

§ 84.19

32 CFR Ch. I (7–1–98 Edition)

in 5 U.S.C. 2302(a)(2)(A) (i) through (x) for individuals in or applicants to the following DoD positions:

- (i) Competitive service employees;
- (ii) Career appointees in the Senior Executive Service; and
- (iii) Excepted service employees other than one who is appointed by the President or whose position has been determined to be of confidential, policy-determining, policy-making, or policy-advocating character.

(2) Each personnel action with respect to a DoD employee or applicant, as described in paragraph (c)(1) of this section, shall be taken without regard to any recommendation or statement, oral or written, made by the following types of individuals:

- (i) Members of Congress or Congressional employees;
- (ii) Elected officials of any State (including the District of Columbia and the Commonwealth of Puerto Rico), county, city, or other subdivision thereof;
- (iii) Officials of political parties; or
- (iv) Other individuals or organizations making such recommendations or statements on the basis of the party affiliations of the DoD employee or applicant recommended.

(3) DoD employees may solicit, accept, and consider any statement with respect to a DoD employee or applicant described in paragraph (c)(1) of this section if the statement meets one of the following conditions:

- (i) It is pursuant to a request or requirement of the DoD Component and consists solely of an evaluation of the work performance, ability, aptitude, and general qualifications of the DoD employee or applicant;
- (ii) It relates solely to the character and residence of the DoD employee or applicant;
- (iii) It is furnished pursuant to a request made by an authorized representative of the Government of the United States solely in order to determine whether the DoD employee or applicant meets suitability or security standards;
- (iv) It is furnished by a former employer of the DoD employee or applicant pursuant to a request of an agency, and consists solely of an evaluation of the work performance, ability, apti-

tude, and general qualifications of such DoD employee or applicant during employment with such former employer; or

(v) It is furnished pursuant to a provision of law or regulation authorizing consideration of such statement with respect to a specific position or category of positions.

(4) DoD Component Heads are required by 5 CFR 300.801 to ensure that DoD employees and applicants described in paragraph (c)(1) of this section are notified of the provisions of 5 U.S.C. 3303.

[60 FR 20030, Apr. 24, 1995]

§ 84.19 Political activities of military members.

See DoD Directive 1344.10²⁰, “Political Activities by Members of the Armed Forces on Active Duty,” June 15, 1990.

[59 FR 13214, Mar. 21, 1994, as amended at 60 FR 20030, Apr. 24, 1995]

Subpart G—Financial and Employment Disclosure

§ 84.20 Office of Government Ethics regulation.

See 5 CFR part 2634, “Financial Disclosures, Qualified Trusts, and Certificates of Divestiture for Executive Branch Employees”.

§ 84.21 Public financial disclosure report (SF-278).

(a) *Individuals required to file—(1) Covered positions.* For purposes of this section, the following individuals are in “covered positions” and are required by the Ethics in Government Act of 1978, Public Law 95-521 (5 U.S.C. App.) to file an SF 278, with their DoD component DAEO or designee as set out in paragraph (f) of this section:

- (i) Civilian Presidential appointees;
- (ii) Regular and reserve military officers whose pay grade is 0-7 or above;
- (iii) Members of the Senior Executive Service;
- (iv) Other civilian DoD employees, including special Government employees, whose positions are classified above GS/GM-15 prescribed by 5 U.S.C.

²⁰See footnote 4 to § 84.7(d).

5332 or civilian DoD employees under other pay systems whose rate of basic pay is fixed at or above 120% of the minimum rate of basic pay for a GS/GM-15;

(v) DoD employees in the excepted service in positions that are of a confidential or policy-making character unless they have been excluded by the Director, OGE. See paragraph (a)(4) of this section;

(vi) Individuals serving by appointment under the Intergovernmental Personnel Act, from State or local governments, institutions of higher education or other eligible organizations. See 5 U.S.C. 3371-3376;

(vii) Civilian individuals who are detailed to positions described in paragraphs (a)(1)(iii) through (a)(1)(v) of this section;

(viii) DoD component DAEOs.

(2) *Waiver.* An individual otherwise required to file an SF 278 but who now is expected to perform the duties of a covered position for less than 130 days in a calendar year, may request a waiver of any or all reporting requirements from the Director, OGE, in accordance with 5 CFR part 2634.

(3) *Exception.* An individual who is nominated to or assumes a covered position is not required to file an SF 278 if the Secretary concerned or the DoD component DAEO determines that the individual is not reasonably expected to perform the duties of the position for more than 60 days in a calendar year. If such individual performs the duties of the position for more than 60 days in a calendar year, an SF 278 shall be filed within 15 days after the 61st day of duty.

