



August 27, 2019
PA-19-10

PROGRAM ADVISORY

TO: Designated Agency Ethics Officials

FROM: Emory A. Rounds, III
Director

SUBJECT: Revised Format for Requesting a Certificate of Divestiture

A certificate of divestiture (CD) allows an eligible person to defer paying capital gains taxes on property that is sold to comply with conflict of interest requirements.¹ The CD must be received from the Director of the U.S. Office of Government Ethics (OGE) before the property is sold. In 2007, OGE developed a suggested format for an agency to use when requesting a CD for an eligible person.² OGE is now revising the suggested format.

This Program Advisory provides a revised format incorporating recent changes in the CD regulation, which became effective on January 1, 2019,³ as well as incorporating input received from ethics officials on ways to improve the efficiency and consistency of the CD program. In addition to the substantive revisions, OGE moved the continuation pages to the end of the format, which will make navigation easier. Finally, in order to expedite requesting and processing a CD request if more than six holdings are being divested, OGE now asks that the agency provide the requested information regarding the holdings in an Excel spreadsheet or Word document. Attached is a table highlighting the most significant changes to the CD request format.

Use of the CD request format remains optional; however, in OGE's experience, using the format streamlines the process for requesting and processing CDs. The revised CD format is available on the OGE website in the Forms Library and in the Public Financial Disclosure and Confidential Financial Disclosure sections under Helpful Resources.

If you have any questions, please contact Elaine Newton, Associate Counsel, at 202-482-9265.

Attachments

¹ 26 U.S.C. § 1043; 5 C.F.R. pt. 2634, subpt. J.

² See OGE DAEOgram DO-07-035 (Sept. 25, 2007).

³ The amendments to 5 C.F.R. part 2634, subpart J include the requirement to inform OGE of any circumstances that the designated agency ethics official believes weigh against the issuance of a CD and incorporate OGE's long-standing practice of not issuing CDs for sales of assets held in tax-deferred or tax-advantaged accounts that do not incur capital gains.



Attachment 1: Significant Changes to the Request for a Certificate of Divestiture Format

Section of the Format	Changes
1: Property being divested (5 C.F.R. § 2634.1005(a)(1))	<ul style="list-style-type: none"> ● This section has been slightly rearranged to highlight the information that is being requested. ● The number of holdings that can be listed on the format itself is limited to six. ● An Excel spreadsheet or Word document must be used when a CD is requested for more than six holdings. (There is no longer a separate continuation page for agencies to list additional holdings.)
5: Additional items	<p>5a. Adds a new question on whether the employee has been informed of their obligation to recuse.</p> <p>5b. Revises the question on whether the property was acquired prior to appointment. If the property was acquired after appointment, the continuation page should be used to explain how the property was acquired (e.g., gift, inheritance, etc.) (5 C.F.R. § 2634.1005(a)(2)).</p> <p>5c. Adds a new question on whether divestiture will incur capital gains. (This new question incorporates former question 5c on whether the property was acquired through an employee benefit plan (5 C.F.R. § 2634.1007(a).)</p> <p>5d. Revises the question on whether any other holdings are “similar or related” to the property for which the eligible person is seeking a CD (5 C.F.R. § 2634.1007(c)).</p> <p>5e. Revises the question on whether the property is held in a tax-deferred or tax-advantaged account, which allows the eligible person to exchange the property for permissible property without incurring capital gains (5 C.F.R. § 2634.1007(b)).</p> <p>5f. Revises the question on whether the request is within the divestiture deadline (5 C.F.R. § 2634.1005(e)).</p>
6: Any other factors that weigh against issuing a certificate of divestiture (5 C.F.R. § 2634.1005(b)(3))	Adds the new question to reflect a change in the regulation.

Section of the Format	Changes
7: Other required material	7b. Revises the question requiring a copy of the employee's most recent financial disclosure report by including any required Periodic Transaction Reports (5 C.F.R. § 2634.1005(b)(1)).
Continuation Pages	The continuation pages are now at the end of the format.

Attachment 2

REQUEST FOR A CERTIFICATE OF DIVESTITURE
(must be completed by the agency, not by the requesting employee)

Requesting employee's name and position title:	Employing agency and component:
Agency point of contact:	Telephone number and email address for agency point of contact:
Signature of DAEO or ADAEO:	Date signed:

For complete instructions on requesting a Certificate of Divestiture (CD), please review 5 C.F.R. part 2634, subpart J.

