



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

U.S. Office of Government Ethics
1201 New York Ave., NW, Suite 500
Washington, DC 20005
Attn: Grant Anderson, Assistant Counsel

Via email

Re: Comment of Citizens for Responsibility and Ethics in Washington in response to (*Comment Request From Stakeholders Regarding the U.S. Office of Government Ethics Form 278e Executive Branch Personnel Public Financial Disclosure Report*), U.S. Office of Government Ethics, 86 Fed. Reg. 29583 (June 2, 2021)

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully submits this comment in response to the Office of Government Ethics’ (“OGE” or “the Agency”) June 2, 2021 solicitation for comments regarding OGE Form 278e Executive Branch Personnel Public Financial Disclosure Report (“OGE Form 278e”). CREW is a nonpartisan government watchdog organization committed to ensuring an ethical and accountable government and, to that end, frequently relies on public financial disclosure reports and other information obtained under the Ethics in Government Act (“EIGA”). CREW appreciates this opportunity to collaborate with OGE as it prepares its request to the Office of Management and Budget to renew approval for OGE Form 278e under the Paperwork Reduction Act.

In recent years, the Executive Branch has grown more powerful and less accountable, but public financial disclosures are an important tool in making sure our government serves and prioritizes the public over special interests and private gain. Without a clear understanding of a person’s financial interests, it is impossible to know what conflicts those interests might present.¹ Therefore, robust public financial disclosures help OGE, civil society organizations, and the wider public get a truer picture of an individual’s financial situation and take steps to remedy conflicts.² Without public financial disclosures, President Trump may have never disclosed his liability to Michael Cohen for the controversial hush money payment his attorney made to Stormy Daniels in the latter stages of the 2016 presidential campaign.³ CREW may have never learned about former Secretary of Commerce Wilbur L. Ross’ discrepancies between the total value of his reported assets and information he previously disclosed publicly about the extent of his wealth.⁴ Secretary Ross’ forms also revealed apparent omissions and

¹ “What Democracy Looks Like” (Citizens for Responsibility and Ethics in Washington (CREW), December 2020), <https://www.citizensforethics.org/reports-investigations/crew-reports/democracy-reform-blueprint-accountable-inclusive-ethical-government/>.

² “CREW Requests Investigation of Nikki Haley for Accepting Private Plane,” *Citizens for Responsibility and Ethics in Washington (CREW)*, October 8, 2018, sec. Press Release, <https://www.citizensforethics.org/news/press-releases/crew-requests-investigation-of-nikki-haley-for-accepting-private-plane-flights/>.

³ “Donald J. Trump 2018 Annual Public Financial Disclosure Report,” Press Release, May 15, 2018, [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/3730CE1E7F315D448525828F005E2C76/\\$FILE/Trump,%20Donald%20J.%20%202018Annual278.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/3730CE1E7F315D448525828F005E2C76/$FILE/Trump,%20Donald%20J.%20%202018Annual278.pdf).

⁴ Dan Alexander, “The Case of Wilbur Ross’ Phantom \$2 Billion,” *Forbes*, December 11, 2017, sec. Billionaires, <https://www.forbes.com/sites/danalexander/2017/11/07/the-case-of-wilbur-ross-phantom-2-billion/?sh=32b66f4a7515>.

irregularities in his reporting of problematic assets, including his shares in the Bank of Cyprus.⁵ Additional information collected from Secretary Ross' public disclosures showed a pattern of ignoring, if not flouting, his legal and ethical obligations and prompted CREW to file a legal complaint with the Office of the Inspector General at the Commerce Department.⁶

Below are some technical suggestions which would further increase the utility of OGE Form 278e for the public, civil society organizations like CREW, and OGE in its efforts to encourage and ensure compliance with ethical government standards.

CREW Technical Suggestions

- OGE Form 278e should note whether the filer is a political appointee, and if so, what type (e.g. non-career SES, PAS, etc.).
- OGE should require the filer to include their middle name (or initial if they have one). In addition, OGE should consider creating a standardized ID for each filer. More biographical information makes it easier for the public to connect information about filers from other sources.
- OGE should note if the filer is required to sign the ethics pledge (EO 13989 for President Biden's administration) and if so, whether they did. This is important because it helps the public track compliance.
- OGE Form 278e should delineate whether an asset is a mutual fund, stock, private equity, or falls under a different category. The form should also include the full name and ticker symbol for publicly traded companies or create an automated system to populate information about stock names when the filer enters the ticker symbol. These changes would make it easier to identify possible conflict issues as well as the progress filers are making to resolve conflicts of interest.
- OGE should require filers to disclose the methodology used for valuing interests in property in any case in which they make a good faith estimate of the fair market value of interests in property when the exact value cannot be obtained without undue hardship or expense to the filer. See 5 C.F.R. § 2634.301(e).