(4) *Exclusion.* The Director, OGE, may exclude an individual who is in a covered position under paragraph (a)(1)(v) of this section from the requirement to file an SF 278 in accordance with 5 CFR 2634.203.

(b) *Information on covered positions.* The directors of DoD component personnel offices are responsible for providing the following information to their DoD component DAEOs or designees:

(1) The name, position, grade, organization and entrance-on duty or termination date of each individual assigned to the DoD component who is required

to file a new entrant or termination SF 278 immediately upon the appointment of the individual to a position requiring filing, or upon receipt of an SF 52, "Request for Personnel Action," August 1988, requesting approval of the retirement, resignation, or removal of the individual from such a position;

(2) By January 10 of each year, the name, position, grade, and organization of each individual assigned to the DoD component who is required to file an annual SF 278.

(c) *Notification of requirement to file.* Each DoD component DAEO or designee shall provide appropriate notices and instructions to all reporting individuals to ensure the timely preparation of the reports and submission to supervisors and Ethics Counselors for review and filing.

(d) *Time of filing—(1) Nomination reports.* (i) Any time after public announcement but within five days after transmittal by the President to the Senate of the nomination of an individual to a civilian DoD position that requires the advice and consent of the Senate, the DoD component DAEO shall ensure the nominee's SF 278 is filed with the appropriate authorities.

(ii) The report shall contain the information prescribed in the "Instructions for Completing SF 278" attached to the SF 278. These reports shall be certified by the DoD component DAEO, and processed as prescribed by OGE regulation, 5 CFR part 2634.

(iii) Unless otherwise required by the Senate, nomination reports are not required of individuals nominated to positions as military officers. Such individuals must file new entrant reports as prescribed in the following.

(2) *New entrant reports.* (i) Within 30 days of assuming a covered position, a reporting individual shall submit an SF 278.

(ii) The report shall contain the information prescribed for new entrant reports in the "Instructions for Completing SF 278" attached to the SF 278.

(iii) No new entrant report is necessary if the reporting individual has, within 30 days prior to assuming a new position, left another covered position for which the reporting individual filed an SF 278.

(iv) Notwithstanding paragraph (a)(3) of this section, reserve military officers shall file a new entrant report within 30 days of promotion to grade O-7, regardless of whether they are expected to perform active duty for more than 60 days.

(3) *Annual reports.* Any time after January 1 but not later than May 15, a reporting individual who served in a covered position for more than 60 days during the preceding calendar year shall file an annual SF 278. For reserve military officers, only service pursuant to orders issued under title 10, United States Code, is counted.

(4) *Termination reports.* Not sooner than 15 days before but not later than 30 days after termination from a covered position, a reporting individual shall submit an SF 278. A termination report is not required of a reporting individual who, within 30 days of such termination, assumes another covered position. A termination report is not required of a reserve military officer in the grade of O-7 or above who did not serve more than 60 days on active duty during the calendar year in which the military officer is transferred to the Retired reserve.

(5) *Extension of filing deadlines.* The DoD component DAE0, in the case of civilian Presidential appointees, and the DoD component DAE0 or designee in other cases, may grant, for good cause, a filing extension up to 45 days. All requests for extensions shall be provided, in writing, by the reporting individual to the DoD component DAE0 or designee. The request shall contain a clear statement of the reasons for the request and shall be submitted in advance of the original filing deadline. Requests for additional time beyond the initial 45 day extension shall be forwarded by the appropriate DoD component DAE0 or designee with his comments to the Director, OGE, who may grant an additional 45 days extension. The reporting individual shall notify his supervisor of any extension granted.

(6) *Combined annual and termination reports.* Reporting individuals who anticipate terminating their DoD employment before June 30 may request an extension from the appropriate DoD component DAE0 or designee of up to

45 days in order to file one consolidated annual and termination report. Combined annual and termination reports must be filed within 30 days after termination of employment or service but not later than July 15.

(7) *Late filing fee.* (i) Any reporting individual who is required to file an SF 278 and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a \$200 late filing fee. See 5 CFR part 2634. Such fee shall be collected by the DoD component DAE0 or designee for deposit with the U.S. Treasury.

(ii) If the reporting individual fails to remit the \$200 fee within 90 days, the fee shall be subject to DoD component debt collection procedures.

(iii) If extraordinary circumstances existed that caused the late submission of the report, a request for a waiver of the fee may be submitted by the reporting individual with supporting documentation to the DoD component DAE0 or designee. The DoD component DAE0 or designee shall review the request and forward it with a recommendation for approval or denial to OGE. OGE will grant or deny the waiver.