1. Provide the requested information about the property being divested and the owner(s) of that property (see sample table to the right):

(a) description of the property: include the name of the property being divested;

(b) quantity or percentage owned: quantity may be represented by the number of shares of stock, units owned, or percentage of the partnership owned;

(c) owner(s) of the property: provide the full name of the owner(s) of the property; and

(d) relationship to the employee: indicate whether each property owner is one of the following: (i) a government employee; (ii) a spouse, a minor child or a dependent child of the government employee; or (iii) a trustee of a trust for the benefit of the government employee, the spouse, minor or dependent child of the government employee.

(a) Description of the property	(b) Quantity or percentage owned	(c) Owner(s) of the property	(d) Relationship to the employee
McDonald's Corp.	57 shares	John A. Jones	self
General Electric Co.	251 shares	John A. Jones (joint) Mary B. Jones	self spouse
Play Toys, LP	12.24% interest	Mary B. Jones	spouse
Merck & Co., Inc.	33 shares	William C. Smith	trustee
Coca-Cola, Co.	55 shares	John A. Jones (as custodian) Robert D. Jones	self dependent child

Please provide the requested information in an Excel spreadsheet or Word document if a CD is being requested for more than six holdings. Please do not submit financial statements.

(a) Description of the property	(b) Quantity or percentage owned	(c) Owner(s) of the property	(d) Relationship to the employee

(a) Description of the property	(b) Quantity or percentage owned	(c) Owner(s) of the property	(d) Relationship to the employee

2. Provide a brief description of the employee's position or provide a citation to a statute or regulation that sets forth the duties of the position. **(If additional space is needed, please use the [continuation page](#) at the end of the format.)**

3. Provide a detailed explanation of the basis for your conclusion that divestiture is reasonably necessary to comply with Federal ethics rules. **(If additional space is needed, please use the [continuation page](#) at the end of the format.)**

4. Provide the date that the requirement to divest first applied or the date the employee first agreed that the eligible person would divest the property in order to comply with conflict of interest requirements. **(If additional space is needed, please use the [continuation page](#) at the end of the format.)**

5. Please address all items below **(If additional space is needed, please use the [continuation page](#) at the end of the format.):**

a. Has the employee been informed of their obligation to recuse from particular matters in which the employee would have a disqualifying financial interest arising from the property described in the employee's request for a Certificate of Divestiture?

Yes No (if no, please explain using the [continuation page](#))

b. Was the property acquired prior to appointment?

Yes No (if no, please explain using the [continuation page](#))

c. Will divestiture of the property incur capital gains rather than ordinary income?

Yes No (if no, please explain using the [continuation page](#))

d. Has the ethics office confirmed that none of the employee's other financial interests are "similar or related" to the property being divested (i.e., will divestiture resolve the entire conflict)?

Yes No (if no or if additional explanation is needed, please explain using the [continuation page](#))

e. Has the ethics office confirmed that the property being divested is not held in an account that can be rolled into permissible property in a tax-deferred account without incurring capital gains (e.g., IRA, 401(k), etc.)?

Yes No (if no, please explain using the [continuation page](#))

f. Is the request within the divestiture deadline?

Yes No (if no, please explain using the [continuation page](#))

6. Are there any other factors that are not addressed above that weigh against issuing a certificate of divestiture (e.g., is the ethics office aware that the employee may be leaving the Government soon, or is under investigation or subject to a disciplinary action related to the conflict of interest requirements)? If yes, provide a detailed statement identifying the factors that weigh against issuing a certificate of divestiture on a [continuation page](#).

Yes No

7. Please confirm that you are submitting a completed CD package, including:

a. A written request from the employee that includes an unconditional statement that the eligible person holding the property (i.e., the employee, spouse, and/or relevant trustee) has agreed to divest the property.

Yes No

b. A copy of the employee's most recent financial disclosure report including any required subsequent Periodic Transaction Reports, or a list of the equivalent information if the employee does not file a financial disclosure report.

Yes No

c. A copy of the trust document if any of the property is held in a trust.

N/A Yes No

8. Please provide any additional information that you would like OGE to consider when processing the request. (If additional space is needed, please use the [continuation page](#) at the end of the format.)

Please send the completed CD package to CD@oge.gov or to the following address: Director, U.S. Office of Government Ethics, 1201 New York Avenue, NW, Suite 500, Washington, DC 20005-3917.

REQUEST FOR A CERTIFICATE OF DIVESTITURE
Continuation Page

Before each response, please indicate the question for which you are providing additional information.

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