

NIH POLICY MANUAL

2300-735-1 - AVOIDING CONFLICTS OF INTEREST

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1. **Explanation of Material Transmitted:** This chapter contains guidelines on avoiding conflicts of interest and procedures for the completion of financial disclosure reports.

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- A. PURPOSE:** This chapter provides guidelines for avoiding conflicts of interest.

This chapter also states the procedures which govern completion of financial disclosure reports. See the following Appendices for specific information:

Appendix 2 - Executive Branch Personnel - Public Financial Disclosure Reporting System (SF 278)

Appendix 3 - Executive Branch Personnel - Confidential Financial Disclosure Reporting System (OGE 450)

Appendix 4 - Confidential Financial Disclosure Reporting System for NIH Special Government Employee (SGE) Advisory Committee Members (OGE 450)

This NIH Manual chapter interprets, supplements, and is intended to be used in conjunction with Government-wide statutes and regulations as well as any guidelines published by the Office of the General Counsel, Ethics Division (OGC/ED), Department of Health and Human Services (HHS).

- B. POLICY:** Employees and other individuals covered by this chapter are responsible for becoming familiar with and observing all requirements set forth in this chapter, and exercising judgment to avoid conflicts of interest. Failure to observe any of these requirements may be cause for disciplinary action. Some of the provisions are required by law and carry criminal penalties which are in addition to any potential disciplinary action . When in doubt about any provision, employees should consult their supervisor, Deputy Ethics Counselor (DEC), Ethics Coordinator, or other designated contacts.
- C. COVERAGE:** All NIH employees, including commissioned officers and Special Government Employees (including members of advisory committees), are subject to conflict of interest guidelines. Coverage for purposes of financial disclosure requirements is defined under each of the three reporting systems (see Appendices 2, 3, and 4).

Other individuals who are engaged in work in a capacity other than an employee are not explicitly subject to the criminal statutes and financial disclosure requirements. However, these individuals would be obliged to avoid situations giving rise to actual or apparent conflicts of interest.

- D. REFERENCES:**

1. Ethics in Government Act of 1978 (Public Law 95-521) and Ethics Reform Act of 1989 (Public Law 101-194)
2. Part I of Executive Order 12674 and 5 C.F.R. Part 2635 Regulations, Office of Government Ethics Standards of Ethical Conduct for Employees of the Executive Branch

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3. 5 C.F.R. Part 2634, Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture
4. 18 U.S.C. Sections 201-209, 216, Bribery, Graft, and Conflicts of Interest Criminal Statutes
5. 41 U.S.C. 423, Office of Federal Procurement Policy Act, as amended by Section 814 of the FY 90/91 National Defense Authorization Act, Public Law 101-189, and Section 815 of the 1991 National Defense Authorization Act, Public Law 101-510 [Reference commonly referred to as the Procurement Integrity Act], and section 4304 of the FY 1996 National Defense Authorization Act, Public Law 104-106 [Office of Federal Procurement Policy Act].

E. RESPONSIBILITIES:

1. **Director, NIH:**
 - a. Issues policies and procedures supplementing the Government-wide regulations on conflicts of interest and financial disclosure, and
 - b. Makes exceptions to supplementary NIH policies and procedures when appropriate and justified by special circumstances, and where permitted by law.
2. **Deputy Ethics Counselors (DEC):**
 - a. Provide advice to managers and employees regarding the application of the conflict of interest guidelines and completion of financial disclosure report forms;
 - b. Consult with the NIH OGC/ED, the NIH Legal Counsel, and/or the Office of Human Resource Management (OHRM), on difficult and/or unique situations and issues;
 - c. Coordinate and manage Institute and Center (IC) financial disclosure reporting systems;
 - d. Review, approve, and retain completed financial disclosure reports unless further delegated to other managers within the IC (note: NIH Records Management regulations provide for the retention of financial disclosure reports from SGE advisory committee members by the IC Committee Management Office);
 - e. Ensure that new entrant reports, termination reports (if required), and annual reports meet specified deadlines; and
 - f. Maintain each financial disclosure report for six years. (See NIH Manual 1743, Keeping and Destroying Records, item 2300-730-7.)

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- d. Provides appropriate ethics training materials as required by statute and/or regulation to the ICs for distribution to SGEs.
6. **IC Committee Management Offices:**
 - a. Distribute and receive financial disclosure documents for NIH SGE Advisory Committee Members on an initial as well as continuing basis during members' terms of office;
 - b. Perform initial review of financial disclosure documents, alerting the IC DEC's of any potential conflict and advises on the proper procedures to handle any potential conflict situations;
 - c. Prepare and clear general and specific waivers for SGE Advisory Committee Members as necessary and maintains tracking system for all such documentation; and
 - d. Provide for the proper storage of all forms and correspondence relating to the information and ensure confidentiality and security of these records as required by NIH and HHS regulations and policies.
 7. **Office of Human Resource Management (OHRM):**
 - a. Provides advice and assistance to DEC's and other IC officials on conflict of interest issues;
 - b. Provides information and guidance on annual filing procedures;
 - c. Ensures that all new employees receive information on the standards of conduct upon entrance on duty; and
 - d. Provides advice and assistance in preparation of annual and other ethics training materials.
 8. **IC Ethics Coordinators:**
 - a. Serve as the primary contact for the exchange of information regarding conflicts of interest and financial disclosure;
 - b. Provide the annual reports of filers to OHRM;
 - c. Provide administrative and/or program support for IC Ethics Programs as defined by their Directors and/or Deputy Ethics Counselors; and

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- d. Implement and/or coordinate the annual and other ethics training requirements within their ICs.
9. **Supervisors:**
- a. Acquire a working knowledge of pertinent statutes, regulations, policies, and procedures regarding conflict of interest and financial disclosure;
 - b. Help employees to understand requirements;
 - c. Ensure that job applicants are fully aware of conflict of interest and financial disclosure requirements and work with the DEC or Ethics Coordinator to resolve any conflicts before employment, as needed;
 - d. Assure that program related considerations are disclosed on the appropriate financial disclosure reporting form, if the supervisor is involved in the review process; and
 - e. Notify the DEC, Ethics Coordinator, and other appropriate authorities regarding perceived or suspected violations of ethics laws and/or regulations.
10. **Employees:**
- a. Become familiar with and observe all requirements set forth in this chapter and exercise judgment to avoid conflicts of interest;
 - b. Acquire a working knowledge of the financial disclosure requirements, if applicable;
 - c. Complete appropriate financial disclosure reports as required;
 - d. Provide complete information on appropriate financial disclosure report forms and on any necessary attachments;
 - e. Ensure that program related considerations are disclosed on the appropriate financial disclosure reporting form;
 - f. Obtain ethics advice and assistance from supervisors, personnel office, and/or IC DEC or Ethics Coordinator when needed; and
 - g. Complete new employee or annual ethics training, if required.

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F. EXCEPTIONS TO NIH POLICY:

1. Any requests for exceptions must be fully documented in writing, signed by the IC DEC, reviewed and recommended by OHRM and OGC/ED, and approved by the Director NIH.
2. ICs may issue IC-specific instructions to implement this chapter without prior approval. However, any IC supplementation of policy contained in this chapter must be approved in advance by the Director, NIH.

G. GUIDELINES TO AVOID CONFLICTS OF INTEREST:

1. Definitions

- a. **Actual Conflict of Interest:** An actual conflict of interest arises when an employee has or would have official responsibilities with an outside organization with which that employee has a financial interest (his/her own or an interest which is imputed to the employee) or affiliation. Such a situation puts the employee in the position of having an official responsibility or action which could directly influence his or her own financial interests, or those interests which are imputed to him or her (financial interests of spouse, minor children, outside employers, and other entities). This situation is in violation of both statutes (18 U.S.C. 208) and regulation (5 C.F.R. 2635). See "Financial Interest" below.
- b. **Apparent Conflict of Interest:** An appearance of a conflict of interest arises where an employee is involved in a particular matter involving specific outside parties (including individuals, corporate entities, etc.) and the circumstances are such that a reasonable person with knowledge of the relevant facts would question the employee's impartiality in the matter.
- c. **Authorization:** An authorization is a written mechanism used to resolve an apparent conflict of interest, for example, under §2635.502 (the *Standards of Ethical Conduct for Employees of the Executive Branch*). An authorization permits the employee to continue a particular official duty concerning an outside organization despite the appearance of a conflict of interest with that outside organization.
- d. **"Dependent" vs. "Minor" Child:** The terms "minor child" and "dependent child" are used as follows. "Minor" is the term used by the conflict of interest statute and regulation. Thus, in this manual chapter, "minor" is used in those discussion. Who is a minor is determined by state law.

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The OGE-450 refers to "dependent" child and defines that term on the instructions to the form. Thus, in this manual chapter, "dependent" will be used in OGE-450 discussions.

- e. **Direct and Predictable Effect:** The term "direct and predictable effect" refers to the impact an employee's official duties may have on an outside financial interest. A particular matter will have a direct effect on a financial interest if there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest. An effect may be direct even though it does not occur immediately. A particular matter will not have a direct effect on a financial interest, however, if the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative or that are independent of, and unrelated to, the matter. A particular matter will have a predictable effect if there is a real, as opposed to a speculative, possibility that the matter will affect the financial interest. It is not necessary, however, that the magnitude of the gain or loss be known and the dollar amount of the gain or loss is immaterial.
- f. **Disqualification:** Disqualification (also called recusal) is used to resolve an apparent or actual conflict of interest. A disqualified employee signs a written statement reflecting the scope of the disqualification and the precise nature of the conflicting interest or activity. The disqualification should also identify the individual who will deal with the matters from which the employee is disqualified. In all cases, the individual who will deal with these matters must be at a higher organizational level than the employee (i.e., the employee's supervisor). The disqualification must be approved by the IC DEC or his/her designee.
- g. **Financial Interest:** A financial interest, broadly defined, includes any monetary interest of the employee, the spouse, or minor children. Financial interest may also include the interests of an employee's general partner. A financial interest includes the interests of an outside organization in which the employee serves as an officer, director, trustee, general partner, or employee, and the interests of an organization with which the employee is seeking employment. The interests described above are imputed to the employee. Such interests include, without limitation on the value, stock interests, bank accounts, mutual funds, sector funds, consulting relationships, and leaves of absence agreements. The monetary interest may be present or future (pension plans, future royalties, and patent rights).
- h. **Negotiation:** The term negotiation means discussion or communication with another person, or such person's agent or intermediary, mutually conducted with a view toward reaching an agreement. The term is not limited to discussions of specific terms and conditions.

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- i. **Particular Matter:** The criminal conflict of interest and post employment statutes come into play when an employee participates in a particular matter. A particular matter refers to the official action taken by the employee and includes matters that involve a deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons. A particular matter does not necessarily involve formal parties and may include governmental action, such as legislation or policy-making, that is narrowly focused on the interests of a discrete and identifiable class of persons.
- j. **Personal and Substantial Participation:** Certain criminal statutes impose restrictions on employees because of the kind of participation he or she may have with respect to official duty activity. Typically this is referred to as personal and substantial participation. To participate personally means to participate directly. It includes the direct and active supervision of the participation of a subordinate in the matter. To participate substantially means that the employee's involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter.
- k. **Prohibited Source:** Employees are subject to restrictions on engaging in outside activities, accepting gifts, and/or holding financial interests in entities that are considered prohibited sources. Prohibited source means any person (or organization) who:
 - (1) Is seeking official action by the employee's agency;
 - (2) Does business or seeks to do business with the employee's agency;
 - (3) Conducts activities regulated by the employee's agency;
 - (4) Has interests that may be substantially affected by performance or nonperformance of the employee's official duties; or
 - (5) Is an organization a majority of whose members are described in paragraphs h(1)-(4) above.

For purposes of this section, "agency" is defined as follows:

- (1) For outside activities, agency is defined as NIH, with consideration of the employee's official duties (e.g., intramural employee can have an outside activity with an organization even if someone else in that employee's lab or branch has an official relationship with that outside organization, or an extramural employee may have an outside activity with an organization that is **not** in the employee's grant portfolio);

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- (2) For financial interests, agency is defined as the employee's office or branch, with consideration of the employee's official duties.
 - (3) For acceptance of gifts, agency is defined as NIH.
1. **Waiver:** A waiver is a written mechanism used to resolve an actual conflict of interest. Certain criminal statutes governing the conduct of Federal employees allow the use of a waiver to avoid the terms of the statute. For example, an employee working on a Cooperative Research and Development Agreement (CRADA) must obtain a waiver under 18 U.S.C. Section 208 before the employee may negotiate for employment with the outside collaborator.
 2. **Criminal Statutes:** Failure to abide by the requirements of the following criminal statutes may subject employees to criminal penalties.
 - a. **18 U.S.C. Section 201 - Bribery**

An employee may not receive anything of value for or because of his or her official position or for services performed as official duties unless the item is excluded from the definition of a gift as stated in the "Office of Government Ethics Standards of Ethical Conduct for Employees of the Executive Branch" or falls within one of the exceptions set forth in the standards.
 - b. **18 U.S.C. Sections 203 and 205 - Compensation for Representation and Representation Against the United States**

An employee may not be compensated for representation before any Federal court or agency.

An employee may not represent a party in a claim against the United States in which the United States is a party or has a direct or substantial interest.

Exception - An employee may represent parents, spouse, child, or other person (or estate) for whom the employee is serving as a guardian, executor, administrator, trustee, or other personal fiduciary unless the representation involves matters in which the employee has participated personally and substantially as a Government employee and/or such matters are part of the employee's official responsibilities.
 - c. **18 U.S.C. Section 208 - Personal and Substantial Participation in a Particular Matter Involving a Financial Interest**

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An employee who is working on a Cooperative Research and Development Agreement (CRADA), formal or informal collaborations, or other matter in his or her official duties involving an outside company may not:

- (1) Have a financial interest in that outside company (financial interest includes stock or stock option, bonds, or other securities in excess of \$5000 total per company which is owned by the employee, his/her spouse and/or dependent children);
- (2) Engage in an outside activity (including service on the Board of Directors or science advisory board) with that company; or,
- (3) Negotiate for employment with that company.

... unless the employee obtains a waiver under Section 208 from his/her appointing authority (see below).

Formal collaborations include any working relationships with the outside entity in the context of a CRADA. Informal collaborations include any working relationships with the outside entity not in the context of a CRADA.

Conversely, an employee may not negotiate a CRADA or discuss arrangements for other formal or informal official collaborations with an outside entity with which he or she has an approved outside activity or in which he or she has some financial interest (e.g., stock ownership). In this situation, the outside activity must be discontinued and/or the issue of stock ownership resolved before any official discussions of potential collaboration may ensue.

To obtain a waiver, an employee must disclose the situation to the appropriate approving official and receive in advance a written determination (a waiver) made by that official that the financial interest (e.g., negotiating for employment) is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from the employee.

Approving officials are as follows:

- (1) For employees who are IC Directors and/or in a Senior Executive Service (SES), Senior Scientific Service (SSS), Senior Level (SL), Scientific and Technical (ST), or Senior Biomedical Research Service (SBRS) position in the NIH Office of the Director, the OGC/ED must be consulted and the waiver is approved by the Deputy Director, NIH.