(e) *Content of report.* (1) Instructions for completing the SF 278 are attached to the form. See detailed instructions at 5 CFR 2634.301 through 2634.408, for additional guidance or contact the local Ethics Counselor.

(2) A complete report is required even if no changes have occurred since the last submission.

(3) Termination reports shall contain information covering the preceding calendar year, if an annual report was not filed for that year, and that portion of the present calendar year up to the date of termination from the covered position.

(4) A reporting individual shall request required information known only to another person to be submitted by that person to appropriate reviewing authorities. Such a submission may be made with a request for confidentiality which shall be honored by DoD reviewing authorities when appropriate even

if it limits disclosure to the reporting individual.

(f) *Chain of submission.* A reporting individual shall submit his SF 278 as follows:

(1) A civilian Presidential appointee shall file directly with his DoD component DAE0 or designee;

(2) Any other reporting individual shall submit his SF 278 through his supervisor and through his Ethics Counselor to the DoD component DAE0 or designee. In some cases, the Ethics Counselor and the DoD component DAE0 or designee are the same person;

(i) A military officer serving in a DoD component or in the Central Intelligence agency shall submit his report through his supervisor directly with the DAE0s or designees of those agencies;

(ii) A military officer serving in OSD or for the Chairman of the Joint Chiefs of Staff and Joint Staff, shall submit his report, through his supervisor, to the GC, DoD, as the DoD component DAE0;

(iii) A military officer serving in a joint, Unified, Specified or Combined Commands, other than a Commander in Chief, shall file through his supervisor directly with his DoD component DAE0 or designee. A Commander in Chief of such command shall file with the Legal Advisor to the Chairman of the Joint Chiefs of Staff.

(3) A reporting individual who has more than one immediate supervisor shall submit his report through both supervisors prior to submitting it to the DoD component DAE0 or designee. Such a reporting individual may submit a copy of his report to one supervisor and the original to the other in order to expedite processing;

(4) Reporting individuals on detail to other Executive or Legislative Branch agencies shall follow the filing requirements and procedures of those agencies.

(g) *Review—(1) Initial supervisor review.* Upon receipt of an SF 278, the supervisor of the reporting individual shall review the report to determine if any of the reported financial interests reveal a conflict of interest with the reporting individual's current and future official duties. See 5 CFR 2634.605(b). The supervisor shall supple-

ment the report with any required information or data, including comments on the existence of actual or apparent conflicts of interest, and forward the report with all attachments to the Ethics Counselor. If any review reveals a conflict or apparent conflict, the supervisor shall ensure that the matter is resolved in accordance with paragraph (g)(2)(vii) of this section.

(2) *Ethics Counselor review.* (i) When applicable, the Ethics Counselor shall review each report to determine that:

(A) Each item is completed; and

(B) No interest or position disclosed on the report violates or appears to violate;

(1) Any applicable provision of Chapter 11 of title 18, United States Code;

(2) The Ethics in Government Act of 1978, Public Law 95-521 (5 U.S.C. App.), and implementing regulations;

(3) Executive Order 12674 and implementing regulations; or

(4) Any other related laws or regulations applicable to DoD employees.

(ii) The reports are to be taken at "face value" unless there is a patent omission or ambiguity or the official has independent knowledge of matters outside the report. However, to ensure that there are no omissions, the previous report of each reporting individual, if applicable, shall be compared to the current submission.

(iii) If the Ethics Counselor believes that additional information is required, the reporting individual shall be notified of the additional information required and the date by which it must be submitted. The reporting individual shall submit the required information directly to the Ethics Counselor.

(A) When the Ethics Counselor amends or revises a report based on additional information obtained from the reporting individual, he shall initial the amendment or revision and make a note of the source of the information in the comment section of the report. For example, if the Ethics Counselor adds to a report that a certain fund is an exempted investment fund based on a telephone conversation with the reporting individual, he shall number and initial the change on Schedule A and add a notation in the comment section of the report, such as "1. per telecon with Mr.

Doe on June 16, 1992' and initial the comment.

(B) When a substantial amount of information is missing from the report, it shall be returned to the supervisor for evaluation in accordance with the standards set forth in paragraph (g)(2)(i) of this section, with instructions to return it to the Ethics Counselor with any additional comments or supplementary information.

(iv) If the Ethics Counselor agrees with the supervisor's evaluation that no item violates, or appears to violate, applicable laws or regulations, then:

(A) The Ethics Counselor shall annotate the report or attach an endorsement stating that no conflicts of interest under applicable laws or regulations exist, and forward it to the appropriate DoD Component DAEO or designee; and

(B) If there are no financial interests in non-Federal entities doing or seeking business with DoD reported on the SF 278, the Ethics Counselor may issue a memorandum with the SF 278 to the appropriate DoD Component DAEO or designee.

