



From
The Reality-Based Community
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November 16, 2018

Emory A. Rounds, III
Director
U.S. Office of Government Ethics
1201 New York Avenue NW
Washington, DC 20005

Re: Public Financial Disclosures by Acting Attorney General Matthew Whitaker

Dear Mr. Rounds:

As the director of American Oversight, a non-partisan organization dedicated to accountability and ethics in government, I am concerned to discover that the Department of Justice is not making available to the public in a timely fashion any public financial disclosure reports filed by Matthew Whitaker, recently appointed Acting Attorney General by President Trump.

As you are no doubt aware from your long career in government ethics, transparency is a critical component of the government ethics program of the federal government. Recognizing that citizens should know their leaders' financial interests, more than 40 years ago, Congress enacted the financial disclosure provisions of the Ethics in Government Act. The purpose of these provisions is to facilitate transparency regarding potential financial conflicts of interest posed by the personal interests of senior United States Government officials. Accordingly, the Act imposes detailed requirements for public financial disclosure by such senior officials. The Office of Government Ethics (OGE) Form 278e and the OGE Form 278-T are financial disclosure reports that are intended to ensure disclosure of the information that the Act requires covered officials to disclose.

Appointees to senior government positions covered by this filing requirement must file their public financial disclosures within 30 days of assuming the duties of the position covered by the filing requirements.¹ The appointee's agency may grant an extension of up to 45 days for good cause shown, with the possibility of an additional extension of up to 45 days.² Thus under OGE regulations a covered appointee has, at most, 120 days from taking office to file the required public financial disclosures.

Matthew Whitaker was reportedly appointed Chief of Staff to Attorney General Jeff Sessions on October 4, 2017.³ As a non-career Senior Executive Service appointee at the Department of

¹ 5 C.F.R. § 2634.201(b)(1).

² 5 C.F.R. § 2634.201(f).

³ October 4, 2018, was Mr. Whitaker's start date at the Department of Justice as reported in documents produced to American Oversight in response to a FOIA request, available at



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Justice, Mr. Whitaker is a required public filer.⁴ Consequently, the latest possible deadline for him to file the required public financial disclosure, assuming he received two extensions for good cause shown, was February 1, 2018. As an incumbent of more than 60 days in a covered position, Mr. Whitaker was also required to file an additional annual public financial disclosure report by May 15, 2018, again with two possible 45-day extensions, so at most no later than August 13, 2018.⁵

In light of his recent appointment as Acting Attorney General, American Oversight requested that the Department of Justice provide access to the two public financial disclosure reports that Mr. Whitaker was required to file as a new entrant and incumbent in a covered position. As you know, OGE regulations require the agency to “permit inspection of the report by, or furnish a copy of the report to, any person who makes written application as provided by agency procedure.”⁶

However, the Department of Justice has not yet permitted inspection or furnished a copy of these public financial disclosure reports, notwithstanding the overwhelming public interest in understanding the potential conflicts of interest of the new Acting Attorney General. Moreover, the Department of Justice’s Departmental Ethics Office has not been willing to provide any specific estimate for when the Department will be in a position to furnish a copy of any financial disclosures filed by Mr. Whitaker. In the interest of minimizing the burden to the Departmental Ethics Office, American Oversight also offered to come and inspect the reports in person rather than wait for the furnishing of a copy to be prepared, but the Department declined that offer. In addition, it is our understanding that there have been numerous other requests for Mr. Whitaker’s public financial disclosure reports since his appointment as Acting Attorney General, and the Department has not made the reports available for inspection or furnished a copy to any public requester. This is all the more surprising given that OGE’s regulations require agencies to be prepared to make public financial disclosure reports available to the public within 30 days of their filing, and it has been many months since Mr. Whitaker was legally required to file his disclosures.⁷

Transparency regarding potential conflicts of interest is a core tenet of the federal government ethics program. Especially given the tremendous responsibilities he has recently assumed as acting head of the Department of Justice, the absence of any public disclosure regarding Mr. Whitaker’s potential conflicts of interest is quite troubling. The Department’s apparent unwillingness to make his public financial disclosure reports publicly available or even provide an estimate for disclosure now, ten days after his appointment as Acting Attorney General, also raises the disturbing possibility that Mr. Whitaker has potentially failed to comply with his legal obligations under OGE regulations to file timely public disclosures.

<https://www.documentcloud.org/documents/4952366-DOJ-Resumes-of-Political-Appointees.html#document/p8>.

⁴ 5 C.F.R. § 2634.202(c).

⁵ 5 C.F.R. § 2634.201(a), (f).

⁶ 5 C.F.R. § 2634.603(c).

⁷ *Id.*

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We strongly urge OGE to undertake an investigation regarding the status of Mr. Whitaker's public disclosure reports and to take steps to promote appropriate transparency and public awareness regarding his potential conflicts of interest.

Sincerely,

A handwritten signature in blue ink, appearing to read "Austin R. Evers", with a long horizontal flourish extending to the left.

Austin R. Evers
Executive Director
American Oversight

Cc: Cynthia Shaw
Director
Departmental Ethics Office
Justice Management Division
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530