliminate the possibility of an SGE public filer filing both types of financial disclosure reports in a 12-month period, OGE recommends that agencies ask all SGEs to voluntarily file, in lieu of the OGE Form 450, a modified new entrant SF 278, which would be updated and values added if the SGE works more than 60 days in the calendar year. Also, agencies should consider requiring all SGEs to use May 15 for their SGE report filing anniversary date.⁴

If you have any questions or comments please contact Tom Zorn, Deputy Associate Director for Financial Disclosure, Program Services Division at 202-482-9287. His e-mail address is tfzorn@oge.gov.

⁴ OGE permits agencies to specify a date each year to collect subsequent new entrant reports in DAEOgram DO-95-019, dated April 11, 1995.