(v) If the Ethics Counselor disagrees with the supervisor's evaluation, and concludes that the report does not comply with applicable laws and regulations, he shall do the following:

(A) Notify the reporting individual in writing of the preliminary determination;

(B) Afford the reporting individual a reasonable opportunity for an oral or written response; and

(C) Determine, after considering any response, whether or not the reporting individual is in compliance with applicable laws and regulations. If the Ethics Counselor concludes that the report does fulfill the requirements, he shall annotate the report or attach an endorsement stating that no conflicts of interest under applicable laws or regulations exist and dispose of the report in accordance with paragraph (g)(2)(iv) of this section. If the Ethics Counselor determines that it does not, he shall:

(1) Notify the reporting individual of the conclusion;

(2) Afford the reporting individual an opportunity for personal consultation, if practicable;

(3) Determine what remedial action should be taken to bring the reporting individual into compliance;

(4) Notify the reporting individual, in writing, of the remedial action required, indicating a date by which that action must be taken; and

(5) Ensure that the supervisor of the reporting individual is notified of the required remedial action and date by which that action must be taken.

(vi) Except in unusual situations, which must be documented fully to the satisfaction of the Ethics Counselor, remedial action shall be completed within three months from the date the reporting individual was notified that the action is required.

(vii) Remedial steps, in accordance with 5 CFR 2634.605–2634.607, may include the following measures:

(A) Divestiture:

(1) Any reporting individual or the spouse, minor or dependent child of a reporting individual, may be issued a Certificate of Divestiture by the Director, OGE, upon a determination that such divestiture is reasonably necessary to comply with 18 U.S.C. 208, or any other Federal Government conflict of interest statute, regulation, rule, or Executive Order, or pursuant to the request of the Senate as a condition of confirmation;

(2) If obtained before the sale, the Certificate of Divestiture allows for the non-recognition of capital gains that result upon the sale of property to comply with conflict of interest requirements if the property is rolled over into property permitted by OGE. See 5 CFR 2634.1001;

(3) The following items must be submitted to the Director, OGE, by the DoD component DAEO:

(i) A copy of the written request from the reporting individual to the DoD component DAEO to seek certification in the case of the property to be divested;

(ii) A copy of the latest SF 278 or SF 450;

(iii) A detailed description of the specific property for which divestiture is contemplated;

(iv) A complete statement by the DoD component DAEO or designee of the facts and circumstances relevant to the requirement for divestiture and an

explanation of the rules that apply to the requirement for divestiture;

(v) An analysis and recommendation as to whether the certificate should be granted.

(4) The Director, OGE, will issue a Certificate of Divestiture when divestiture is a condition for Senate confirmation or is reasonably necessary to comply with conflict of interest requirements.

(B) Disqualification in accordance with 5 CFR 3601.105;

(C) Limitation of duties;

(D) Transfer or reassignment;

(E) Resignation;

(F) Exemption under 18 U.S.C. 208 (b)(1) or (b)(3);

(G) Establishment of a qualified blind trust.

(viii) When the Ethics Counselor determines that a reporting individual has complied fully with the remedial measures, a notation to that effect shall be made in the comment section of the SF 278. The Ethics Counselor shall then follow the procedures set forth in paragraph (g)(2)(iv) of this section.

(ix) If steps ensuring compliance with applicable laws and regulations are not taken by the date established, the Ethics Counselor shall report the matter to the agency designee for appropriate action, with an information copy to the DoD component DAEO.

(3) *DoD component DAEO review.* (i) The DoD component DAEO or designee shall review the report in accordance with the standards set forth in paragraphs (g)(2)(i) and (g)(2)(ii) of this section.

(ii) Additional information required by the DoD component DAEO or designee shall be collected in accordance with paragraph (g)(2)(ii) of this section.

(iii) The DoD component DAEO or designee shall notify the reporting individual of any necessary remedial action in accordance with procedures set forth in paragraph (g)(2)(v) of this section.

(iv) When the DoD component DAEO or designee determines that no item violates, or appears to violate, any applicable law or regulation, or when the DoD component DAEO or designee determines that a reporting individual has complied fully with the remedial

measures, the DoD component DAEO or designee shall sign and date the report.

(v) If steps ensuring compliance with applicable laws or regulations are not taken by the date established, the DoD component DAEO or designee shall report the matter to the Head of the DoD component for remedial action, with an information copy to the Director, OGE.