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- (2) For employees who are in a Senior Executive Service (SES), Senior Scientific Service (SSS), Senior Level (SL), Scientific and Technical (ST), or Senior Biomedical Research Service (SBRS) position within an IC, the OGC/ED must be consulted and the waiver is approved by the IC Director.
- (3) For employees in the Commissioned Corps or General Schedule, the waiver must be approved by the IC Director, or for staff in the NIH Office of the Director (OD), by the Deputy Director, NIH.

A sample waiver is included in Appendix 1, Illustration 1.

d. **18 U.S.C. Section 208 - Employment Negotiations**

An employee who is seeking employment outside the Federal Government, or is interested in negotiating for non-Government employment, is affected by restrictions contained in 18 U.S.C. Section 208 (and by restrictions contained in the *Standards of Ethical Conduct for Employees of the Executive Branch*, 5 U.S.C. Part 2635, written by the Office of Government Ethics).

As a general rule, an employee need not file an HHS 520 (Request for Approval of Outside Activity) for a job interview outside of the Government. However, the activity must be performed on the employee's personal time (i.e., on a non-work day, outside of official duty hours, or on annual leave). Accordingly, payment-in-kind (HHS Form 348) cannot be used to fund travel expenses.

An employee may accept travel expenses and other reasonable expenses incident to non-Government employment discussions even from an entity that constitutes a prohibited source, provided the employee has no official duties which affect that source (see Section 2635.204(e) of the OGE *Standards of Ethical Conduct*). An employee may give a lecture as part of employment negotiations with an outside entity but may not accept compensation for the lecture, since compensation for the lecture converts it to an outside activity. However, should an employee wish to accept compensation for the lecture, an HHS-520 must be submitted and the activity is subject to all the guidelines regarding Outside Activities. This type of activity must also be performed on the employee's personal time.

An employee who is seeking non-Government employment, or who is negotiating for non-Government employment, must disqualify him/herself from any matters involving the outside entity unless he or she obtains a waiver under Section 208 from the employee's appointing authority.

The requirement of disqualification is accomplished by not participating in a particular matter and begins with initial discussion (e.g., response to a resume) and terminates when the discussion concerning possible employment terminates, plus a "cooling off"

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period (which is undefined by the law). Therefore, when discussion end, the employee needs a waiver of the cooling off period to return to official duties which may affect the organization. A deferred decision is not termination of seeking employment, e.g., "Let's talk about it next year."

The employee must submit a disqualification statement (recusal memorandum) to the person responsible for the employee's assignment who must agree that disqualification is possible. As shown in Appendix 1, Illustration 4, the disqualification should (1) identify the particular institution, and 2) name the official above the employee's position to handle any matter dealing with that institution or state that the assignment has been reassigned to another employee. It is recommended that the employee consult with his/her IC DEC, Ethics Coordinator, or other designee before initiating disqualification statements or waivers.

An employee may not participate in a particular matter that has a direct and predictable effect on the financial interests of a prospective employer unless a written waiver is granted by the official responsible for the employee's appointment to his/her position.

Example: Jane Doe is working on an official project with Upjohn. Jane Doe wishes to negotiate for employment with Upjohn. Jane Doe's Institute Director may give her a written waiver, provided all the criteria are met, allowing her to negotiate with Upjohn while at the same time continuing to work on the official project with Upjohn.

A waiver should be granted only after a determination is made that a substantial conflict would not arise if the employee was permitted to engage in employment negotiations while continuing to be involved in the official matter. In a situation of substantial conflict, the agency may allow the employee to take annual leave or leave without pay while seeking employment, or may take other appropriate administrative action.

Sample waivers (for Regular Government Employees and Special Government Employees) are included in Appendix 1, Illustrations 1 and 2. Sample recusal statements are included in Appendix 1, Illustrations 3, 4, and 5.

e. **18 U.S.C. Section 209 - Prohibition on Supplementation of Salary**

An employee may not accept a contribution or supplementation of his or her Government salary as compensation for services performed as official duties.

Exception - An employee may continue to participate in a bona fide pension, retirement, group life, health or accident insurance, profit-sharing, stock bonus, or other employee welfare or benefit plan maintained by a former employer.

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Depending on the type of financial interest and the employee's official responsibilities, a recusal, waiver, or authorization may be necessary.

In addition, this section does not prohibit acceptance of contributions, awards, or other payments under terms of the Government Employees Training Act or relocation expenses associated with participation in an executive exchange or fellowship program (established by statute or Executive Order) in an executive agency.

This section does not apply to a Special Government Employee or any employee serving without compensation.

3. Regulatory Restrictions

a. 5 C.F.R Part 2635 Section 502 - Appearance of Conflict of Interest

An appearance of a conflict of interest arises where an employee is involved in a particular matter involving specific outside parties (including individuals, corporate entities, etc.) and the circumstances are such that a reasonable person with knowledge of the relevant facts would question the employee's impartiality in the matter. Specific outside parties include:

- (1) The employee's spouse, minor children, other member of the employee's household, or a relative with whom the employee has a close personal relationship;
- (2) A person with whom the employee has or seeks a business, contractual, or other financial relationship that involves other than a routine consumer transaction;
- (3) A person for whom the employee's spouse, parent or minor child is, to the employee's knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee;
- (4) Any organization/person for whom the employee has, within the last year, served as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee; or
- (5) An organization in which the employee is an active participant, such as chairperson or committee member (more than just a member of the organization).

It is the responsibility of the appropriate IC DEC to determine whether the employee should be authorized to participate in the matter. The IC DEC may determine that the employee's impartiality is likely to be questioned and the employee should not

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participate in the matter. The IC DEC may, alternatively, determine that any question of impartiality is outweighed by the interests of the Government and authorize the employee to participate in the matter, thus waiving any appearance of a conflict of interest.

In granting an authorization, the IC DEC must find that, in light of all relevant circumstances, the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations. Factors to consider are as follows:

- (1) The nature of the relationship involved;
- (2) The effect that resolution of the matter would have upon the financial interests of the person involved in the relationship;
- (3) The nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) The sensitivity of the matter;
- (5) The difficulty of reassigning the matter to another employee; and
- (6) Adjustments that can be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

A sample authorization is included in Appendix 1, Illustration 6.

b. **5 C.F.R Part 2635 Section 802 - Conflicting Outside Activities**

An employee may not engage in outside employment or any other outside activity which conflicts with his or her official duties.

An activity conflicts with an employee's official duties if:

- (1) The employment or activity is prohibited by the criminal statutes (e.g., bribery, representation before a Federal court or agency, use of official position for private gain, and/or salary supplementation);
- (2) The employment or activity requires the employee's disqualification from matters so central or critical to the performance of official duties that the employee's ability to perform the duties of his or her position would be materially impaired;

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- (3) The employment or activity involves an outside prohibited source and the employee has official duties which affect that source;
 - (4) The employment or activity creates an appearance of a conflict of interest; or
 - (5) The employment or activity is prohibited by the Department's Supplemental Standards of Ethical Conduct for Employees (5 C.F.R. § 5501) or the NIH Manual Chapter 2300-735-4, "Outside Work and Related Activities with Outside Organizations."
4. **Identifying Conflicts of Interest** - To determine whether or not an apparent or actual conflict exists, the reviewing official must:
- a. Know the employee's job description and the function of the employee's office and/or program;
 - b. Know what companies/entities have an interest in the work of the employee and/or the employee's office/program;
 - c. Review information available from financial disclosure forms and/or other documents, such as disqualification or outside activity requests; and
 - d. Determine if any identified financial interest is with a company/entity that has an interest in the work of the employee and/or the employee's office/ program.
5. **Resolving Conflicts of Interest** - If a reviewing official determines that an apparent or actual conflict of interest exists, the conflict may be resolved through one of the actions listed below. Because specific procedures for resolving conflicts of interests (i.e., recusals, waivers, authorizations, reassignments, divestitures, etc) vary among the ICs, employees may wish to consult with their DEC or Ethics Coordinator before initiating any document. When the DEC or Ethics Coordinator is not specifically involved in preparation of the document, a copy should be forwarded to the DEC for review. In all cases, it is appropriate to contact the DEC or Ethics Coordinator early in the process.
- a. **Disqualification** - An employee may be disqualified from participating in a particular matter or category of matters. Disqualification is appropriate when the conflicting interest bears a direct or indirect relationship to particular, identifiable duties performed by the employee.

A disqualification is also referred to as a recusal. A disqualified employee signs a written statement reflecting the scope of the disqualification and the precise nature of the conflicting interest or activity. The disqualification statement should also identify the individual who will deal with the matter from which the employee is disqualified.

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In all cases, the individual who will deal with these matters must be at a higher organizational level than the employee (i.e., the employee's supervisor). For IC Directors, the higher level may be the NIH Deputy Director, the NIH Deputy Director for Extramural Research, or the NIH Deputy Director for Intramural Research.

Sample disqualification statements are included in Appendix 1, Illustrations 3,4, and 5.

- b. **Authorization** - An employee may obtain an authorization when the appearance of a conflict is outweighed by the interests of the Government. A sample authorization is included in Appendix 1, Illustration 6.
- c. **Waiver, Statutory** - An employee may obtain a waiver when there is an actual conflict of interest. Certain criminal statutes governing the conduct of Federal employees permit the use of a waiver under certain circumstances to enable the employee to continue performing official duties despite actual conflicting interests. For example, an employee working on a CRADA must obtain a waiver under 18 U.S.C. Section 208 before the employee may negotiate for employment with the outside collaborator. Sample waivers are included in Appendix 1, Illustrations 1 and 2.
- d. **Waiver, Regulatory** - There are some financial interests that are so small or insignificant that OGE has "exempted" them from the criminal conflict of interest law. The most common exemptions include:
 - (1) Diversified Mutual Funds: You may participate in matters which affect the holdings of these funds.
 - (2) Up to \$5000 of publicly traded stock: You may participate in a matter which affects a company in which you hold up to \$5000 of stock. Your holdings and the holdings of your spouse and minor child are aggregated in calculating the value of your stock. You must instruct your broker to sell any amount over \$5000.
 - (3) Leave of absence from a university: You may participate in general matters which affect universities, such as grant application procedures, but you cannot participate in any particular matter affecting the university from which you are on leave, for example, review of a grant application.
- e. **Reassignment** - A change of job assignment may be an appropriate form of resolution when a conflicting interest bears a direct or indirect relationship to particular, identifiable duties of the employee, and these duties constitute a significant portion of the employee's position.

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- f. **Divestiture** - Divestiture may be necessary when the financial interest is such that the conflict cannot be resolved by any of the methods discussed above. Upon divestiture of the conflicting financial interest, the employee will no longer be prohibited from participating in the matter which caused the disqualification.

An employee who would otherwise (because of a conflicting financial interest) be disqualified from participation may voluntarily sell or otherwise divest him/herself of the conflicting financial interest.

If divestiture is directed (rather than voluntary), an employee may be eligible to defer the tax consequences of the divestiture by obtaining a certificate of divestiture.

H. PROCUREMENT INTEGRITY ACT

Government employees who serve as procurement officials as defined in the Procurement Integrity Act are subject to certain prohibitions when involved in the conduct of a procurement. A procurement includes contracting for services or supplies using any procurement method (record of call, individual contract, etc). In summary:

Government employees participating personally and substantially in the conduct of a procurement have the following restrictions:

1. An employee cannot seek employment with a competing contractor during the conduct of the procurement unless disqualified from the procurement;

Note: If the contract is for more than \$100,000 and the employee is seeking employment or is contacted by the vendor, the employee must provide a **written** report of the contact to their supervisor and DEC. The report must be kept for 2 years. The employee must either reject the potential employment or be disqualified from the procurement. Reinstatement of the employee's activities on the procurement following disqualification can occur if the contractor is no longer a bidder, or if employment discussions have terminated. Such reinstatement is at the discretion of the Head of the Contracting Authority (usually the IC contracts operations manager), it must involve consultation with the DEC, and it must be in writing.

2. An employee cannot solicit any gift or accept anything over \$20 in value from an employee, representative, or consultant of a competing contractor;
3. An employee cannot disclose any contractor bid or proposal or source selection information to any unauthorized person before the award of the contract (applies to anyone with access to the information);

AVOIDING CONFLICTS OF INTEREST

4. Except as provided by law, an employee cannot obtain contractor bid or proposal information or source selection information before award of the agency procurement contract to which the information relates;
5. If an employee retired prior to January 1, 1997, for two years after participating in a procurement the employee cannot:
 - (a) Participate in any matter on behalf of a competing contractor in negotiations for the award, modifications or extensions of such procurement, including “behind the scenes” activities, or
 - (b) Participate on behalf of a competing contractor in the performance of the contract.
6. If the employee retired after January 1, 1997, the contract was over \$10 million, and employee was the procurement or program officer on the contract, or any other employee involved in the procurement, the employee cannot receive any compensation from the contractor for one year from the date of the selection or award, last date served in the procurement or program position, or date decisions were made, whichever is later. The employee may accept compensation from another division of the contractor’s company if that division does not produce the same or similar products or services as provided in the contract with the Federal agency.
7. If the employee retired after January 1, 1997, the contract was under \$10 million, and the employee was the procurement or program officer on the contract, or any other employee involved in the procurement, the former employee may accept salary or other compensation from the contractor, but may not represent the contractor back to the government regarding that particular contract for the lifetime of that contract. In addition, if the former employee was a manager or supervisor while he/she was a Federal employee, he/she may not represent any outside entity back to the Government for two years on any matter that was under his/her official responsibility during the last year of his/her Federal employment.

Non-Government contractors and other non-appointed consultants cannot:

1. Disclose any proprietary or source selection information to an unauthorized person before the award of the contract. This applies to anyone with access to the information.
2. Obtain contractor bid or proposal information before award of the agency procurement contract to which the information relates, except as provided by law.

Definitions and specific guidelines are contained in 41 U.S.C. Code 423(b) Subsection 27 (48 C.F.R. Section 3.104) and the most recent NIH I&I Memorandum on Procurement Integrity Act Implementation. Employees are encouraged to contact their IC DEC or designee for additional guidance and information.

AVOIDING CONFLICTS OF INTEREST

I. ANNUAL ETHICS TRAINING

OGE regulation (5 C.F.R. Part 2639 Subpart G, dated April 7, 1992; amended in 1997 and published in the Federal Register on March 12, 1997) requires annual ethics training for certain categories of employees. Employees, including Special Government Employees, who are required to file public and confidential financial disclosure reports (SF 278 and OGE 450) and contracting officers must receive the training. Employees other than those filing financial disclosure reports may be trained at the discretion of the DEC's. Public (SF 278) filers are required to receive 1-hour annual verbal ethics training with a qualified trainer immediately accessible during and after the training. Confidential financial disclosure filers and other designated employees will receive the verbal training every third year equal to the SF 278 filers' training, with "written" training provided in the intervening two years.

The OGC/ED is responsible for determining the content of annual training programs and providing training information and guidance to DEC's for use in developing internal training programs.

For Special Government Employees, OGC/ED has determined that the annual training requirement may be met by distribution of specified written materials. Materials may include a copy of the Office of Government Ethics Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. 2635, dated August 7, 1992 (or subsequent revisions or updates), the name(s) of the IC ethics official available to answer questions, or other documents provided by OGC/ED on an annual basis.

