

Standards of Conduct Note

Standards of Conduct Office, Office of The Judge Advocate General

Changes to the Processing of Public Financial Disclosure Reports

Introduction

The Standards of Conduct Office recently instituted several procedural changes to the processing of the Public Financial Disclosure Report (SF 278).¹ These changes became effective on 30 December 1998,² and should make the ethics counselor's review less burdensome.

This note reviews the SF 278 filing requirement and explains the recent changes to the review process. Additionally, it provides the ethics counselor with a checklist for conducting a proper review of SF 278s.

The primary purpose of the SF 278 is to assist the Army in identifying potential conflicts of interest between the official duties of employees and their outside financial interests.³ All general officers and civilians who are detailed to Senior Executive Service positions must file a SF 278 report annually.⁴ National Guard and United States Army Reserve general officers must file a report only if they served sixty-one days or more of active duty during the calendar year. Filers need not include drill weekends and administrative nights in calculating this number.⁵ Filers must file their reports for calendar year 1998 no later than 15 May 1999.⁶ We encourage filers to submit their reports early, to allow their ethics counselors more time for review and information gathering. Reports are considered filed with the agency when the ethics counselor receives them.⁷ Absent extraordinary circumstances, however, the reports should be filed with the Standards of Conduct Office by 15 May 1999.

1. U.S. Office of Government Ethics, Standard Form 278, Executive Branch Public Financial Disclosure Report (Rev. 6/94). The SF 278 is available on Forms Engine and at <<http://www.explorer.doe.gov:1776/pdfs/forms/f278.pdf>>.

2. Message, 051032Z Jan 99, Headquarters, Dep't of Army, DAJA-SC, subject: Cancellation of DA Form 4971-R (5 Jan. 1999) [hereinafter DA Message].

3. See PUBLIC FINANCIAL DISCLOSURE: A REVIEWER'S REFERENCE, U.S. OFFICE OF GOVERNMENT ETHICS 1-1 (1994), available at <<http://www.usoge.gov/usoge006.html#publications>>.

4. See 5 C.F.R. §§ 2634.201, 202(c) (1997).

5. See U.S. DEP'T OF DEFENSE REG. 5500.7-R, JOINT ETHICS REGULATION, para. 7-203(c) (C4 Aug. 30, 1993).

6. *Id.*

7. See 5 C.F.R. § 2634.602(a).

8. DA Message, *supra* note 2.

9. U.S. Dep't of Army, DA Form 4971-R, Certificate of Preliminary Review of Standard Form (SF) 278 (Nov. 1994).

10. More information is better than no information. We encourage ethics counselors to explain any unusual circumstances presented by the filer's report.

*Changes to the Review Process*⁸

In an effort to streamline the review process, Department of the Army (DA) Form 4971-R⁹ has been eliminated. The most significant impact of this change is that the ethics counselor of the filer's supervisor no longer needs to review and sign the form. Only the filer, the ethics counselor, and the filer's supervisor must sign the forms.

With the elimination of the DA Form 4971-R, the required signatures must be on the SF 278 itself. The filer's ethics counselor will sign the block on the front of the SF 278 entitled "Other Review." The ethics counselor must include a duty phone number and an e-mail address in this block. Additional information about the form or filer may be attached to the form or annotated on the back of the front page.¹⁰

The next block, entitled "Agency Ethics Official's Opinion," is reserved for final agency review at DA. The filer's supervisor will sign in the last block, entitled "Comments of Reviewing Officials." The filer's ethics counselor will insert the following statement on the left-hand side of the block:

Supervisor Certification. I have reviewed the interests reported on this form in light of the filer's duty position. I am satisfied there is no actual or apparent conflict of interest.
Supervisor's Signature _____

This statement should be in nine-point typeface, and should be left justified to preserve the remaining space in the comment block. This statement may be reproduced by rubber stamp,

printed on an address label, or typed onto a form downloaded from the computer.

The Standards of Conduct Office has developed the following checklist of commonly overlooked items to assist ethics

counselors in their review of SF 278s. Ethics counselors are encouraged to share this checklist, or their own version of it, with their filers. Captain Waldron.

Checklist for Review of SF 278

This is a non-exclusive list of commonly overlooked items.

1. Administrative data is complete.
2. Each section has an entry or a “None” block checked.
3. All required schedules (A, B, C, and D) are completed and attached.
4. Each asset on Schedule A has value, and type and amount of income.
5. Purchases and sales listed in Schedule B are also reported in Schedule A, if the asset produced more than \$200 of income or if the sale resulted in more than \$200 of capital gain.
6. Mutual funds are identified by specific fund name, not just fund family (*i.e.*, “Fidelity Magellan” rather than “Fidelity.”)
7. Underlying assets of investment and brokers’ funds are identified.
8. Accrued income from IRA accounts is reported in amount block (even if the income is not withdrawn).
9. Locations of real estate assets are reported.
10. Name, location, and nature of business are reported for all nonpublic partnerships, closely held corporations, and similar private business ventures.
11. Account numbers and social security numbers have been redacted from broker statements (broker statements may be used in lieu of listing assets on Schedule A).¹¹
12. Filer’s position description is attached.
13. Reported financial interests have been reviewed for actual and apparent conflicts of interest,¹² in light of the filer’s duty description.¹³
14. Conflicts of interest have been resolved through:¹⁴
 - formal disqualification (statement attached)
 - change of duties without reassignment
 - divestiture of the interest
 - transfer, reassignment, or resignation
 - exemption under 18 U.S.C. § 208(b) (supervisor’s determination is attached)
 - establishment of a blind trust

11. 5 C.F.R. § 2634.311(c).

12. *See* 5 C.F.R. § 2635.402 (defining a financial conflict of interest).

13. Ethics counselors bring local expertise to the review process. The greatest concern is that the filer will have a financial interest in a contractor that operates on post. Accordingly, ethics counselors should also contact the Principal Assistant Responsible for Contracting or the Director of Contracting for their command or organization to identify the relevant contractors that may create a basis for a conflict. A list of Department of Defense contractors is available at <http://www.defenselink.mil/dodgc/defense_ethics/index.html>.

14. We encourage ethics counselors to contact the Standards of Conduct Office to coordinate resolutions other than disqualification and reassignment.