

NATIONAL SUPPLEMENT 40

BETWEEN

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

AND

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

NATIONAL COUNCIL OF HUD LOCALS 222

SUBJECT: Office of General Counsel (OGC) Confidential Financial Disclosure Reporting Requirements

SCOPE: This Supplemental Agreement describes the provisions for imposing confidential financial disclosure reporting requirements within the Office of General Counsel.

1. Responses to Proposals. Each Party shall respond to the other's proposals in writing, preceding their response with the number of their counter (e.g., U-1, M-1). The Parties shall indicate agreement to proposals by writing "Agree." The Parties shall indicate any objections to proposals by submitting a substantive counterproposal, and, if the reason for the counterproposal is not self-explanatory, the countering Party shall include a note explaining its reason for the objection and counterproposal.
2. Status Quo: Management shall maintain the status quo by pausing its imposition of the new financial disclosure obligation on Office of General Counsel (OGC) bargaining unit employees until it has fulfilled all bargaining obligations with the Union.
3. Precedence. If there is any conflict between guidance issued by the Agency after the date of this agreement and the provisions of this Supplemental Agreement, the terms of this Supplemental Agreement will govern.
4. Rights. The Parties agree that the implementation of this Supplemental Agreement shall not diminish or waive any rights that the Parties have under the CBA, law, or government-wide rule or regulation that exist as of the date of this agreement.
5. Applicability of Agreement. Any agreement reached on this matter shall apply to all OGC bargaining unit employees.
6. General Obligation to Avoid Conflicts of Interest. The Parties agree that bargaining unit employees have an obligation to avoid financial conflicts of interest per 18 U.S.C § 208, Acts Affecting a Personal Financial Interest, 5 CFR Part 2635 Subpart D, and 5 CFR § 7501.104, Prohibited Financial Interests (for HUD employees), regardless of whether they are required to file an Office of Government Ethics (OGE) Form 450, Confidential Financial Disclosure Report. Nothing in this provision precludes a manager from requiring the filing of the 450, provided that the requirement is imposed in compliance with applicable federal laws and regulations.

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7. Alternative Procedures. If Management determines that other methods to obtain information required to be reported in an OGE 450 are more effective, they will consider those methods in accordance with 5 CFR § 2634.905.
8. Imposition of Confidential Financial Disclosure Reporting Requirement. Management will add the following to the Ethics website within 30 days of signing this agreement:

In accordance with 5 CFR § 2634.904(a)(i), an employee will be required to file an OGE-450 if the agency concludes that the duties and responsibilities of the employee's position require that employee to participate personally and substantially through decision or the exercise of significant judgment, and without substantial supervision and review, in taking a Government action regarding: (A) Contracting or procurement; (B) Administering or monitoring grants, subsidies, licenses, or other federally conferred financial or operational benefits; (C) Regulating or auditing any non-Federal entity; or (D) Other activities in which the final decision or action will have a direct and substantial economic effect on the interests of any non-Federal entity. Additionally, in accordance with 5 CFR § 2634.904(a)(ii), an employee can be required to file an OGE-450 if the agency concludes that the duties and responsibilities of the employee's position require the employee to file such a report to avoid involvement in a real or apparent conflict of interest, or to carry out the purposes behind any statute, Executive order, rule, or regulation applicable to or administered by the employee. Positions which might be subject to a reporting requirement under this subparagraph include those with duties which involve investigating or prosecuting violations of criminal or civil law.

Management will comply with the regulation, 5 CFR § 2634.904(a).

9. Information to Employees, Ethics Office Guidance, and Extensions to Filing Deadlines: Management shall provide the employee with a written explanation of why the reporting requirement has been imposed, upon request, within five business days of receiving the request. The explanation shall identify the employee's duties that trigger the reporting requirement. Management shall consider granting an extension to the filing deadline, if requested by the employee, in a fair and reasonable manner.

The Ethics Office will provide written responses that provide guidance and advice on completing the confidential financial disclosure statements within five business days of receiving the request. The Ethics Office will provide an interim acknowledgment of receipt if additional time to research is needed. If an extension is required because additional information needs to be obtained, the Ethics Office will provide a reasonable and fair extension. If the Ethics Office unduly delays providing guidance, the timeframe for filing shall be extended.

The Ethics Office will comply with Agency guidance on transmitting correspondence that includes confidential information or personally identifiable information.

10. Notice to Employees and Union. Management shall include information about the confidential financial disclosure filing requirement in all job opportunity announcements (JOAs) for positions that will require the employees to submit a confidential financial

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disclosure report. If the announced position is part of a career ladder, the JOA shall identify the grade at which the requirement will be imposed. If any position is determined to require the confidential financial disclosure report after an employee is hired and the requirement was not listed in the JOA, in accordance with Article 49, Sections 49.02 and 49.03, Management shall notify the Union in writing at least 30 days before imposing the requirement (i.e., 60 days before an initial report is due) if feasible.