J. MANAGEMENT CONTROLS

The purpose of this chapter is to provide guidelines for avoiding conflicts of interest, including guidelines for the public and confidential financial disclosure reporting systems. It interprets, supplements, and is intended to be used in conjunction with Government-wide statutes and regulations as well as those from the Department of Health and Human Services.

1. Office Responsible for Reviewing Management Controls Relative to this Chapter (Issuing Office):

Through this manual issuance, the Office of Human Resource Management (OHRM) in the Office of the Director, NIH, is accountable for ensuring that ICs have implemented appropriate management controls.

2. Frequency of Review:

Periodic review of IC files by OHRM staff. In addition, at their discretion and in their time frame, the Office of Government Ethics may audit any or all of the ICs within NIH.

AVOIDING CONFLICTS OF INTEREST

3. Method of Review:

Other Review: OHRM Ethics Staff will maintain appropriate oversight through reviews of IC procedures and files. Problem issues identified by the reviewers are provided to the IC Director and Deputy Ethics Counselor for corrective action. When significant repetitive or other issues are identified, these are brought to the attention of the Director, NIH. Depending on the nature and extent of the problem, additional training may be required or delegated authority may be withdrawn.

4. Review Reports are sent to: NIH Deputy Director for Management and the NIH Ethics Program Manager

K. RECORDS RETENTION AND DISPOSAL

All records (e-mail and non-e-mail) pertaining to this chapter must be retained and disposed of under the authority of NIH Manual 1743, "Keeping and Destroying Records, Appendix 1, *NIH Records Control Schedule*," as noted below:

Item 2300-730-7a: IC DEC's are responsible for retaining original copies of all SF-278 forms for a minimum of six years after the filing date, except that documents needed in an ongoing investigation past the six-year limit will be retained until no longer needed in the investigation.

Item 2300-730-7b: IC DEC's are responsible for retaining original copies of all OGE-450 forms for a minimum of six years after the filing date, except that documents needed in an ongoing investigation past the six-year limit will be retained until no longer needed in the investigation.

Original copies of the financial disclosure reports for DEC's are maintained by OGC/ED. Files associated with financial disclosure, such as waivers, authorizations, and recusals, are also maintained for the six-year period.

NIH e-mail messages: NIH e-mail messages (messages, including attachments, that are created on NIH computer systems or transmitted over NIH networks) that are evidence of the activities of the agency or have informational value are considered Federal records. These records must be maintained in accordance with current NIH Records Management guidelines. Contact your IC Records Officer for additional information.

The reports should be maintained by the DEC's in a secure area. Each DEC should develop a schedule for periodically purging individual SF 278s, OGE 450s, recusals, waivers, and other associated documents, that were received more than six years ago.

AVOIDING CONFLICTS OF INTEREST
Sample Forms and Statements: Criminal Conflict of Interest Statute
Sample 208(b)(1) Waiver
Regular Government Employees

Note: NIH records management regulations provide for the retention of financial disclosure reports from advisory committee members by the Committee Management Office of each IC.

L. CONFIDENTIALITY OF DOCUMENTS/RELEASE OF INFORMATION

Public Financial Disclosure Reports (SF 278) must be maintained in a secure area by the DEC or his/her designee (i.e., Ethics Coordinator). Requests for copies of SF 278s by members of the public must be directed to the Freedom of Information Act/ Privacy Act Division in the Office of the Assistant Secretary for Public Affairs, DHHS, through the NIH FOIA Officer. Upon notification of a request, the FOIA Office forwards a copy of OGE Form 201 to the requestor for the requestor's signature, and also requests a copy of the Sf 278 from the Office of General Counsel/Ethics Division or appropriate DEC. The FOIA Office provides the OGC/ED or DEC with a copy of the signed OGE Form 201 or other documentation. Though it is within the DEC's discretion whether to notify the employee when a request for the employee's SF 278 has been filed, it is suggested that the employee be notified.

Confidential Financial Disclosure Reports (OGE 450) must be maintained in a secure area, in accordance with the System of Records contained in 55 Fed. Reg 6327. The reports remain with the DECs or their designees (i.e., Ethics Coordinators) and are disclosed only pursuant to this System of Records.

NIH may withhold information in waivers, authorizations, and disqualification that fall within the FOIA exemptions. However, under the Privacy Act, any information derived from the Confidential Financial Disclosure report (OGE 450) may not be disclosed unless it falls within a Privacy Act exemption or the confidential filer consents to the disclosure.

AVOIDING CONFLICTS OF INTEREST
Sample Forms and Statements: Criminal Conflict of Interest Statute
Sample 208(b)(1) Waiver
Regular Government Employees

MEMORANDUM

TO: [Name of Employee's Appointing Authority]
[Title]

FROM: [Name of the Employee or Deputy Ethics Counselor]
[Title]

SUBJECT: Conflict of Interest Waiver for [Employee's Name]

The purpose of this memorandum is to request that you grant a waiver from the conflict of interest prohibitions of 18 U.S.C. 208(a), for **[name of individual]**. Waivers under section 208(b)(1) may be granted by the appointing official when it is determined that "the [financial] interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect" from the employee and where the individual has made a disclosure of the financial interests at issue. You are the appointing official for purposes of section 208. Therefore, you have the authority to grant **[name of individual]** a waiver under section 208(b)(1).

[Name of individual] serves as **[Individual's title]**. Section 208 prohibits Federal executive branch employees from participating personally and substantially in particular matters that have a direct and predictable effect on a financial interest of the employee, **[his/her]** spouse, minor child, or general partner, or any organization of which the individual is an employee, general partner, officer, director, or trustee.

[Name of individual] has disclosed **[his/her]** potentially conflicting personal and imputed financial interests as follows:

[Describe the types of financial interests of the individual and the identity of the person whose financial interest is involved, if other than the employee, that may present a conflict of interest. This includes, but is not limited to, interests in real or personal property, stocks, stock options, bonds, job offer, and partnership interests. In addition, describe any entities for which the individual is an officer, director, trustee, general partner, or employee. Include consultancies. Describe the dollar value of these financial interests and compare that to the value of the employee's total assets (if known or the circumstances warrant, for example, if a particular matter or a specific party is involved.)]

Example for employment negotiations: Dr. Doe is working on a project with Company A as part of his official duties. Dr. Doe has indicated that he is interested in initiating discussions with Company A regarding possible employment opportunities with Company A. Dr. Doe cannot,

AVOIDING CONFLICTS OF INTEREST
Sample Forms and Statements: Criminal Conflict of Interest Statute
Sample 208(b)(1) Waiver
Regular Government Employees

under Section 208, begin such discussions unless he first obtains a waiver. Without a waiver, Dr. Doe would be subject to criminal liability under the statute.

Example for other financial interests: Dr. Doe is an extramural employee approving grants to Universities including the Massachusetts Institute of Technology [MIT]. Dr. Doe's wife formerly worked for MIT and still has a pension plan with MIT. [In this situation, one could reasonably say that Dr. Doe's service to the government will not be impaired by the fact that his spouse has a pension plan with MIT.]

As **[Individual's title]**, **[Name of individual]** might participate in matters that could affect the financial interests of an entity in which **[he/she]** has a personal or imputed interest. Such participation could be prohibited under section 208, but a waiver granted by you, under 18 U.S.C. § 208(b)(1) would allow **[him/her]** to participate in a limited manner. This waiver would only permit **[name of individual]** to participate in matters that would affect all similarly situated entities to the same extent, and **[he/she]** would still be disqualified from participating in any particular matter that would have a unique and distinct effect on any entity in which **[he/she]** has a personal or imputed interest, in addition to having a direct and predictable effect on any such interests.

For the following reasons, I believe that it would be appropriate for you to grant a waiver to **[name of individual]** that would allow **[him/her]** to participate in all matters that affect the above **[financial interests, companies/organizations, etc.]** to the same extent as they would affect all similarly situated entities.

[Describe the reasons for granting the waiver, focusing on the test, i.e., that the interest is not so substantial as to be deemed likely to affect the integrity of the services that the Government may expect from the individual. Describe the amount of the interest and why it is not substantial.]

In addition, the nature of the duties that **[name of individual]** performs are such that the integrity of **[his/her]** services are such that the integrity of **[his/her]** services are not likely to be compromised. The duties involve **[describe, e.g., the distribution of formula-based grants]**. **[Further describe the sensitivity of the matter, the extent to which the employee exercises discretion, the need for the employee's services in the matter, and any adjustments in the duties that would reduce the likelihood that the integrity of the employee's duties would be questioned]**. Since **[name of individual]** is recused from participating in any particular matters that uniquely and distinctly, as well as directly and predictably, affect any of the financial interests described above, the only matters in which **[he/she]** will participate that will affect **[his/her]** financial interests will be those matters that affect the interests of all entities similarly situated to the same extent. While this participation is technically covered by the current interpretation of section 208, it poses far less risk of bias or conflict of interest than participation in matters that relate specifically to a particular entity.

AVOIDING CONFLICTS OF INTEREST
Sample Forms and Statements: Criminal Conflict of Interest Statute
Sample 208(b)(1) Waiver
Regular Government Employees

Accordingly, I recommend that you grant **[name of individual]** a waiver that would allow **[him/her]** to participate as **[individual's title]** in all matters that may affect entities in which **[he/she]** has a personal or imputed interest only to the same extent as they affect all similarly situated entities. I believe that such a waiver is appropriate because in this case, the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from **[name of individual]**.

DECISION

- ___ Waiver granted based on my determination, made in accordance with 18 U.S.C. Section 208 (b)(1) that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such employee.

- ___ Waiver denied. The employee is disqualified from participating in any matter affecting the listed financial interests, regardless of whether such matter would affect similarly situated entities to the same extent.

[Name of Appointing Authority/DEC]

Date

Confirmed and Acknowledged:

[Name of Individual]

Date

(Revised HHS/OGC/ED - 1/98)

AVOIDING CONFLICTS OF INTEREST
Sample Forms and Statements: Criminal Conflict of Interest Statute
Sample 208(b)(3) Waiver
Special Government Employee -- Committee Member

MEMORANDUM

TO: [Name of Appointing Official or Delegatee]
[Title]

FROM: [Name of Recommending Official]
[Title]

SUBJECT: Conflict of Interest Waiver for [Name of Individual]

I am writing to request a waiver for [name of individual], a member of the [name of advisory committee], from the conflict of interest prohibitions of 18 U.S.C. § 208(a). Waivers under section 208(b)(3) may be granted by the appointing official where “the need for the individual’s services outweighs the potential for a conflict of interest created by the financial interest involved” and where the individual has made a disclosure of the financial interests at issue. We have determined that you are the appointing official for purposes of section 208 or that you have authority to grant waivers under section 208. Therefore, you have the authority to grant [name of individual] a waiver under section 208(b)(3).

Section 208(a) prohibits Federal Executive Branch employees, including Special Government Employees, from participating personally and substantially in matters in which any of the following individuals or organizations have a financial interest: (1) the employee; (2) the employee’s spouse; (3) the employee’s minor child; (4) an organization in which the employee serves as an officer, director, trustee, partner, or employee; or (5) a person or organization with which the employee is negotiating for prospective employment or has an arrangement for prospective employment. Since [name of individual] is a Special Government Employee, this individual is under a statutory obligation to refrain from participating in any deliberations that involve a particular matter having a direct and predictable effect on a financial interest attributable to the individuals or organizations described above.

The member’s financial interest subject to waiver are:

<u>Organization</u>	<u>Kind of Organization</u>	<u>Nature of Interest</u>
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Other Type of Interest (stock, bond, employment)

The functions of the committee, as stated in its Charter, are to [add description of committee functions and any specific functions that are pertinent]. As a member of the [name of advisory committee], [name of individual] potentially could become involved in matters that affect [identify financial interest]. Under section 208, [name of individual] is prohibited from participating in such matters.

AVOIDING CONFLICTS OF INTEREST
Sample Forms and Statements: Criminal Conflict of Interest Statute
Sample 208(b)(3) Waiver
Special Government Employee -- Committee Member

However, as noted above, you have the authority under 18 U.S.C. § 208(b)(3) to grant a waiver permitting this individual to participate in such matters as you deem appropriate.

For the following reasons, I believe that it would be appropriate for you to grant a waiver to **[name of individual]** that would allow this individual to participate in general matters that might directly affect **[name of individual's]** financial interests.

First, _____. **[Describe the nature of the financial interest and the identity of the person whose financial interest is involved if other than the member. Describe the dollar value of the financial interest and compare the value of the disqualifying interest to the other assets of the member, if known, or the circumstances warrant (for example, if a particular matter or a specific party is involved). The relationship between the financial interest and the actions that the individual may take as a committee member should also be explained, e.g., whether the financial interest is likely directly to be affected or if the relationship is more attenuated. Along this line, describe what the individual will be doing on the committee in detail and how this work will not specifically and uniquely affect the employee's financial interests. If the employee's financial interests would be specifically affected, describe in detail.]**

Second, the Federal Advisory Committee Act requires that committee memberships be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee. **[Describe the individual's unique expertise, why the individual's services are essential, and the difficulty in locating a similarly qualified individual.]** We believe that **[name of individual]**'s participation in the deliberations of the advisory committee will help provide a foundation for developing advice and recommendations that are fair and comprehensive.

Accordingly, I recommend that you grant **[name of individual]** a waiver that would allow this individual to participate in all general matters that may directly affect **[name of individual's]** financial interest, but not matters specifically and uniquely affecting **[name of individual's]** financial interests. I believe that such a waiver is appropriate because in this case, the need for the services of **[name of individual]** outweighs the potential for a conflict of interest created by the financial interest involved.

AVOIDING CONFLICTS OF INTEREST
Sample Forms and Statements: Criminal Conflict of Interest Statute
Sample 208(b)(3) Waiver
Special Government Employee -- Committee Member

DECISION:

_____ Waiver granted based on my determination, made in accordance with section 208(b)(3), that the need for the individual's services outweighs the potential for a conflict of interest created by the financial interest attributable to the individual.

_____ Waiver denied.

[Name of Appointing Official or Delegatee]

Date

Confirmed and Acknowledged:

[Name of Advisory Committee Member]

Date

(Revised HHS/OGC/ED -- 1/98)

AVOIDING CONFLICTS OF INTEREST
Sample Forms and Statements
Sample Disqualification Statement: Stock Ownership

MEMORANDUM

TO: Deputy Ethics Counselor
[IC Acronym]

FROM: [Name of Employee]

SUBJECT: Recusal -- Stock Holdings with [name of company]

This is to notify you that I own stock with

The Name of the Company

I have been advised that stock ownership may present an actual or appearance of conflict of interest; therefore, I must disqualify/recuse myself from any official duty activities that involve the above Company. I understand that I may not participate personally or substantially as a Government employee in any matters regarding the above company and any matters involving particular products of this company that are currently available or under development by this company. Furthermore, I understand that under the Department of Health and Human Services' guidelines, it would be appropriate for any matters specifically involving the above named company or device to be referred to my supervisor without consulting me or informing me that such matters are pending. This action is taken with the concurrent of my Division/Office Director, as indicated below.