(vi) If the DoD component or designee concludes that no item violates, or appears to violate, any applicable law or regulation, but that there are financial interests in non-Federal entities doing or seeking business with DoD, then the DoD component DAEO or designee may issue a memorandum of caution to the reporting individual.

(vii) All reports shall be reviewed within 60 days after the date of filing. The DoD component DAEO or designee shall record the date of the review and ensure that all reports are reviewed within the 60 day period. After review, the DoD component DAEO or designee may proceed to obtain additional information, seek remedial action, or sign and date the report.

(4) *Special reviewing requirements of O-9 and O-10 Flag and General Officer nominees.* (i) As part of the process for approving nominees for appointment to O-9 and O-10 Flag or General officer positions, the Secretaries of the Military Departments shall ensure that the nominee has a current SF 278 on file and that the report has been reviewed by the appropriate DoD component DAEO or designee in relation to the position for which he is being considered.

(ii) Secretaries of Military Departments shall cause a review of all relevant systems of records maintained by their departments, including investigative files, to determine if there is any evidence that the nominee has violated the rules or standards of conduct.

(iii) Each nomination forwarded to the Secretary of Defense shall be accompanied by a certification by the Secretary of the Military Department concerned that the required review has been conducted and has or has not disclosed a violation of the rules or standards of conduct.

(h) *Disposition—(1) Designation of certifying official.* Only the Head of the DoD component or the DoD component

DAEO may certify nomination reports required to be filed by a reporting individual who is nominated by the President to a position requiring the advice and consent of the Senate. For all other reports, the DoD component DAEO may delegate this responsibility to other officials within the DoD component.

(2) *Disposition.* The SF 278 and a complete record of all action taken thereon shall be retained for a period of six years by the DoD component DAEO or designee, and a copy of the report shall be forwarded to OGE, when required. After the six-year period, the report shall be destroyed, unless needed in an ongoing investigation. In the case of a reporting individual who filed a report as a nominee and was not subsequently confirmed by the Senate, the report shall be destroyed one year after the reporting individual is no longer under consideration by the Senate.

(i) *Public availability of reports.* SF 278s must be made available for public inspection 30 days after the reports are filed unless otherwise exempted under law. OGE Form 201, "Request to Inspect or Receive Copies of SF 278, Financial Disclosure Report," shall be filed by a requestor before inspecting an SF 278.

(j) *Penalties—(1) Action within a DoD component.* The Head of the DoD component may take appropriate action, including adverse action, in accordance with applicable laws or regulations, against any reporting individual who fails to file an SF 278 or who falsifies or fails to report required information.

(2) *Action by the U.S. Attorney General.* The U.S. Attorney General may bring a civil action in the U.S. District Court against any individual who knowingly and willfully falsifies or fails to file or report information required to be reported. The court may assess a civil penalty. Knowing and willful falsification of information required to be filed may also result in criminal prosecution under 18 U.S.C. 1001, leading to a fine or imprisonment of not more than five years, or both.

(3) *Misuse of reports.* (i) The U.S. Attorney General may bring a civil action against an individual who obtains or uses an SF 278 filed under the Ethics in Government Act, Public Law 95–521

(5 U.S.C. App.), for the following reasons:

- (A) Any unlawful purpose;
- (B) Any commercial purpose other than by news and communications media for dissemination to the general public;
- (C) Determining or establishing the credit rating of any individual;
- (D) Directly or indirectly, for the solicitation of money for any political, charitable or other purpose.

(ii) The court in which the action is brought may assess a penalty against a person in any amount, not to exceed \$10,000. This shall be in addition to any other remedy available under statutory or common law.

[59 FR 13214, Mar. 21, 1994, as amended at 60 FR 20030, Apr. 24, 1995]

§ 84.22 Confidential financial disclosure report (SF 450).

(a) *Individuals required to file.* (1) *Covered positions.* For purposes of this section, unless required to file an SF 278 or unless expressly exempted, the following individuals are in "covered positions" and are required by 5 CFR part 2634 to file initial and annual SF 450 through their supervisor to their Ethics Counselor as set out in paragraph (f) of this section:

(i) Commanding officers, heads and deputy heads, and executive officers of:

(A) Navy shore installations with 500 or more military and civilian DoD employees (including foreign nationals and indirect personnel regularly attached but excluding personnel attached for temporary duty); and

(B) All Army, Air Force, and Marine Corps installations, bases, air stations or activities.

(ii) Special Government employees, except the following categories of DoD employees who are required to file reports only when specifically requested to do so by their supervisor:

(A) Physicians, dentists, and allied medical specialists engaged only in providing services to patients;

(B) Veterinarians providing only veterinary services;

(C) Lecturers participating only in educational activities;

(D) Chaplains performing only religious services;