11. First Annual Report Requirement. Employees who are required to file a new entrant report from November 1 of any current year through February 14 of the following year shall not be required to file an annual report (due on February 15) in the upcoming filing season. For example, a new entrant filer who files a new entrant report on November 1, 2022, shall not be required to file an annual report on February 15, 2023. The employee's next annual report shall be due on February 15, 2024.
12. Pre-Bargaining Implementation. Management shall not take any disciplinary/adverse actions against any bargaining unit OGC employee for not filing the financial disclosure forms before the effective date of this agreement. Management may take disciplinary/adverse actions against any OGC employee who does not timely file the financial disclosure forms after the Parties reach an agreement. Management shall grant any employee whose submission of the OGE Form 450 has been suspended 30 days following the effective date of this agreement to file the OGE Form 450.
13. Notice of Collection and Storage of Information. Before collecting any OGE Forms 450 from any employee, Management shall provide affected employees with the following information related to the collection, storage, securing of, and access to OGE Forms 450, or the equivalent information when systems are updated: "OGE Forms 450 are collected through the FDonline electronic system, an automated financial disclosure reporting system, which is a secure system protected by a firewall. Only attorneys in OGC's Ethics and Appeals Division (EAD) have access to the forms submitted by OGC employees. Forms are reviewed by one EAD attorney and one supervisory EAD attorney. OGE Forms 450 are not available through FOIA and are only provided to the IG upon request during an investigation. OGE Forms 450 are not shared with employees' supervisors." Management shall provide an equivalent statement to field office employees if their forms are reviewed by different personnel.
14. Maintenance of OGE Forms 450. Management shall ensure that all confidential financial disclosure statements are maintained in accordance with 5 CFR § 2634.604, 5 U.S.C. § 552a, and OGE/GOVT-2 Systems of Records Notice; and that they shall be destroyed six years after receipt in accordance with 5 CFR § 2634.604(a), unless needed in an ongoing investigation.
15. Training and Guidance. Management shall provide all written and recorded training and guidance necessary for affected employees to accurately complete OGE Form 450. Management shall ensure that this training and guidance is available for employees to consult at any time via HUD@Work or its successor system. This shall include, at a minimum, a copy of the OGE guidance at [https://www.oge.gov/web/OGE.nsf/0/A685AEC70F057115852585B6005A202F/\\$FILE/Con](https://www.oge.gov/web/OGE.nsf/0/A685AEC70F057115852585B6005A202F/$FILE/Con)

[fidential%20Fin%20Disc%20Guide_Jan2019.pdf](#) or any updated version. All training related to filing the OGE Form 450 shall be optional. All notices to employees related to completion or submission of the OGE Form 450 shall include information on where to find the training and guidance. Management also shall provide employees with contact information for the Ethics Office to answer any questions regarding filing the confidential financial disclosure form.

16. Errors Due to Ethics Office Guidance. Consistent with 5 CFR § 2635.107, Management shall not take disciplinary action for violating federal ethics regulations or any supplemental agency regulations against an employee who engaged in conduct in good faith reliance upon the advice of a HUD ethics official, provided that the employee, in seeking such advice, has made full disclosure of all relevant circumstances. The Parties recognize that if an employee's conduct violates a criminal statute, reliance on the advice of an agency ethics official cannot ensure that the employee will not be prosecuted under that statute and that disclosures made by an employee to an agency ethics official are not protected by an attorney-client privilege. The Parties understand that an agency ethics official is required by 28 U.S.C. § 535 to report any information received relating to a violation of the criminal code, title 18 of the United States Code.
17. Harmless Errors. Management shall hold employees harmless for unintentional errors or omissions in an OGE Form 450 submitted by an employee, provided that the errors or omissions cause no conflicts of interest, the employee notifies Management of conflicts of interest if and when they arise, and the Agency suffers no harm as a result of the unintentional error or omission.
18. Duty Time. Management shall permit employees to prepare financial disclosure statements during duty time, and to use duty time to determine whether potential or actual conflicts exist and to provide information or prepare statements or correspondence related to those conflicts.
19. No Benefits or Harm Based on OGE-450 Information. Employees shall not be subject to any benefits, disadvantages, or disciplinary or adverse actions based on information provided in the OGE Form 450, so long as they have completed the form accurately to the best of the employees' knowledge and the form does not reveal any impermissible activity or information. This shall include but not be limited to opportunities for promotion, performance ratings, and training opportunities, as well as the nature of work assignments barring any conflicts of interest.
20. Assignment of Work. The Parties recognize that the Ethics Office collects OGE Forms 450 in order to identify conflicts of interest based on violations of any applicable provision of 18 U.S.C. Chapter 11; the Ethics in Government Act of 1978 and the Ethics Reform Act of 1989, as amended, and the implementing regulations; Executive Order 12674, as modified by Executive Order 12731, and the implementing regulations; any other applicable Executive Order in force at the time of the review; and any other HUD-specific statute or regulation which governs the filer. Employees may rely in good faith on the Agency's review of potential conflicts of interest, including Ethics Office's determinations regarding possible conflicts of interest based on the information the employee provides. This review, however, does not address specific work assignments. Consequently, in order to ensure that employees