I understand that this recusal will remain in effect until I inform you in writing that all stock ownership has terminated.

Employee's Name

Recommend: _____
[Name of Employee's Director/Supervisor] Date

Approve: _____
Deputy Ethics Counselor, [IC] Date

AVOIDING CONFLICTS OF INTEREST
Sample Forms and Statements
Sample Disqualification Statement: Seeking Employment

MEMORANDUM

TO: Deputy Ethics Counselor
[IC Acronym]

FROM: [Name of Employee]

SUBJECT: Recusal -- Seeking Employment with [name of outside organization]

This is to notify you that I am seeking employment with

[Name of Outside Organization]

I have been advised that my seeking employment may present an actual or appearance of a conflict of interest; therefore, I must disqualify/recuse myself from any official duty activities that involve the above organization. I understand that I may not participate personally or substantially as a Government employee in any matters regarding the above organization. Furthermore, I understand that under the Department of Health and Human Services' guidelines, it would be appropriate for any matters specifically involving the above named organization to be referred to my supervisor without consulting me or informing me that such matters are pending. This action is taken with the concurrent of my Division/office Director, as indicated below.

I understand that this recusal will remain in effect until I inform you in writing that all seeking employment activity has terminated and I receive a waiver of the "cooling off" period.

Employee's Name

Recommend: _____
[Name of Employee's Director/Supervisor] Date

Approve: _____
Deputy Ethics Counselor, [IC] Date

AVOIDING CONFLICTS OF INTEREST
Sample Forms and Statements
Sample Disqualification Statement: Outside Activity

MEMORANDUM

TO: Deputy Ethics Counselor
[IC Acronym]

FROM: [Name of Employee]

SUBJECT: Disqualification from Participation in Matters Involving [Name of Outside Organization]

This is to notify you that I have an approved ongoing Outside Activity with

[Name of Outside Organization]

I have been advised that an Outside Activity may present an actual or appearance of a conflict of interest; therefore, I must disqualify/recuse myself from any official duty activities that involve the above organization. I understand that I may not participate personally or substantially as a Government employee in any matters regarding the above organization. Furthermore, I understand that under the Department of Health and Human Services' guidelines, it would be appropriate for any matters specifically involving the above named organization to be referred to my supervisor without consulting me or informing me that such matters are pending. This action is taken with the concurrent of my Division/ Office Director, as indicated below.

I understand that this recusal will remain in effect until I inform you in writing that the Outside Activity has terminated, plus a 1-year "cooling off" period.

Employee's Name

Recommend:

[Name of Employee's Director/Supervisor] Date

Approve:

Deputy Ethics Counselor, [IC] Date

AVOIDING CONFLICTS OF INTEREST
Sample Forms and Statements
Appearances of Conflict of Interest
Sample § 2635.502 Authorization

MEMORANDUM

TO: [Name of Employee's Deputy Ethics Counselor or Designee]

FROM: [Name of Employee]

SUBJECT: Authorization to Participate Under Section 502

I am writing to request authorization to participate in an official duty matter notwithstanding the impartiality provisions set forth in 5 C.F.R. § 2635.502. Section 2635.502 (a) states, in part:

"Where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his/her household, or knows that a person with whom he has a covered relationship is or represents a party to such a matter, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his/her impartiality in the matter, the employee should not participate in the matter until he has informed the agency designee of the appearance problem and received authorization from the agency designee..."

Authorization under section 2635.502 (d) may be granted by the IC Deputy Ethics Counselor (agency designee) where

"..an employee's participation in a particular matter involving specific parties would not violate 18 U.S.C. § 208 (a), but would raise a question in the mind of a reasonable person about his/her impartiality,"

but,

"the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations."

[Insert here the facts that raise an appearance of a conflict of interest. Be sure to address the following factors: (1) the nature of the relationship; (2) the effect that resolution of the matter would have on the financial interests of the person involved in the relationship; (3) the nature and importance of the employee's role, including the extent to which the employee is called upon to exercise discretion in the matter; (4) the sensitivity of the matter; (5) the difficulty of assigning the matter to another employee; (6) adjustments to the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality. For example, John Doe is an employee of a laboratory at the National Cancer Institute that is negotiating a collaborative research and development agreement (CRADA) with Bristol Myers. John Doe's brother is a senior vice-president at Bristol Myers. While John Doe is a scientist and will work on the CRADA, he will have no role in negotiating the

AVOIDING CONFLICTS OF INTEREST
Sample Forms and Statements
Appearances of Conflict of Interest
Sample § 2635.502 Authorization

CRADA nor will he have any oversight responsibilities over Bristol Myers' collaboration with this lab. For these reasons, I believe an authorization is appropriate.]

NOTE: Employees who have served in outside organizations (e.g., consultant, employee, board member) in the last year may not participate in official matters involving these entities for one year. The Deputy Ethics Counselor (DEC) may determine that a shorter period would be appropriate given an evaluation of the specific facts of each case. The DEC should state in the authorization that official participation is allowed after one year or after a shorter period as determined by the DEC.

DECISION:

_____ Authorization to participate granted based on my determination, made in accordance with 5 C.F.R. § 2635.502(d), that "the need for the individual's services outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations."

_____ Authorization to participate denied.

Deputy Ethics Counselor

Date

Confirmed:

Employee

Date

AVOIDING CONFLICTS OF INTEREST
Executive Branch Personnel Public Financial
Disclosure Reporting System (SF 278)

A. COVERAGE:

The following employees are required to complete the Executive Branch Personnel Public Financial Disclosure Report (SF 278):

1. Members of the Senior Executive Service/Senior Scientific Service;
2. Employees whose positions are classified above GS-15, generally described as "Senior Level" (SL), or "Scientific and Technical" (ST) employees;
3. Members of the Commissioned Corps whose pay is at the O-7 level or above;
4. Employees whose annual rate of basic pay is fixed under other pay schedules at a rate equal to or greater than 120% of the minimum rate of basic pay for GS-15 (120% of the pay for a GS-15, Step 1) (Note: Career GS/GM-15 level employees and commissioned officers at the O-6 level and below are excluded, as are Title 42/SBRS appointees whose basic rate is GS-15 Step 1, even though their actual pay may exceed the threshold); and
5. Experts, Consultants, or Advisory Committee Members appointed as Special Government Employees, who are reasonably expected to serve more than 60 calendar days in any calendar year, and whose annualized salary is equal to or greater than 120% of the minimum rate of basic pay for GS-15 GS-15 (120% of the pay for a GS-15, Step 1).

B. APPEALS:

Employees who believe that they are not required to file a public financial disclosure report should contact their DEC, who consults with OGC/ED if necessary. If the information provided by the employee indicates that the employee should not file a report, the DEC notifies the employee and the relevant Personnel Specialist. Decisions of DEC's are final.

C. FILING DEADLINES AND REPORTING PERIODS:

1. **New Entrant Report:** An employee as defined above must complete an SF 278 within 30 days of assuming a position. No report is required if the employee left a position covered by the SF 278 reporting system within 30 days prior to assuming the new position.

The reporting period is the preceding calendar year and the current calendar year up to the date of filing, except for outside activities. The reporting period for outside activities is the previous two calendar years through the current calendar year up to the date of filing.

NOTE: Supervisors are reminded that, if at all possible, job applicants should be made aware of potential conflicts before an employment agreement is reached.

AVOIDING CONFLICTS OF INTEREST
Executive Branch Personnel Public Financial
Disclosure Reporting System (SF 278)

2. **Annual Report:** Annual reports are due no later than May 15.

The reporting period is the preceding calendar year, except for outside activities which must be reported for the preceding calendar year up through the filing date. No report is required if an employee performed the duties of a covered position for less than 61 days during the 12-month reporting period (i.e., started in the covered position on or after November 1 of the preceding calendar year).

3. **Termination Report:** A termination report must be filed within 30 days after termination. No report is required if the employee accepts another position covered by the SF 278 reporting system within 30 days.

The reporting period begins at the end of the period covered by the previous report and ends at the date of termination of Government employment in the covered position.

4. **Combination Reports:** An employee who terminates employment in a covered position within 60 days of the end of the due date for the annual report may file a single combined annual/termination report. The reporting period is the previous calendar year through the filing date.

5. **Late Filing Fee:** A covered employee who fails to file within 30 days of a specified deadline may be assessed a late fee of \$200. Detailed procedures are contained in *Fee Assessment Procedures for Delinquent SF 278 Filers in the Department of Health and Human Services*. A copy may be obtained from IC DEC's or from the NIH Ethics Program website (located on the NIH Home Page, Employee Information).

D. EXTENSIONS:

Filers who for good cause cannot meet the filing deadline may request an extension from their DEC. Requests should be submitted prior to the due date, but may also be accepted up to 30 days after the due date. DEC's may grant an extension for up to 45 calendar days following the original due date. Although oral extensions are permitted according to the Office of Government Ethics (OGE), OGE also recommends that all requests and DEC responses be in writing.

Requests for additional 45 day extensions may be granted in exceptional circumstances and only by OGE, when recommended by OGC/ED. The filer submits a written request to his/her DEC, who then writes a transmittal memo to OGC/ED indicating his/her endorsement or opposition to the extension request. Both memoranda are forwarded to the NIH Office of OGC/ED. The statute does not allow any extensions of more than 90 days, regardless of the circumstances. See also procedures outlined in the *Fee Assessment* document mentioned in the above section.

**AVOIDING CONFLICTS OF INTEREST
Executive Branch Personnel Public Financial
Disclosure Reporting System (SF 278)**

E. REVIEW/APPROVAL AUTHORITY:

Authority has been delegated to DEC's to receive and review Public Financial Disclosure Reports for covered employees within their respective organizations. This authority may not be redelegated.

If required to file an SF 278, DEC's must submit their own SF 278s directly to the HHS Designated Agency Ethics Official (HHS Office of the General Counsel, Ethics Division, at NIH).

F. ANNUAL FILING PROCEDURES:

1. By no later than **April 15** (or 30 days prior to the alternate filing date should May 15 fall on a holiday or weekend), IC DEC's distribute forms to all covered employees. Sample transmittal memoranda to covered employees and a "Helpful Hints for 278 Filers and Reviewers" checklist are included as Illustrations 1, 2, 3, and 4 to this Appendix:
2. All covered employees return completed forms by **May 15**, or the next work day if the 15th falls on a weekend.

Note: Forms completed by DEC's must be submitted directly to the Office of the General Counsel, Ethics Division, at NIH by **May 15**. IC Directors who are not DEC's submit their forms to the Deputy Director, NIH.

3. After each completed report is received, the following steps should be taken:
 - (a) Check to see that the employee has signed and dated the certification in the middle of page 1; if not, return the report to the employee.
 - (b) If the certification is complete, log the report into the IC tracking system and enter the date received in the block labeled "Agency use Only" at the end of the first line on page 1.
 - (c) The IC DEC should complete his/her review within 60 calendar days of the date entered in the "Agency Use Only" block on page 1. The DEC documents completion of the review by signing and dating on the line for "Designated Agency Ethics Official" on page 1.

Reviewers examine each report for completeness and for conflicts of interest and other related violations of law, regulation or executive order. If the report is not sufficient to make a meaningful conflicts analysis or is otherwise deficient, the reviewer telephones or writes to the filer requesting the necessary information. All additional information is added to the report by the reviewer, and the date(s) of the contacts with the filer and

AVOIDING CONFLICTS OF INTEREST
Executive Branch Personnel Public Financial
Disclosure Reporting System (SF 278)

the initials of the reviewer are noted in the "Comments of Reviewing Officials" section of the form. If the filer cannot be contacted by telephone and does not reply to memoranda or letters, and any attempts to learn the needed information by other methods fail, the reviewer sends a letter to the filer establishing a date by which the filer must provide the information. If the filer thereafter fails to provide the information, the reviewer consults with the Office of General Counsel/Ethics Division, which may result in referral of the matter to the Office of the Inspector General. If a reviewing official concludes that remedial action is required to resolve conflicts of interest or violations of law, regulations, or executive orders, such action shall be subject to the provisions of 5 C.F.R. §§2634.605(b)(4) through (6). Any remedial action taken is documented on the report, or in the file.

- (d) The disclosure reports should then be hand-carried to the NIH Legal Advisor in Building 31, Room 2B50, for a legal review. The NIH Legal Advisor will document completion of the review by signing and dating on the line for "Other Reviewer."
NOTE: This section was rescinded on 8/21/98. OGC review is no longer required.
- (e) After the NIH Legal Advisor returns the reports to the IC DEC, a copy of the signed report is sent to each employee and the original reports should be filed with prior year reports and retained for six years. Any reports in the file that are more than six years old should be destroyed when the new report is filed.

G. FAILURE TO SUBMIT A REPORT OR SUBMITTING A FALSE REPORT:

An employee who fails, or refuses, to file a report, is subject to a late filing fee penalty as discussed in *Fee Assessment Procedures for Delinquent SF 278 Filers in the Department of Health and Human Services*. A copy may be obtained from IC DECs or from the NIH Ethics Program website (NIH Home Page, Employee Information). In addition, an individual may be prosecuted under Federal criminal statutes for supplying false information.

H. AVAILABILITY OF SF 278:

IC DECs may order supplies of SF 278s through the General Service Administration's (GSA) Federal Supply Service. Local reproduction of forms is permitted. Copies are also available for download from the OGE web site, through the NIH Ethics Program web site (NIH Home Page, Institutes, OD, OHRM).

I. RECORDS RETENTION AND DISPOSAL:

See also section K of the main section of this chapter. IC DECs are responsible for retaining original copies of all SF 278 forms for a period of six years after the filing date, except that

AVOIDING CONFLICTS OF INTEREST
Executive Branch Personnel Public Financial
Disclosure Reporting System (SF 278)

documents needed in an ongoing investigation will be retained until no longer needed in the investigation. Each DEC should develop a schedule for periodically purging individual SF 278s that were received more than six years ago.

When employees who are required to file the SF 278 transfer to another organization into another covered position, forward all the SF 278s for that employee to the Deputy Ethics Counselor at the new employing agency. Also, note in your IC tracking system for that year the employee's name, date the reports were forwarded, and the name of the receiving agency.

J. ILLUSTRATIONS:

- Illustration 1:** Sample Transmittal Memorandum - Incumbent of Career Position (Annual Report)
- Illustration 2:** Sample Transmittal Memorandum -- New Entrant to Career Position
- Illustration 3:** Sample Transmittal Memorandum - Termination from Career Position
- Illustration 4:** "Helpful Hints for 278 Filers and Reviewers"

See the NIH Ethics Program web site maintained by the Office of Human Resource Management (OHRM) for electronic copies of the above memoranda and forms, and for copies of memoranda for public financial disclosure filers in non-career positions. Due to the limited use of the non-career memoranda at the NIH, they are not included in the illustrations to this appendix. The NIH Ethics Home Page is located as follows:

NIH Home Page
Employee Information
NIH Ethics Program

AVOIDING CONFLICTS OF INTEREST
Executive Branch Personnel Public Financial
Disclosure Reporting System (SF 278)
Transmittal Memorandum: Incumbent of Career Position

Date

TO: [Employee Name]
[Title]

FROM: [Name]
[Title]

SUBJECT: SF 278 Public Financial Disclosure Report

Title I of the Ethics in Government Act, as amended by the Ethics Reform Act of 1989, requires individuals who are assigned to certain designated positions in the Executive Branch of the Government to file an annual SF 278 Public Financial Disclosure Report.