OGE should also consider seeking legislative authority to make additional changes to the report to address deficiencies in the current framework. Please see some examples below.

Current Law:

The Ethics in Government Act of 1978, as amended, contains significant shortcomings that can prevent conflicts of interest from being revealed under reporting requirements. For instance:

⁵ "CREW Requests Investigation into Wilbur Ross," *Citizens for Responsibility and Ethics in Washington (CREW)*, December 21, 2017, sec. Legal Complaints, <https://www.citizensforethics.org/legal-action/legal-complaints/commerce-wilbur-ross/>.

⁶ "CREW Legal Complaint to the Office of Inspector General, U.S. Department of Commerce.," December 21, 2017, <https://www.citizensforethics.org/wp-content/uploads/legacy/2017/12/Ross-Complaint-FINAL.pdf>.

- The Act does not require the president (or vice president) to file a public financial disclosure report until May 15 in the year following the president's first year in office, although President Biden, like Presidents Trump and Obama and most other modern presidents, elected to file his first public financial disclosure report in his first year of office.
- The Act contains numerical caps for reporting the value of assets, transactions, and liabilities by numerical category of income making it difficult to get a full understanding of the filer's wealth and debt obligations. Assets, transactions, and liabilities that exceed the \$50 million threshold are reported simply as "greater than \$50,000,000."
- The Act also contains numerical caps for reporting income. Certain income that exceeds the \$5 million threshold is reported simply as "greater than \$5,000,000."
- Except for pooled investment funds, the Act only requires minimal reporting information for LLCs and other privately held businesses, including those engaged in real estate or other activities susceptible to money laundering. For privately held businesses, filers must provide the "name of the business;" "the line of business" and "describe the type of asset, including the city and state (or county and state) for real estate." Generally, the filer "need not itemize the assets and liabilities of the business" or provide other information about the business's sources of income or investment.
- Current law does not require filers to report assets divested by the filer through a gift transfer to a family member, trust or third party, making it difficult to track a filer's compliance with divestiture commitments made to agency ethics officials.

CREW Suggestions Requiring Legislative Changes

- **New Entrant Report for the President and Vice President** - Amend the Ethics in Government Act, 5 U.S.C. app. § 101(a), to require that the president and vice president file a public financial disclosure report by May 15 of the first year in which they take office.
- **Enhance Public Financial Disclosure Requirements for the President, Vice President and other Senior Officials** - Amend the Ethics in Government Act, 5 U.S.C. app. §§ 101- 111, to enhance financial disclosure requirements applicable to the president, vice president, cabinet members and senior White House staff as follows:

Assets, transactions and liabilities that exceed \$50 million - Require these filers to report the value of all assets, transactions and liabilities that exceed \$50 million to the nearest \$100 million. For example, for an asset with a value of \$80 million, the president would be required to report the asset as having a value of between \$50 million and \$100 million; and for a liability with a value of \$150 million, the president would be required to report the liability as having a value of between \$100 million and \$200 million;

Income that exceeds \$5 million - Require these filers to report the value of income that exceeds \$5 million to the nearest \$10 million. For example, for an asset with income of \$7.5 million, the president would be required to report the income as having a value of between \$5 million and \$10 million; Note: This amendment would not affect the reporting requirement for specific types of income that must be reported exactly (e.g., salary income).

- **LLCs and other privately held businesses** - For any LLC or other privately held business that is not divested prior to taking office, require these filers to report the identity and amounts

received by the LLC or other privately held business from its major creditors, investors and customers, as follows:

Identity of any major creditor and category of value of the total liabilities owed by the LLC or other privately held business to that creditor, which exceeds \$10,000, by numerical categories;

Identity of any major investor and category of value of its investment in the LLC or other privately held business, which exceeds \$50,000, by numerical categories;

Identity of any major customer and category of value of any sales transaction made by the LLC or other privately held business to that customer, which exceeds \$50,000, by numerical categories.

- ***Divestiture Commitments via Gift transfers*** – Amend the Ethics in Government Act to require public disclosure within 30 days after any gift transfer by the filer of assets that exceed \$1,000 in value when the gift is undertaken by the filer to comply with divestiture commitments made to agency ethics officials ***and to identify if the gift was donated to a family member, trust or third party.***

Conclusion

OGE plays a critical role in ensuring that our government is serving the public's best interest and comprehensive public financial disclosure instruments, like OGE Form 278e, help both government institutions and all citizens hold Executive Branch officials to the highest standards. Small technical adjustments to the existing form and more substantive legislative changes would enable OGE to better perform its essential duties. CREW looks forward to working with you throughout this process and towards our shared goal of government that is ethical, accountable, and open.