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understand that supervisors do not ordinarily see the employees' OGE Form 450 and the Ethics Office remains unaware of potential conflicts of interest related to specific employee work assignments, the Ethics Office shall notify all employees who are required to file OGE Form 450 that (1) OGE Form 450 are used only to identify possible conflicts of interest with broad government-wide or agency regulations and (2) supervisors ordinarily do not review the OGE 450 form and cannot make assignments based on the form unless notified by the employee. The Ethics Office shall provide that information whenever the Ethics Office notifies employees that they are required to submit OGE Form 450, either as new filers or in reminders to annual filers. This does not eliminate employees' obligations under 18 U.S.C § 208 and related regulations. Employees remain responsible for notifying their supervisors of any conflicts of interest related to specific duties, responsibilities, and assignments.

21. Identifying Conflicts. When reviewing OGE 450 forms, Management shall apply the definitions and criteria provided at 5 CFR § 2635.402, Disqualifying Financial Interests, to determine whether an employee's financial interest creates a conflict with a particular matter.
22. Notification to Supervisor. Employees who become aware of the need to disqualify themselves from participation in a particular matter due to a possible financial conflict of interest should notify their supervisor (and/or the person responsible for assigning the work) either orally or in writing. In accordance with 5 CFR § 2635.402(c)(2), employees shall not be required to file a written disqualification statement or use a particular form unless required by an agency ethics official or the person responsible for the assignment. While the Department has no particular form, employees may choose to use the Ethics Office's template recusal statement, which is available upon request.
23. Recusal. When conflicts arise between work assignments and employees' (or their family members') pre-existing financial interest, Management shall allow employees to recuse (disqualify) themselves from the assignment to avoid a conflict of interest, as provided under 5 CFR § 2635.402(c). Employees who recuse themselves due to identified conflicts of interest shall not be subject to any adverse actions, nor have the recusal reflected in reduced performance appraisals, nor suffer any other harm as a result of such recusal.
24. Waivers and Exemptions. Management shall not require employees to disqualify themselves from participation in any particular matter affecting one or more holdings covered by 5 CFR Part 2640 Subpart B (e.g., for mutual fund holdings, employee benefit plans, or de minimis stock assets). Management shall comply with the procedures described in 5 CFR § 2640.301 and 5 CFR § 2635.402(d)(2) when making decisions regarding granting employee's individual waivers from disqualification.
25. Divestiture. In accordance with 5 CFR § 2635.402(e)(2), Management shall require employees to divest themselves of disqualifying financial interests only if the continued holding of the interest is prohibited by statute or by a HUD supplemental regulation issued in accordance with § 2635.403(a), or if the Agency determines in accordance with § 2635.403(b) that a substantial conflict exists between the financial interest and the employee's duties or accomplishment of HUD's mission.

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26. Reassignment of Duties; Other Considerations. In making any determination related to requiring that an employee divest themselves of a significant pre-existing financial interest that is not otherwise prohibited by statute or HUD supplemental regulation, Management will take into consideration the availability of other personnel for whom performing the work will not cause a potential or actual conflict of interest and the degree of adverse financial impact the divestiture would have on the affected employee. Affected employees are permitted to request a waiver of the HUD supplemental ethics regulations pursuant to 5 CFR § 7501.103 by submitting the request in writing to a HUD ethics official and including the information required by § 7501.103.
27. Deadline for Divestiture. In the event that Management requires any employee to divest financial interests due to a conflict of interest after a review of their OGE-450, pursuant to 5 CFR § 2635.403(d) Management shall allow the employee a reasonable period of time, considering the nature of the employee's duties and the nature and marketability of the interest, to comply with the direction. Whenever possible, unless the Agency has demonstrated an operational reason to require an earlier deadline, the Agency shall grant the employee the full 90 days permitted under 5 CFR § 2635.403(d) to divest. In cases where divestiture causes unusual hardship, as determined by the Agency, Management shall permit the employee additional time to divest. The Parties recognize that as long as an employee continues to hold the financial interest, the employee remains subject to any restrictions imposed by 5 CFR Part 2635 Subpart D, Conflicting Financial Interests.

Effective Date: This Supplement shall become effective upon signature of the Parties.

FOR MANAGEMENT:

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Dated: January 9, 2023