Because you are assigned to a position designated for coverage by the requirements of Title I, you are required to file the enclosed SF 278 on or before May 15. If for some reason you cannot meet the deadline, you should contact your Deputy Ethics Counselor to request an extension. (NOTE: New Entrants who have already filed this calendar year, and other new employees who started working after November 1 last year and filed new entrant reports, need not fill out an annual report. Simply return the blank report to your Deputy Ethics Counselor, along with a statement indicating when you began working and the date on which you filed your new entrant report.)

Revisions to the financial disclosure law added new categories of value or amount that are not shown on the SF 278. If you have any entry checked in a column labeled "over \$1,000,000" on Schedules A or C, you must annotate that entry, either by footnote or other notation directly on the form or on a separate attachment, to specify the following:

In the case of ASSETS (Block B of Schedule A) or LIABILITIES (Part I of Schedule C), whether the value or amount is

- between \$1,000,001 and \$5,000,000;
- between \$5,000,001 and \$25,000,000;
- between \$25,000,001 and \$50,000,000; or
- over \$50,000,000.

In the case of INCOME (Block C of Schedule A), whether the value or amount is

- between \$1,000,001 and \$5,000,000; or
- over \$5,000,000.

AVOIDING CONFLICTS OF INTEREST
Executive Branch Personnel Public Financial
Disclosure Reporting System (SF 278)
Transmittal Memorandum: Incumbent of Career Position

EXCEPTION: For assets, income or liabilities of your spouse or dependent children, you are only required to specify these additional categories of value or amount if the assets, income or liabilities are held jointly with you.

Please carefully read the instructions accompanying the form. To further assist you in avoiding common errors and omissions, attached are two pages of "Helpful Hints for SF 278 Filers and Reviewers." In addition, you should review the points listed below:

1. Please report all required information on the first page, including your reporting status, your signature, the date, and both your room number and your telephone number. Report the EOD (Entered on Duty) date into a covered position (i.e., a position requiring you to file an SF 278) in the "Date of Appointment" box. Note also that the EOD date does not necessarily equate with your service computation date, as the latter may have been adjusted to reflect prior service.
2. If you have nothing to report with respect to a specific schedule, please check the "none" box. The section on "Compensation in excess of \$5,000" does not apply to incumbents; therefore, do not check any box in Part II of Schedule D.
3. When filling out Schedule A, four entries normally must be made on the same line for each asset identified: (1) an adequate description; (2) the category of value of the asset; (3) the type of income generated by the asset; and (4) the category of amount of income. REMEMBER: Income sources must be listed as well, except for income from Federal Government employment. You must also list the source, though not the amount, of your spouse's salary on Schedule A for the prior calendar year (if no spousal employment is reported, it is helpful to give a brief explanation in the margin; e.g., "spouse is unemployed" or "spouse is Federal employee").
4. Do not forget to include the income and assets of your spouse as well as the assets of any dependent children.
5. You must specify on Schedule A the underlying assets in any reportable IRA or Cash Management Account which you maintain, including the complete name of an investment fund, and indicate whether the account is self-directed or independently managed. You may attach a computer print-out specifying the individual holdings in the portfolio.
6. When listing stock holdings and other investments, indicate the company's full name and briefly describe the nature of the business, where that is not otherwise obvious. For mutual funds concentrated in a particular geographic area or economic sector, indicate the area or industry in which the fund is primarily invested. If the mutual fund or other similar investment meets the definition of Excepted Investment Fund given on page 1 of the form instructions, remember to check the column for "Excepted Investment Fund" under "Type" on Schedule A.

AVOIDING CONFLICTS OF INTEREST
Executive Branch Personnel Public Financial
Disclosure Reporting System (SF 278)
Transmittal Memorandum: Incumbent of Career Position

7. Remember to complete the "Agreements or Arrangements" section on Schedule C for the previous calendar year up to the date of filing. List any continuing ties you may have with your prior employer, such as a leave of absence, continued participation in a pension plan, etc. If known, indicate whether your pension plan is classified as a defined contribution plan or defined benefit plan, whether it is independently managed, and whether the plan is invested in the stock of your prior employer. The employee benefits brochure or handbook of your prior employer is usually a source for this information.
8. Remember that as an incumbent the reporting period for Part I of Schedule D is the previous calendar year and the current year up to the filing date.
9. If you are a member (paid or volunteer) of a Board, Commission or Committee of any profit or non-profit organization, you must submit a request for approval of outside activity (HHS Form 520) to your supervisor and include this information under "Positions Held Outside U.S. Government" on Schedule D.
10. Compensated outside positions listed in Schedule D, Part I, must also be reflected in Schedule A as an income source if over \$200 was received during the reporting period applicable to that portion of the form.
11. Retain a copy of the completed report form to assist you in filling out next year's report.

It is important that you comply fully with the reporting requirements. Section 104(a) of the Ethics in Government Act provides that any individual who knowingly or willfully falsifies or fails to report the required information may be assessed a civil penalty up to \$10,000. Pursuant to 5 CFR § 2634.605(b)(3), you will be contacted for additional information if the reviewing official determines that the filed report fails to provide adequate information for a meaningful conflicts analysis. Your effort in providing detailed and complete responses at the outset will lessen the necessity for repeated follow-up contacts.

Please return the completed form in an envelope marked "Confidential" to your Deputy Ethics Counselor at:

You are advised that pursuant to 5 U.S.C. App. 4, § 104(d), anyone who files a Public Financial Disclosure Report more than thirty (30) days after its filing due date will be assessed a \$200 late fee by the Ethics Division of the Office of General Counsel. You may contact _____, your Deputy Ethics Counselor at _____, for a copy of the Late Fee Assessment Procedures.

AVOIDING CONFLICTS OF INTEREST
Executive Branch Personnel Public Financial
Disclosure Reporting System (SF 278)
Transmittal Memorandum: Incumbent of Career Position

If you require an extension of the filing date, you must request an extension no later than thirty (30) days after the filing due date. Requests for extensions must be made by contacting your Deputy Ethics Counselor.

The Paperwork Reduction Act and Office of Management and Budget (OMB) regulations require that we notify you that an agency may not conduct or sponsor, and no person is required to respond to, a collection of information unless it displays a currently valid OMB control number (that number is displayed in the upper right-hand corner of the first page of the SF 278). The Office of Government Ethics has advised us that OMB renewed its approval of the SF 278 through 1999 and the control number is currently valid.

In addition, you should note that all persons required to complete this form are also required to complete **annual ethics training**. If you have any questions or need further information, do not hesitate to contact your Deputy Ethics Counselor.

Attachment

(Revised 11/97 by HHS/OGC/ED - Prior Editions Obsolete)

AVOIDING CONFLICTS OF INTEREST
Executive Branch Personnel Public Financial
Disclosure Reporting System (SF 278)
Transmittal Memorandum: New Entrant to Career Position

Date

TO: Employee Name
Title

FROM: Name
Title

SUBJECT: SF 278 Public Financial Disclosure Report

Title I of the Ethics in Government Act, as amended by the Ethics Reform Act of 1989, requires individuals who are appointed to certain designated positions in the Executive Branch of the Government to file an SF 278 Public Financial Disclosure Report within thirty (30) days of entering the position. Covered employees are also required to file an annual report each year on May 15, as well as a report within 30 days of terminating government service. Because you were assigned to the position of (title) on (date), you are required to file the attached Public Financial Disclosure Report form on or before (date), with your Deputy Ethics Counselor. To be considered timely filed, the form must be received by your Deputy Ethics Counselor on or prior to the deadline.

If you already filed an SF 278 while you were in another position, please obtain a copy of your previous completed report and forward it to your Deputy Ethics Counselor.

Revisions to the financial disclosure law added new categories of value or amount that are not shown on the SF 278. If you have any entry checked in a column labeled "over \$1,000,000" on Schedules A or C, you must annotate that entry, either by footnote or other notation directly on the form or on a separate attachment, to specify the following:

In the case of ASSETS (Block B of Schedule A) or LIABILITIES (Part I of Schedule C), whether the value or amount is

- between \$1,000,001 and \$5,000,000;
- between \$5,000,001 and \$25,000,000;
- between \$25,000,001 and \$50,000,000; or
- over \$50,000,000.

In the case of INCOME (Block C of Schedule A), whether the value or amount is

- between \$1,000,001 and \$5,000,000; or
- over \$5,000,000.

AVOIDING CONFLICTS OF INTEREST
Executive Branch Personnel Public Financial
Disclosure Reporting System (SF 278)
Transmittal Memorandum: New Entrant to Career Position

EXCEPTION: For assets, income or liabilities of your spouse or dependent children, you are only required to specify these additional categories of value or amount if the assets, income or liabilities are held jointly with you.

Please carefully read the instructions accompanying the form. To further assist you in avoiding common errors and omissions, attached are two pages of "Helpful Hints for SF 278 Filers and Reviewers." In addition, you should review the points listed below:

1. Please report all required information on the first page, including your reporting status, your signature, the date, and both your room number and your telephone number. If no positions were held with the Federal Government during the preceding 12 months, mark "none" in the designated space. Report the EOD (Entered on Duty) date into a covered position (i.e., a position requiring you to file an SF 278) in the "Date of Appointment" box. Note also that the EOD date does not necessarily equate with your service computation date, as the latter may have been adjusted to reflect prior service.
2. If you have nothing to report with respect to a specific schedule, please check the "none" box. Schedule B does not apply to new entrants; therefore, you may leave Schedule B blank.
3. When filling out Schedule A, four entries normally must be made on the same line for each asset identified: (1) an adequate description; (2) the category of value of the asset; (3) the type of income generated by the asset; and (4) the category of amount of income. REMEMBER: Income sources must be listed as well, except for income from Federal Government employment. You must list your salary (as well as the source, though not the amount, of your spouse's salary) on Schedule A for the prior calendar year and the current year up to the filing date (if no spousal employment is reported, it is helpful to give a brief explanation in the margin; e.g., "spouse is unemployed" or "spouse is Federal employee").
4. Do not forget to include the income and assets of your spouse as well as the assets of any dependent children.
5. You must specify on Schedule A the underlying assets in any reportable IRA or Cash Management Account which you maintain, including the complete name of an investment fund, and indicate whether the account is self-directed or independently managed. You may attach a computer print-out specifying the individual holdings in the portfolio.
6. When listing stock holdings and other investments, indicate the company's full name and briefly describe the nature of the business, where that is not otherwise obvious. For mutual funds concentrated in a particular geographic area or economic sector, indicate the area or industry in which the fund is primarily invested. If the mutual fund or other similar investment meets the

AVOIDING CONFLICTS OF INTEREST
Executive Branch Personnel Public Financial
Disclosure Reporting System (SF 278)
Transmittal Memorandum: New Entrant to Career Position

definition of Excepted Investment Fund given on page 1 of the form instructions, remember to check the column for "Excepted Investment Fund" under "Type" on Schedule A.

7. Remember to complete the "Agreements or Arrangements" section on Schedule C and list any continuing ties you may have with your prior employer, such as a leave of absence, continued participation in a pension plan, etc. If known, indicate whether your pension plan is classified as a defined contribution plan or defined benefit plan, whether it is independently managed, and whether the plan is invested in the stock of your prior employer. The employee benefits brochure or handbook of your prior employer is usually a source for this information.
8. Remember that as a new entrant the reporting period for Schedule D is comprised of the two previous calendar years and the current year up to the filing date.
9. If you are a member (paid or volunteer) of a Board, Commission or Committee of any profit or non-profit organization, you must submit a request for approval of outside activity (HHS Form 520) to your supervisor and include this information under "Positions Held Outside U.S. Government" on Schedule D.
10. Compensated outside positions listed in Schedule D, Part I, must also be reflected in Schedule A as an income source if over \$200 was received during the reporting period applicable to that portion of the form.
11. Retain a copy of the completed report form.

It is important that you comply fully with the reporting requirements. Section 104(a) of the Ethics in Government Act provides that any individual who knowingly or willfully falsifies or fails to report the required information may be assessed a civil penalty up to \$10,000. Pursuant to 5 CFR § 2634.605(b)(3), you will be contacted for additional information if the reviewing official determines that the filed report fails to provide adequate information for a meaningful conflicts analysis. Your effort in providing detailed and complete responses at the outset will lessen the necessity for repeated follow-up contacts.

Please return the completed form in an envelope marked "Confidential" to your Deputy Ethics Counselor at:

You are advised that pursuant to 5 U.S.C. App. 4, § 104(d), anyone who files a Public Financial Disclosure Report more than thirty (30) days after its filing due date will be assessed a \$200 late fee by

AVOIDING CONFLICTS OF INTEREST
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the Ethics Division of the Office of General Counsel. You may contact _____, your Deputy Ethics Counselor at _____, for a copy of the Late Fee Assessment Procedures.

If you require an extension of the filing date, you must request an extension no later than thirty (30) days after the filing due date. Requests for extensions must be made by contacting your Deputy Ethics Counselor.

The Paperwork Reduction Act and Office of Management and Budget (OMB) regulations require that we notify you that an agency may not conduct or sponsor, and no person is required to respond to, a collection of information unless it displays a currently valid OMB control number (that number is displayed in the upper right-hand corner of the first page of the SF 278). The Office of Government Ethics has advised us that OMB renewed its approval of the SF 278 through 1999 and the control number is currently valid.

In addition, you should note that all persons required to complete this form are also required to complete **annual ethics training**. If you have any questions or need further information, do not hesitate to contact your Deputy Ethics Counselor at _____.

Attachment

(Revised 11/97 by HHS/OGC/ED - Prior Editions Obsolete)

AVOIDING CONFLICTS OF INTEREST
Executive Branch Personnel Public Financial
Disclosure Reporting System (SF 278)
Transmittal Memorandum: Termination From Career Position

Date

TO: Employee Name
Title

FROM: Name
Title

SUBJECT: SF 278 Public Financial Disclosure Report

Title I of the Ethics in Government Act, as amended by the Ethics Reform Act of 1989, requires individuals who are assigned to certain designated positions in the Executive Branch of the government to file a Public Financial Disclosure Report (SF 278) within thirty (30) days of termination.

The filing requirement is applicable even if an individual already filed an annual report during the current calendar year or is no longer working with the Federal Government. Under section 104(a) of the statute, failure to file or failure to report the required information carries a penalty of up to \$10,000. Failure to submit a report as required will result in your name being referred for collection actions.

Because you will separate from the position of (title) , (organization) , on (date) , you are required to file the enclosed Public Financial Disclosure Report after your last day of service but no later than (due date) .

Revisions to the financial disclosure law added new categories of value or amount that are not shown on the SF 278. If you have any entry checked in a column labeled "over \$1,000,000" on Schedules A or C, you must annotate that entry, either by footnote or other notation directly on the form or on a separate attachment, to specify the following:

In the case of ASSETS (Block B of Schedule A) or LIABILITIES (Part I of Schedule C), whether the value or amount is

- between \$1,000,001 and \$5,000,000;
- between \$5,000,001 and \$25,000,000;
- between \$25,000,001 and \$50,000,000; or
- over \$50,000,000.

In the case of INCOME (Block C of Schedule A), whether the value or amount is

- between \$1,000,001 and \$5,000,000; or
- over \$5,000,000.

AVOIDING CONFLICTS OF INTEREST
Executive Branch Personnel Public Financial
Disclosure Reporting System (SF 278)
Transmittal Memorandum: Termination From Career Position

EXCEPTION: For assets, income or liabilities of your spouse or dependent children, you are only required to specify these additional categories of value or amount if the assets, income or liabilities are held jointly with you.

Please carefully read the instructions accompanying the form. To further assist you in avoiding common errors and omissions, attached are two pages of "Helpful Hints for SF 278 Filers and Reviewers." In addition, you should review the points listed below:

1. Please report all required information on the first page, including your reporting status, your signature, the date, and both your room number and your telephone number. In addition, provide information concerning where you can be reached following termination from your Government position. Report the EOD (Entered on Duty) date into a covered position (i.e., a position requiring you to file the SF 278) in the "Date of Appointment" box. Note also that the EOD date does not necessarily equate with your service computation date, as the latter may have been adjusted to reflect prior service. Remember to specify the date of your termination from a covered position.
2. Remember that for termination filers the reporting period for all schedules begins at the end of the period covered by your previous filing and ends at the date of termination. Therefore, please do not sign and date the form until your last day of service.
3. If you have nothing to report with respect to a specific schedule, please check the "none" box. The section on "Compensation in excess of \$5,000" does not apply to termination filers; therefore, do not check any box for Part II of Schedule D.
4. When filling out Schedule A, four entries normally must be made on the same line for each asset identified: (1) an adequate description; (2) the category of value of the asset; (3) the type of income generated by the asset; and (4) the category of amount of income. REMEMBER: Income sources must be listed as well, except for income from Federal Government employment. You must also list the source, though not the amount, of your spouse's salary on Schedule A for the prior calendar year (if no spousal employment is reported, it is helpful to give a brief explanation in the margin; e.g., "spouse is unemployed" or "spouse is Federal employee").
5. Do not forget to include the income and assets of your spouse as well as the assets of any dependent children.
6. You must specify on Schedule A the underlying assets in any reportable IRA or Cash Management Account which you maintain, including the complete name of an investment fund, and indicate whether the account is self-directed or independently managed. You may attach a computer print-out specifying the individual holdings in the portfolio.

AVOIDING CONFLICTS OF INTEREST
Executive Branch Personnel Public Financial
Disclosure Reporting System (SF 278)
Transmittal Memorandum: Termination From Career Position

7. When listing stock holdings and other investments, indicate the company's full name and briefly describe the nature of the business, where that is not otherwise obvious. For mutual funds concentrated in a particular geographic area or economic sector, indicate the area or industry in which the fund is primarily invested. If the mutual fund or other similar investment meets the definition of Excepted Investment Fund given on page 1 of the form instructions, remember to check the column for "Excepted Investment Fund" under "Type" on Schedule A.
8. Remember to complete the "Agreements or Arrangements" section on Schedule C for the period from the date of the previous filing to the date of termination. List any continuing ties you may have with your prior employer, such as a leave of absence, continued participation in a pension plan, etc. If known, indicate whether your pension plan is classified as a defined contribution plan or defined benefit plan, whether it is independently managed, and whether the plan is invested in the stock of your prior employer. The employee benefits brochure or handbook of your prior employer is usually a source for this information.
9. If you arrange new employment before you leave your covered position, you must identify your new employer on Schedule C, Part II ("Agreements or Arrangements") and report the dates when negotiations for employment began and when you accepted your new position. See page 10 of the form instructions for details.
10. If, before you leave your covered position, you are a member (paid or volunteer) of a Board, Commission or Committee of any profit or non-profit organization, you must submit a request for approval of outside activity (HHS Form 520) to your supervisor and include this information under "Positions Held Outside U.S. Government" on Schedule D.
11. Compensated outside positions listed in Schedule D, Part I, must also be reflected in Schedule A as an income source if over \$200 was received during the reporting period applicable to that portion of the form.
12. Retain a copy of the completed report form for your files.

It is important that you comply fully with the reporting requirements. Section 104(a) of the Ethics in Government Act provides that any individual who knowingly or willfully falsifies or fails to report the required information may be assessed a civil penalty up to \$10,000. Pursuant to 5 CFR § 2634.605(b)(3), you will be contacted for additional information if the reviewing official determines that the filed report fails to provide adequate information for a meaningful conflicts analysis. Your effort in providing detailed and complete responses at the outset will lessen the necessity for repeated follow-up contacts.

Please return the completed form to your Deputy Ethics Counselor at the following address:

AVOIDING CONFLICTS OF INTEREST
Executive Branch Personnel Public Financial
Disclosure Reporting System (SF 278)
Transmittal Memorandum: Termination From Career Position

You are advised that pursuant to 5 U.S.C. App. 4, § 104(d), anyone who files a Public Financial Disclosure Report more than thirty (30) days after its filing due date will be assessed a \$200 late fee by the Ethics Division of the Office of General Counsel. You may contact _____, your Deputy Ethics Counselor at _____, for a copy of the Late Fee Assessment Procedures.

If you require an extension of the filing date, you must request an extension no later than thirty days after the filing due date. Requests for extensions must be made by contacting your Deputy Ethics Counselor.

The Paperwork Reduction Act and Office of Management and Budget (OMB) regulations require that we notify you that an agency may not conduct or sponsor, and no person is required to respond to, a collection of information unless it displays a currently valid OMB control number (that number is displayed in the upper right-hand corner of the first page of the SF 278). The Office of Government Ethics has advised us that OMB renewed its approval of the SF 278 through 1999 and the control number is currently valid.

If you have any questions or need further information, do not hesitate to contact your Deputy Ethics Counselor.

Attachment

(Revised 11/97 by HHS/OGC/ED — Previous Editions Obsolete)

AVOIDING CONFLICTS OF INTEREST
Executive Branch Personnel Public Financial
Disclosure Reporting System (SF 278)
Helpful Hints for SF 278 Filers and Reviewers

SCHEDULE A



Filers must report each asset held in an Individual Retirement Account (IRA) or "Keogh" plan if the asset meets either of the reporting thresholds -- a fair market value exceeding \$1,000 at the close of the reporting period or over \$200 of income during the reporting period. IRAs and Keoghs are retirement vehicles which hold investment assets. Note that a specific investment which is a fund may qualify as an "excepted investment fund" under the rules discussed in the instructions to the form. The portfolios of such funds need not be reported.



The name, location, and line of business or investment holdings of any partnership of reportable value or income must be supplied.



The full specific name of each reported mutual fund, not just the fund's family name, must be provided. For instance, "Fidelity investment fund" is not specific enough; "Fidelity Magellan Fund" should be indicated if that is the full name of the particular fund held.



Asset valuations reported should reflect each asset's value at the close of the reporting period. For an annual report, if an asset were completely sold before the end of the calendar year, the value checked under Block B, Valuation of Assets, should be "None" (any reportable income during the period of time covered would be recorded under Block C, Income; if there was no such income, no entry at all for the asset would be needed).



Accrued income, even if deferred or exempt for tax purposes, is reportable, and the category of amount of such income (or exact amount if required) should be listed. For example, an IRA invested in a bank deposit account that accrues \$400 in interest during the covered period must be reported since the accrued income exceeds \$200 in amount.

AVOIDING CONFLICTS OF INTEREST
Executive Branch Personnel Public Financial
Disclosure Reporting System (SF 278)
Helpful Hints for SF 278 Filers and Reviewers



When the "other" column is used to describe a type of income, the actual amount of income must be reported. This includes any earned income other than that derived from current U.S. Government employment. However, in the case of a spouse's earned income, the source, but not the amount (except for honoraria), has to be reported.

SCHEDULE B



If bank or brokerage statements are included as part of annual or termination reports, they must reflect transactions (and income for Schedule A) with the necessary details for the entire reporting period, not solely for the last month or quarter of the period. Assets held must also be shown as of the end of the appropriate reporting period for Schedule A.



When sales are recorded on Schedule B, make certain that Schedule A reflects any corresponding capital gains, dividends and interest realized (if over \$200).

SCHEDULE C



Generally, any reportable liabilities which exceed \$10,000 at any time during the reporting period must be reported with the category of value for the highest amount owed indicated. This section is not limited to those liabilities which exceed \$10,000 at the conclusion of the reporting period (except for revolving charge accounts).

SCHEDULE D



The outside positions reported must include positions held at any time during the reporting period, even those from which the individual may have resigned before the close of the reporting period.

AVOIDING CONFLICTS OF INTEREST
Executive Branch Personnel Confidential Financial
Disclosure Reporting System (OGE 450)

A. COVERAGE:

Deputy Ethics Counselors (DECs) are responsible for designating which employees are required to file a confidential financial disclosure form, with assistance as necessary from the personnel office. DECs must apply the criteria below for designating filers, as published in 5 CFR §2634.904. Individuals or classes of individuals that may fall under the designating criteria should also be evaluated for exclusion under the guidelines in 5 CFR §2634.905. Each DEC must maintain a master list of filers in some format, such as a database. Each DEC determines what information would be most useful to include in their listing.

1. The following positions are subject to completion of the Executive Branch Personnel Confidential Financial Disclosure Report (OGE 450) filing requirements unless incumbents are subject to filing an Executive Branch Personnel Public Financial Disclosure Report (SF 278).
 - a. Deputy Directors, IC
 - b. Associate Directors, IC
 - c. Assistant Directors, IC
 - d. Division Directors, IC
 - e. Center Directors, NICHD
 - f. Executive Officers, IC
 - g. Deputy Executive Officers, IC
 - h. All other employees designated by the IC DEC who meet one or more of the following criteria and who have not been excluded from the filing requirements, including, employees who participate personally and substantially in decisions or the exercise of significant judgment regarding:
 - (1) contracting or procurement,
 - (2) administration, monitoring of grants, licenses, CRADAs, or other federally conferred benefits,
 - (3) regulating or auditing non-Federal entities,
 - (4) other activities that will have a substantial economic effect on the interests of a non-Federal entity, or

AVOIDING CONFLICTS OF INTEREST
Executive Branch Personnel Confidential Financial
Disclosure Reporting System (OGE 450)

- (5) other activities that have the potential to create a real or apparent conflict of interest (e.g., those with duties to investigate alleged violations of criminal or civil laws).
2. Covered employees includes Title 42/SBRS appointees whose basic rate is GS-15 Step 1, even though their actual pay may exceed the threshold for filing an SF 278, IF there position or responsibilities meet one of the criteria above.
3. Covered employees also include Special Government Employees (excluding advisory committee members) who are not subject to filing an Executive Branch Personnel Public Financial Disclosure Report (SF 278). See Appendix 4 for Advisory Committee Members.

B. APPEALS:

A filer may appeal to the Deputy Ethics Counselor (DEC) designated for their component if they believe that their position has been improperly determined to be one which requires the submission of a confidential financial disclosure report. If the appellant filer has not already filed the OGE 450, the form is due 30 days from the date of the DEC's decision, as if the appellant is a new entrant beginning on that date. Decisions of DEC's are final.

C. FORMS, FILING DEADLINES AND REPORTING PERIODS:

Forms used include the OGE 450, Confidential Financial Disclosure Report, and the OGE-450, Certificate of No New Interests. The Office of Government Ethics authorized the use of a standard Certificate of No New Interests (OGE 450-A) in the executive branch as an alternative confidential financial disclosure form. NIH implemented the three year cycle beginning in 1998,. The OGE 450-A form can be used for two consecutive years, with a full OGE 450 required in the third year. Full OGE 450s are required from all filers in each year divisible by 3, i.e., 1998, 2001, 2004, etc. In addition, the alternative form can be used **only** if there is nothing new to report, including no new sources of income or assets over the \$200 reporting threshold, or no new outside activities, either compensated or uncompensated. Filers with new information to report must file the OGE 450, even during the alternative years. Use of the OGE 450-A is voluntary, i.e., an employee who qualifies to file an OGE 450-A may choose to file a full OGE 450.

The timing and types of reports filed are as follows:

1. **New Entrant Report:** An employee in a covered position as defined above must complete an OGE 450 within 30 days of assuming the position. No report is required if the employee left a position covered by this or a different filing system (i.e., SF 278) within 30 days prior to assuming the new position or responsibilities. The full OGE 450 must be filed.

AVOIDING CONFLICTS OF INTEREST
Executive Branch Personnel Confidential Financial
Disclosure Reporting System (OGE 450)

The reporting period is the preceding twelve (12) months from the date of filing.

NOTE: Supervisors are reminded that, if at all possible, job applicants should be made aware of potential conflicts before an employment agreement is reached.

2. **Annual Report:** Annual reports are due no later than October 31. The reporting period is the preceding twelve (12) months ending September 30 (or any portion not covered by a New Entrant report). No report is required if an employee performed the duties of a covered position for less than 61 days during the 12-month reporting period (i.e., entered the covered position after August 1 in the filing year). Employees will be informed whether the full OGE 450 is required or the OGE 450-A may be used.
3. **Termination Report:** None required for OGE 450 filers.

D. EXTENSIONS:

Filers may request extensions from the DEC designated for their component and the DEC may grant an initial extension of 45 calendar days for good cause. In exceptional circumstances, the Office of General Counsel, Ethics Division, may grant an additional extension of 45 calendar days.

E. REVIEW/APPROVAL AUTHORITY:

Authority has been delegated to IC DEC's to review and consider Confidential Financial Disclosure Reports for covered employees within their respective organizations. This authority may be re-delegated to officials who are at a high enough level to be consistent with good management of this authority.

Reviewers examine each report for completeness and for conflicts of interest and other related violations of law, regulation or executive order. If the report is not sufficient to make a meaningful conflicts analysis or is otherwise deficient, the reviewer telephones or writes to the filer requesting the necessary information. All additional information is added to the report by the reviewer, and the dates of the contacts with the filer and initials of the reviewer are noted. If the filer does not reply to telephone calls or to memoranda or letters that clearly express the need for further information, the employee is subject to disciplinary action. If a reviewing official concludes that remedial action is required to resolve conflicts of interest or violations of law, regulations, or executive orders, such action shall be subject to the provisions of 5 CFR §§2634.605(b)(4)-(6). Any remedial action taken is documented in the file.

Because the OGE 450-A, Certificate of No New Interests (see below) has no substantive financial information, the DEC or reviewing official performs only a procedural review of that form, to ensure the form is properly completed by the employee and tracked by the DEC/reviewing official.

AVOIDING CONFLICTS OF INTEREST
Executive Branch Personnel Confidential Financial
Disclosure Reporting System (OGE 450)

The DEC/reviewing official may, at their discretion, initial in the Comments section of the OGE 450-A to indicate that such a procedural review was done.

NOTE: The OGE 450 includes two signature blocks for review/approval. Persons delegated the authority listed above must sign as the second-level reviewing official ("Agency's Final Reviewing Official"). The first-level (or intermediate) reviewing official may be the employee's supervisor or another designated official.

F. ANNUAL FILING PROCEDURES:

The following paragraphs outline the general distribution and review procedure.

1. DEC's forward a list of IC Reviewing Officials to the Office of Human Resource Management by **September 5**.

For purposes of this list, IC Reviewing Officials are defined as those with the delegated authority to approve or disapprove the financial disclosure statements.

Illustration 1 of this Appendix includes a recommended format to be used in reporting IC Reviewing Officials. Alternative forms must, at a minimum, include the information listed on the sample forms. Reports may be hand carried directly to the Division of IC Consulting, OHRM, in Building 31, Room 1C39.

2. By **September 15**, DEC's notify Reviewing Officials to distribute the OGE 450 (and OGE 450-A during alternative years) to all covered employees.

The notification package should include a supply of OGE 450s, a list of covered positions, a current review guide (if available), sample transmittal memoranda to covered employees which explains how to complete the form and when and where to return it, and a copy of the OGE 450 Completion Checklist. See the following illustrations to this Appendix.

Illustration 2 is a sample notification letter to Reviewing Officials.

Illustration 3 is a sample transmittal memorandum to New Entrant Employees.

Illustration 4 is a sample transmittal memorandum to Incumbents for use during the years that all employees must file the full OGE 450.

Illustration 5 is a sample transmittal memorandum to Incumbents for use during the years when the alternative form (OGE 450-A) may be used.

Illustration 6 is the OGE 450 Completion Checklist

3. By **September 30**, Reviewing Officials distribute forms to all covered employees.

AVOIDING CONFLICTS OF INTEREST
Executive Branch Personnel Confidential Financial
Disclosure Reporting System (OGE 450)

4. All covered employees return completed forms by **October 31**.
5. Reviewing officials review and sign the forms by December 30, unless a particular statement reveals a conflict of interest necessitating further action. Such further action may include divestiture, disqualification, waiver, or authorization. Should real or potential conflicts occur, Reviewing Officials should consult with their DEC for resolution.

G. FAILURE TO SUBMIT A REPORT:

Although there is no late filing fee for confidential filers, an employee who fails, or refuses, to file a report, or who knowingly falsifies information in a report, is subject to disciplinary action. In addition, an individual may be prosecuted under Federal criminal statutes for supplying false information. The DEC's identify those employees who have failed to file a report and initiate appropriate action to get the report filed or to pursue administrative action. If that fails, the DEC contacts the appropriate level in the supervisory chain and requests that disciplinary action be initiated. The DEC is responsible for following-up to determine what disciplinary action has been taken, and to ensure submission of a report.

H. REPORTS:

DECs must maintain statistics on the progress of the annual filing process. Submission of a report is not required until requested, but information on number of covered positions, number of reports filed, and instances of corrective action must be immediately available when requested by OHRM.

I. AVAILABILITY OF OGE 450 AND RELATED DOCUMENTS:

IC DECs may order supplies of the OGE 450 through the General Service Administration's (GSA) Federal Supply Service or download it from the OGE web site. Local reproduction of forms is permitted. The OGE 450-A is available via the OGE web site, with local reproduction permitted. In addition, a computerized format for entering the information and printing a completed form is available from the Office of Government Ethics. DECs may also order copies of the most current edition of the Office of Government Ethics OGE 450 Review Guide through GSA or download a copy from the OGE web site (link from NIH Ethics Program web site located on the NIH Home Page, Employee Information).

J. RECORDS RETENTION AND DISPOSAL:

See also Section K of the main section of this manual chapter. IC DECs are responsible for retaining original copies of all OGE 450s for a period of six years after the filing date, except that documents needed in an ongoing investigation after the six years will be retained until no longer

AVOIDING CONFLICTS OF INTEREST
Executive Branch Personnel Confidential Financial
Disclosure Reporting System (OGE 450)

needed in the investigation. Each DEC should develop a schedule for periodically purging individual OGE 450s that were received more than six years ago.

When covered employees transfer to another organization into another covered position, forward all the OGE 450s for that employee to the Deputy Ethics Counselor at the new employing agency. Also, note the following in your IC tracking system for that year: the employee's name, date the reports were forwarded, and the name of the receiving agency.

K. ILLUSTRATIONS:

- | | |
|------------------------|---|
| Illustration 1: | Recommended Report Format: Designated Reviewing Officials |
| Illustration 2: | Sample Notification Memorandum to Reviewing Officials |
| Illustration 3: | Sample Transmittal Memorandum to New Entrant Employee |
| Illustration 4: | Sample Transmittal Memorandum to Incumbents for use during years when the full OGE 450 is required (1998, 2001, 2004, etc) |
| Illustration 5: | Sample Transmittal Memorandum to Incumbents for use during alternative years when the OGE 450-A is permitted (NOT the years listed above) |
| Illustration 6: | OGE 450 Completion Checklist |

See the NIH Ethics Program web site maintained by the Office of Human Resource Management for electronic copies of the above memoranda and form. The web site is located at:

NIH Home Page
Employee Information
NIH Ethics Program

AVOIDING CONFLICTS OF INTEREST
Executive Branch Personnel Confidential Financial
Disclosure Reporting System (OGE 450)
Sample Notification Memorandum to Reviewing Officials

MEMORANDUM

TO: [Name of Reviewing Official]

FROM: Deputy Ethics Counselor
[Your IC]

SUBJECT: Annual Distribution and Review of Confidential Financial Disclosure Reports (OGE 450)

I wish to remind all Reviewing Officials of the OGE 450 that the annual review process will soon begin pursuant to 5 CFR part 2634, Subpart I (1992), as amended 58 Fed. Reg. 63023 (November 30, 1993). The 19__ cycle for the OGE 450 process is as follows:

- **September 30:** Complete distribution of the OGE 450s to all covered employees.
- **October 31:** OGE 450 filing deadline. All completed reports should be received.
- **December 30:** Complete review of the OGE 450s.
- **December 30:** Reviewing Officials submit status report to Deputy Ethics Counselor.

You should send an OGE 450, along with an explanatory transmittal memorandum, to each covered employee for whom you are responsible no later than September 30. Employees must return their completed form to you no later than October 31. You must complete your review and certify each form by December 30, unless a particular statement reveals that further information is needed from the filer or there is a conflict of interest necessitating further action.

To ensure that all forms are filed and reviewed in a timely manner this year, I am requesting that you complete the attached Status Report Form by December 30, and return it to my office. In the event you fail to receive an OGE 450 from every covered employee under your responsibility, or, if you are unable to review and sign off on all statements, then you must continue to submit a status report each quarter until you complete your review. Please remember that you are responsible for ensuring that all covered employees return their completed forms to you.

If an employee leaves your organization, that employee's file should be closed and maintained for the required six years. When a reorganization occurs and an employee retains his or her filing status but transfers to a new organizational unit, the file must be forwarded to the new Reviewing Official. If an employee transfers to a covered position in another IC or agency, you must forward all OGE 450s for that employee to the new employing agency Deputy Ethics Counselor. In addition, please inform me in writing when such file transfers are completed.

AVOIDING CONFLICTS OF INTEREST
Executive Branch Personnel Confidential Financial
Disclosure Reporting System (OGE 450)
Sample Notification Memorandum to Reviewing Officials

You will find attached sample memoranda for employees required to file an OGE 450, the status report form, and a list of covered employees required to file with you.

If you have any questions about which employees you are responsible for reviewing, or if you need more copies of the form, you may contact [name of contact] at [contact's phone or e-mail]. Questions concerning reviewing the form for possible conflicts of interest may be directed to your me at [**DEC's phone**], the Office of General Counsel at NIH, or the HHS Office of General Counsel, Ethics Division, at NIH, at (301) 402-2576.

Thank you for your assistance in this important aspect of the Department's Ethics Program.

[DEC's name]

Attachments

(Revised 11/97 by HHS/OGC/ED - Prior Editions Obsolete)

AVOIDING CONFLICTS OF INTEREST
Executive Branch Personnel Confidential Financial
Disclosure Reporting System (OGE 450)
Sample Transmittal Memorandum to New Entrant Employees

Date

MEMORANDUM

TO: Employee

FROM: Reviewing Official

SUBJECT: Confidential Financial Disclosure Report (OGE Form 450)

The Ethics Reform Act of 1989, Executive Order 12674, and 5 CFR Part 2634, Subpart I, require individuals who are assigned to certain designated positions in the Executive Branch of the Federal Government to file a Confidential Financial Disclosure Report (OGE 450). Because you entered a position designated for coverage by the requirements of the Act, Order, and Regulation, you are required to file the enclosed OGE 450 within 30 days of entering your current position. Requests for extensions may be considered under appropriate circumstances. Please note that, if you filed an OGE 450 in your previous position, and you left that position less than 30 days before entering your current position, then you do not need to file an OGE 450 as a New Entrant; however, you would need to file an Annual OGE 450 when the current annual coverage period ends on September 30.

Please carefully read the instructions accompanying the OGE 450 and review the additional points listed below:

1. Please report your full office address, including your room number in the "Branch/Unit and Address" box. Report the date you entered into the covered position in the "Date of Appointment" box. (NOTE: the date of appointment does not necessarily equate with your service computation date.)
2. Do not leave any schedule blank. If you have nothing to report with respect to a specific schedule, please check the "None" box.
3. Remember that the covered period for reporting on the OGE 450 is the twelve month period preceding your date of filing.
4. REMEMBER TO INCLUDE THE INCOME AND ASSETS OF YOUR SPOUSE AS WELL AS THE ASSETS OF ANY DEPENDENT CHILDREN.
5. When filling out PART I, for each asset identified you must provide an adequate description and the type of income generated by the asset. REMEMBER: Income sources must be listed as well.

AVOIDING CONFLICTS OF INTEREST
Executive Branch Personnel Confidential Financial
Disclosure Reporting System (OGE 450)
Sample Transmittal Memorandum to New Entrant Employees

You must list the source, though not the amount, of your spouse's salary in PART I (if no spousal employment is reported, it is helpful to give a brief explanation in the margin; e.g., "spouse is unemployed" or "spouse is federal employee").

6. You must specify in PART I the underlying assets in any brokerage account which you maintain down to the level of publicly available mutual funds or limited partnerships as indicated in the form's instructions). You may attach a computer print-out or broker's statement specifying the individual holdings in the portfolio. You must also list the underlying holdings in any IRA, 401(k), or other pension plan in which you control the investments. Please report the full name of any mutual funds.
7. When indicating stock holdings and other investments, indicate the company's full name and briefly describe the nature of the business, where that is not otherwise obvious. For mutual funds concentrated in a particular geographic area or economic sector, indicate the area or industry in which the fund is primarily invested.
8. Remember to complete the "Agreements and Arrangements" section in PART IV for both future and former employment. List any continuing ties you may have with your prior employer, such as a leave of absence, continued participation in a health or pension plan, etc. If known, it is helpful to indicate whether your pension plan is classified as a defined contribution plan or defined benefit plan, whether it is independently managed, and whether the plan is invested in the stock of your prior employer. The employee benefits brochure or handbook of your prior employer is usually a source for this information.
9. If you serve (paid or volunteer) as an officer, director, board member, or advisory group member of a non-Federal entity (other than a solely religious, social, fraternal or political organization), or provide professional or consultative services, or engage in teaching, speaking, writing or editing that relates to your official duties (or for a prohibited source) as an outside activity, then you must submit a request for approval of outside activity (HHS FORM 520) to your supervisor and include this information in PART III.
10. Compensated outside positions listed in PART III, must also be reflected in PART I as an income source if over \$200 was received during the reporting period.
11. Retain a copy of the completed report form to assist you in filling out the report for the next cycle.

Privacy Act Notice: In addition to the statement on page 3 of the report's instructions, please note the information in the following two bullets:

AVOIDING CONFLICTS OF INTEREST
Executive Branch Personnel Confidential Financial
Disclosure Reporting System (OGE 450)
Sample Transmittal Memorandum to New Entrant Employees

- The Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating, or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

- Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

It is important that you comply fully with the reporting requirements. Any individual who fails to file a report, files such report late, or falsifies or fails to report the required information may be subject to sanctions (including removal from Federal Service). Pursuant to 5 C.F.R. Section 2634.605, you may be contacted for additional information if the reviewing official determines that the filed report fails to provide adequate information for a meaningful conflicts analysis. Your effort in providing detailed and complete responses at the outset will lessen the necessity for repeated follow-up contacts.

As an OGE Form 450 filer, you are required to attend one hour of annual ethics training. Contact your Deputy Ethics Counselor for the current years' ethics training schedule.

Please return the completed form in an envelope marked "CONFIDENTIAL" to your reviewing official at:

If you have any questions, or need further information, do not hesitate to call your Deputy Ethics Counselor at _____.

Attachment

(Revised 11/97 by HHS/OGC/ED - Prior Editions Obsolete)

AVOIDING CONFLICTS OF INTEREST
Executive Branch Personnel Confidential Financial
Disclosure Reporting System (OGE 450)
Sample Transmittal Memorandum to Incumbent Employees
(For use when all filers must file the full OGE-450, i.e., 1998, 2001, 2004, etc.)

Date

MEMORANDUM

TO: Employee

FROM: Reviewing Official

SUBJECT: Confidential Financial Disclosure Report (OGE 450)

The Ethics Reform Act of 1989, Executive Order 12674, and 5 CFR Part 2634, Subpart I, require individuals who are assigned to certain designated positions in the Executive Branch of the Federal Government to file an annual Confidential Financial Disclosure Report (OGE 450).

Because you are assigned to a position designated for coverage by the requirements of the Act, Order, and Regulation, you are required to file the enclosed OGE 450 **on or before October 31**. Requests for extensions may be considered under appropriate circumstances. Please note that new employees who started working after July 31 and filed an OGE 450 as a New Entrant need not complete an Annual report at this time.

Please carefully read the instructions accompanying the OGE 450 and review the additional points listed below:

1. Please report your full office address, including your room number in the "Branch/Unit and Address" box. Report the date you entered into the covered position in the "Date of Appointment" box. (NOTE: the date of appointment does not necessarily equate with your service computation date.)
2. Do not leave any schedule blank. If you have nothing to report with respect to a specific schedule, please check the "None" box.
3. Remember that the covered period for reporting on the OGE 450 is the preceding twelve month period ending September 30, 199_. Do not sign, date, or send in your report before the covered period ends on September 30.
4. REMEMBER TO INCLUDE THE INCOME AND ASSETS OF YOUR SPOUSE AS WELL AS THE ASSETS OF ANY DEPENDENT CHILDREN.

AVOIDING CONFLICTS OF INTEREST
Executive Branch Personnel Confidential Financial
Disclosure Reporting System (OGE 450)
Sample Transmittal Memorandum to Incumbent Employees
(For use when all filers must file the full OGE-450, i.e., 1998, 2001, 2004, etc.)

5. When filling out PART I, for each asset identified you must provide an adequate description and the type of income generated by the asset. REMEMBER: Income sources must be listed as well. You must list the source, though not the amount, of your spouse's salary in PART I (if no spousal employment is reported, it is helpful to give a brief explanation in the margin; e.g., "spouse is unemployed" or "spouse is federal employee"). Please consult the OGE 450 instructions for the kinds of assets you do not need to report (e.g., savings and checking accounts).
6. You must specify in PART I the underlying assets in any brokerage account which you maintain down to the level of publicly available mutual funds or limited partnerships as indicated in the form's instructions). You may attach a computer print-out or broker's statement specifying the individual holdings in the portfolio. You must also list the underlying holdings in any IRA, 401(k), or other pension plan in which you control the investments. Please report the full name of any mutual funds.
7. When indicating stock holdings and other investments, indicate the company's full name and briefly describe the nature of the business, where that is not otherwise obvious. For mutual funds concentrated in a particular geographic area or economic sector, indicate the area or industry in which the fund is primarily invested.
8. Remember to complete the "Agreements and Arrangements" section in PART IV for both future and former employment. List any continuing ties you may have with your prior employer, such as a leave of absence, continued participation in a health or pension plan, etc. If known, it is helpful to indicate whether your pension plan is classified as a defined contribution plan or defined benefit plan, whether it is independently managed, and whether the plan is invested in the stock of your prior employer. The employee benefits brochure or handbook of your prior employer is usually a source for this information.
9. If you serve (paid or volunteer) as an officer, director, board member, or advisory group member of a non-Federal entity (other than a solely religious, social, fraternal or political organization), or provide professional or consultative services, or engage in teaching, speaking, writing or editing that relates to your official duties (or for a prohibited source) as an outside activity, then you must submit a request for approval of outside activity (HHS FORM 520) to your supervisor and include this information in PART III.
10. Compensated outside positions listed in PART III, must also be reflected in PART I as an income source if over \$200 was received during the reporting period.
11. Retain a copy of the completed report form to assist you in filling out the report for the next cycle.

AVOIDING CONFLICTS OF INTEREST
Executive Branch Personnel Confidential Financial
Disclosure Reporting System (OGE 450)
Sample Transmittal Memorandum to Incumbent Employees
(For use when filers may use the OGE 450-A; i.e., NOT years in Illustration 4)

Privacy Act Notice: In addition to the statement on page 3 of the report's instructions, please note the information in the following two bullets:

- The Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating, or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.
- Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

It is important that you comply fully with the reporting requirements. Any individual who fails to file a report, files such report late, or falsifies or fails to report the required information may be subject to sanctions (including removal from Federal Service). Pursuant to 5 CFR Section 2634.605, you may be contacted for additional information if the reviewing official determines that the filed report fails to provide adequate information for a meaningful conflicts analysis. Your effort in providing detailed and complete responses at the outset will lessen the necessity for repeated follow-up contacts.

As an OGE 450 filer, you are required to attend one hour of annual ethics training. Contact your Deputy Ethics Counselor for the ethics training schedule.

Please return the completed form in an envelope marked "CONFIDENTIAL" to your reviewing official at:

If you have any questions, or need further information, do not hesitate to call your Deputy Ethics Counselor at _____.

Attachment

(Revised 11/97 by HHS/OGC/ED - Prior Editions Obsolete)

AVOIDING CONFLICTS OF INTEREST
Executive Branch Personnel Confidential Financial
Disclosure Reporting System (OGE 450)
Sample Transmittal Memorandum to Incumbent Employees
(For use when filers may use the OGE 450-A; i.e., NOT years in Illustration 4)

Date

MEMORANDUM

TO: Employee

FROM: Reviewing Official

SUBJECT: Confidential Financial Disclosure Report (OGE 450) and
"Certificate of No New Interests" (OGE 450-A)

The Ethics Reform Act of 1989, Executive Order 12674, and 5 CFR Part 2634, Subpart I, require individuals who are assigned to certain designated positions in the Executive Branch of the Federal Government to file an annual Confidential Financial Disclosure Report (OGE 450). Because you are assigned to a position designated for coverage by the requirements of the Act, Order, and Regulation, you are required to file the enclosed OGE 450 **on or before October 31**. Requests for extensions may be considered under appropriate circumstances. Please note that new employees who started working after July 31 and filed an OGE 450 as a New Entrant need not complete an Annual report at this time.

As an alternative to filing the OGE 450, you may be eligible to file the enclosed Certificate of No New Interests (OGE 450-A) instead. In order to be eligible to file the OGE 450-A in lieu of the OGE 450, you must examine your previously filed OGE 450 and conclude that, since the time of your previously filed OGE 450, you, your spouse, or your dependent children: (1) have no new reportable interests, and (2) have not had a significant change in job duties (for instance, a change that would require a new position description). Even if you are eligible to use the OGE 450-A, you may still file a full OGE 450 instead if you prefer. Please consult the instructions on the OGE 450 for guidance on what constitutes a "reportable" interest. **NOTE:** Using a "Certificate of No New Interests" requires that you reexamine your previously filed OGE 450; therefore, you should keep a copy of that completed form for future reference, in the event you are eligible for and wish to use the Certificate in subsequent years.

NIH is on a 3-year cycle for using the OGE 450-A. Thus, you may be able to use the alternative form for two consecutive years, as long as you meet the criteria above. In each year divisible by 3 (1998, 2001, 2004, etc.), all covered employees are required to file the full OGE 450.

The due date for the Certificate is the same as that for the OGE 450 -- **October 31, 199_** -- and the same extension procedures apply.

If you are submitting an OGE 450, please carefully read the instructions accompanying the form and review the additional points listed below:

AVOIDING CONFLICTS OF INTEREST
Executive Branch Personnel Confidential Financial
Disclosure Reporting System (OGE 450)
Sample Transmittal Memorandum to Incumbent Employees
(For use when filers may use the OGE 450-A; i.e., NOT years in Illustration 4)

1. Please report your full office address, including your room number in the "Branch/Unit and Address" box. Report the date you entered into the covered position in the "Date of Appointment" box. (NOTE: the date of appointment does not necessarily equate with your service computation date.)
2. Do not leave any schedule blank. If you have nothing to report with respect to a specific schedule, please check the "None" box.
3. Remember that the covered period for reporting on the OGE 450 is the preceding twelve month period ending September 30, 199_. Do not sign, date, or send in your report before the covered period ends on September 30.
4. REMEMBER TO INCLUDE THE INCOME AND ASSETS OF YOUR SPOUSE AS WELL AS THE ASSETS OF ANY DEPENDENT CHILDREN.
5. When filling out PART I, for each asset identified you must provide an adequate description and the type of income generated by the asset. REMEMBER: Income sources must be listed as well. You must list the source, though not the amount, of your spouse's salary in PART I (if no spousal employment is reported, it is helpful to give a brief explanation in the margin; e.g., "spouse is unemployed" or "spouse is federal employee"). Please consult the OGE 450 instructions for the kinds of assets you do not need to report (e.g., savings and checking accounts).
6. You must specify in PART I the underlying assets in any brokerage account which you maintain down to the level of publicly available mutual funds or limited partnerships as indicated in the form's instructions). You may attach a computer print-out or broker's statement specifying the individual holdings in the portfolio. You must also list the underlying holdings in any IRA, 401(k), or other pension plan in which you control the investments. Please report the full name of any mutual funds.
7. When indicating stock holdings and other investments, indicate the company's full name and briefly describe the nature of the business, where that is not otherwise obvious. For mutual funds concentrated in a particular geographic area or economic sector, indicate the area or industry in which the fund is primarily invested.
8. Remember to complete the "Agreements and Arrangements" section in PART IV for both future and former employment. List any continuing ties you may have with your prior employer, such as a leave of absence, continued participation in a health or pension plan, etc. If known, it is helpful to indicate whether your pension plan is classified as a defined contribution plan or defined benefit plan, whether it is independently managed, and whether the plan is invested in the stock of your

AVOIDING CONFLICTS OF INTEREST
Executive Branch Personnel Confidential Financial
Disclosure Reporting System (OGE 450)
Sample Transmittal Memorandum to Incumbent Employees
(For use when filers may use the OGE 450-A; i.e., NOT years in Illustration 4)

prior employer. The employee benefits brochure or handbook of your prior employer is usually a source for this information.

9. If you serve (paid or volunteer) as an officer, director, board member, or advisory group member of a non-Federal entity (other than a solely religious, social, fraternal or political organization), or provide professional or consultative services, or engage in teaching, speaking, writing or editing that relates to your official duties (or for a prohibited source) as an outside activity, then you must submit a request for approval of outside activity (HHS FORM 520) to your supervisor and include this information in PART III.
10. Compensated outside positions listed in PART III, must also be reflected in PART I as an income source if over \$200 was received during the reporting period.
11. Retain a copy of the completed report form to assist you in filling out the report for the next cycle.

Privacy Act Notice: In addition to the statement on page 3 of the report's instructions, please note the information in the following two bullets:

- The Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating, or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy act safeguards with respect to such records.
- Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

It is important that you comply fully with the reporting requirements. Any individual who fails to file a report, files such report late, or falsifies or fails to report the required information may be subject to sanctions (including removal from Federal Service). Pursuant to 5 CFR Section 2634.605, you may be contacted for additional information if the reviewing official determines that the filed report fails to provide adequate information for a meaningful conflicts analysis. Your effort in providing detailed and complete responses at the outset will lessen the necessity for repeated follow-up contacts.

As an OGE 450 filer, you are required to attend one hour of annual ethics training. Contact your Deputy Ethics Counselor for the ethics training schedule.

Please return the appropriate completed form (OGE 450 or OGE 450-A) in an envelope marked "CONFIDENTIAL" to your reviewing official at:

AVOIDING CONFLICTS OF INTEREST
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If you have any questions, or need further information, do not hesitate to call your Deputy Ethics Counselor at _____.

Attachments

(Revised 11/97 by HHS/OGC/ED - Prior Editions Obsolete)

AVOIDING CONFLICTS OF INTEREST
Executive Branch Personnel Confidential Financial
Disclosure Reporting System (OGE 450)
OGE 450 Completion Checklist



Part I: Assets and Income

- If income-producing asset was not held at close of the reporting period, "X if no longer held" column is checked
- Assets and income sources fully identified (including full names of mutual funds)
- Nature of income described
- Pensions/IRA/401(k) accounts--underlying assets reported if you control the investments
 - If non-federal pension is listed, agreement is reported on Part IV (Agreements and Arrangements)
- Trusts--assets reported unless Excepted Trust
- Honorarium--date shown
- Partnerships--address and business activity shown
- Real estate--address reported
- If any other earned income from an outside position is reported, position is reported on Part III
- Compare assets and income sources shown on prior report with those shown on this report:
 - all assets on prior report still held during this reporting period are shown in this part (please report them in the same order)
 - all income sources on prior report are shown in this part (please report them in the same order)



Part II: Liabilities

- "None" box checked if no reportable liabilities
- Name of creditor listed
- Address of creditor reported (city and state if a financial or commercial institution, street address if an individual or a partnership)
- Type of liability shown
- Compare liabilities listed with those shown on prior report
 - All liabilities shown on prior report that carried over into this period, and that had a value > \$10,000 at any time during this reporting period, are reported



Part III: Outside Positions

- "None" box checked if no reportable outside positions
- Organization name and address (city and state) listed
- Organization type shown

AVOIDING CONFLICTS OF INTEREST
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OGE 450 Completion Checklist

- Position held reported
- Compare outside positions held with those shown on prior report
 - Outside positions shown in prior report that carried over into this reporting period are identified



Part IV: Agreements or Arrangements

- "None" box checked (if no reportable agreements or arrangements)
- Status and terms of agreement or arrangement described
- Parties to agreement or arrangement shown (include addresses)
- Date of agreement or arrangement reported



Part V: Gifts and Travel Reimbursements

- "None" box checked (if no reportable gifts or travel reimbursements)
- Name and address (city and state) shown for source of item(s) reported
- Descriptions of travel gifts and reimbursements include:
 - Itinerary
 - Dates of travel
 - Nature of gift/reimbursement (e.g., hotel room, airline ticket)



Final Checklist Before Submission of Your Report

- Your name, position, grade and agency are shown at top of each page
- Page number is listed sequentially on each page
- Any attachments to the form are labeled and clearly referenced to the appropriate part
- Certification block on first page is signed and dated
- Appropriate reporting status is checked

AVOIDING CONFLICTS OF INTEREST
Confidential Financial Disclosure Reporting System (OGE 450) for
NIH Special Government Employee (SGE) Advisory Committee Members

NOTE: Specific procedures and guidelines regarding financial disclosure reporting requirements for NIH Special Government Employees (SGE) Advisory Committee Members are included in the NIH Manual Chapter 1810-1, "Procedures for Avoiding Conflicts of Interest for NIH SGE Advisory Committee Members" and in the NIH Committee Management Handbook.

A. COVERAGE:

All Special Government Employees who are members of NIH Councils/Boards, Program Advisory Committees, Boards of Scientific Counselors.

B. FILING DEADLINES AND REPORTING PERIODS:

1. **New Entrant Report:** Individuals must complete an OGE 450 prior to appointment as an SGE Advisory Committee Member as defined above.

The reporting period is the preceding 12 months from the date of filing.

2. **Updated Report:** SGE Advisory Committee Members must update their most recent OGE 450 prior to each meeting, using the appropriate format provided to them through the Committee Management Office.

The update must reflect any changes that have occurred up to 30 calendar days prior to the date of the meeting.

C. REVIEW/APPROVAL AUTHORITY:

Authority has been delegated to Deputy Ethics Counselors (DEC) to review and consider Confidential Financial Disclosure Reports for Special Government Employee Advisory Committee members.

This authority may not be re-delegated.

D. WAIVERS:

Criminal conflict of interest statutes preclude an SGE Advisory Committee Member from participating as a Government employee in any particular matter in which, to his/her knowledge, he/she, his/her spouse, minor child, partner, or organization which he/she serves as an officer, director, trustee, general partner, or employee has a financial interest, or organization with which he/she is seeking employment.

A waiver is a mechanism to resolve an actual conflict of interest. For an SGE Advisory Committee Member, a waiver may be granted by the DEC based on the need for the member's services. Specifically, a waiver under 18 U.S.C. Section 208(b)(3) can be granted when the need

AVOIDING CONFLICTS OF INTEREST
Confidential Financial Disclosure Reporting System (OGE 450) for
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for the member's services outweighs the potential for a conflict of interest created by the financial interest involved.

A sample waiver is included in Appendix 1, Illustration 2, of this manual chapter.

E. AVAILABILITY OF OGE 450 AND RELATED DOCUMENTS:

IC DEC's may order supplies of OGE 450s through the General Service Administration's (GSA) Federal Supply Service, or download the form from the Office of Government Ethics (OGE) web site. In addition, OGE has a computerized OGE 450 available which allows the individual to input the data using his/her computer and then print a form containing all the data. Contact the NIH Ethics Coordinator or OGE's web site (linked from NIH Ethics Program web site). Local reproduction of form is permitted.

F. RECORDS RETENTION AND DISPOSAL:

See also Section K of the main section of this manual chapter. IC Committee Management Offices are responsible for retaining all original OGE 450 and update forms for a period of six years after the filing date, except that documents needed in an on-going investigation past the six-year limit will be retained until no longer needed in the investigation.

The OGE 450s and update forms are confidential and shall not be released to the public except pursuant to a specific court order requiring release or as otherwise provided under the Privacy Act.