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OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2634

RIN 3209-AA00

Technical Amendments to Financial Disclosure Rule for Executive Branch Employees

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule; technical amendments.

SUMMARY: The Office of Government Ethics is making minor technical amendments to the executive branch financial disclosure rule at 5 CFR part 2634, which remove obsolete provisions, correct inconsistencies, clarify ambiguities, and otherwise conform the text to current practice.

EFFECTIVE DATE: December 18, 1998.

ADDRESSES: Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917, Attn.: Mr. G. Sid Smith. A copy of the two OGE memoranda to designated agency ethics officials noted in the **SUPPLEMENTARY INFORMATION** section below may be obtained from OGE's World Wide Web Site on the Internet at <http://www.usoge.gov>, or by contacting Mr. Smith at OGE.

FOR FURTHER INFORMATION CONTACT: G. Sid Smith, Senior Associate General Counsel, Office of Government Ethics, telephone: 202-208-8000; TDD: 202-208-8025; FAX: 202-208-8037.

SUPPLEMENTARY INFORMATION: The regulation at 5 CFR part 2634 was promulgated by OGE in 1992 (with various subsequent amendments), to implement the financial disclosure requirements of the Ethics Reform Act of 1989 (5 U.S.C. app., §§ 101-111) and section 201(d) of Executive Order 12674, as well as other related statutory provisions. That regulation governs both the public and confidential financial

disclosure systems for executive branch employees. As OGE and ethics officials throughout the executive branch have gained experience with these disclosure systems, a few minor amendments have become necessary, in order to correct inconsistencies, clarify ambiguities, and conform the text to current practice. Those amendments are summarized below.

The term "gift" is defined in § 2634.105(h) by restating the statutory definition and exclusions at 5 U.S.C. app., § 109(5). Another section of the regulation at § 2634.304 recognizes additional statutory exclusions and exceptions from the gift disclosure requirements. For completeness and to eliminate any doubt for filers and ethics officials, this rulemaking adds a cross-reference at the end of § 2634.105(h) to those additional exclusions, which concern gifts from relatives, personal hospitality of an individual, gifts received when the filer was not a Government employee, and items valued at \$100 or less.

Example 2 following § 2634.201(a) illustrates that an employee who is not a public filer but who serves in an acting capacity in a public filer position for more than 60 days in a calendar year must file an incumbent public financial disclosure report. In order to eliminate any confusion, this rulemaking adds a sentence at the end of Example 2 following § 2634.201(a) to note that, in addition, the employee must file a new entrant report the first time that he has served for more than 60 days in a calendar year in the position, as required by other referenced sections of the regulation.

Example 2 following § 2634.304(e) illustrates how to determine the value of a gift of dinner at a restaurant. This example has caused some misunderstanding, because the definition of "gift" in § 2634.105(h)(4) excludes food and beverages not consumed in connection with a gift of overnight lodging. Further, the note after the examples following § 2634.304(e) discusses how to determine the value of a ticket to an event which includes food, refreshments, entertainment and other benefits, but fails to account for the exclusion of food and beverages not consumed in connection with a gift of overnight lodging. In order to eliminate any ambiguity, this rulemaking removes

Example 2 following § 2634.304(e), and adds in the note after the remaining example following § 2634.304(e) a reference to the potential exclusion of food and beverages, along with guidance in determining the value thereof.

Section 2634.902 discusses transition to the new confidential financial disclosure reporting system, which became effective on October 5, 1992. That section has served its purpose and is no longer necessary. Therefore, it is removed, and the section will be reserved.

Section 2634.903(a) requires persons in positions designated for confidential disclosure reporting to file an incumbent report on or before October 31 (if they have performed the duties of their position for more than 60 days during the reporting period). Some agencies and employees have inquired whether this report must be filed if the individual leaves Government service prior to the due date. As OGE indicated in a memorandum to designated agency ethics officials on July 31, 1995 (DO-95-030), it would be consistent with the regulatory scheme not to require reports in that situation, because the regulation was not intended to require reports after a confidential filer has terminated Government service. Such a requirement exists only for filers covered by the public financial disclosure statute, which involves substantially fewer filers and serves the special purpose of public scrutiny. In order to codify the 1995 OGE interpretation, this rulemaking adds a sentence in § 2634.903(a), to indicate that incumbent reports for confidential filers are not required if the employee has left Government service prior to the report's due date.

Section 2634.904(a) defines "confidential filer" by requiring agencies to designate positions where the duties and responsibilities require the employee to participate "personally and substantially" through decision or the exercise of significant judgment in taking certain types of Government actions. Several agencies have asked for guidance as to the meaning of the term "personally and substantially." As guidance, OGE has referred them to the definitions in other OGE regulations, primarily the standards of ethical conduct at 5 CFR § 2635.402(b)(4). See OGE memorandum to designated agency ethics officials of September 14, 1994

(DO-94-031). This rulemaking codifies that advice by adding a cross-reference in § 2634.904(a)(1) to § 2635.402(b)(4). While there are similar definitions in parts 2637 and 2640 of 5 CFR, the definition in the referenced section will suffice.

Section 2634.907(a) describes the contents of confidential financial disclosure reports by referring generally to the information required for public reports in subpart C of 5 CFR part 2634. While that subpart clearly specifies in § 2634.309 that information must be included about the filer's spouse and dependent children, some agencies and confidential filers have found the reference to be misleading or obscure. In order to eliminate any confusion on that point, this rulemaking amends § 2634.907(a) by specifying that confidential filers must include information about themselves, their spouse and their dependent children.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b) and (d), as Director of the Office of Government Ethics, I find good cause exists for waiving the general notice of proposed rulemaking, opportunity for public comment and 30-day delay in effectiveness as to these revisions. The notice, comment and delayed effective date are being waived because these technical amendments to certain OGE regulations concern matters of agency organization, practice and procedure. Furthermore, it is in the public interest that the obsolete provisions be removed and that ambiguous provisions be clarified as soon as possible.

Executive Order 12866

In promulgating these technical amendments to its regulations, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These amendments have also been reviewed by the Office of Management and Budget under that Executive order.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rulemaking will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal executive branch agencies and their employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply

because this rulemaking, involving technical amendments and corrections, does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2634

Administrative practice and procedure, Certificates of divestiture, Conflict of interests, Financial disclosure, Government employees, Penalties, Privacy, Reporting and recordkeeping requirements, Trusts and trustees.

Approved: November 5, 1998.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Office of Government Ethics is amending part 2634 of chapter XVI of 5 CFR as follows:

PART 2634—[AMENDED]

1. The authority citation for part 2634 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

2. Section 2634.105 is amended by:
a. Removing the word "or" at the end of paragraph (h)(5);
b. Removing the period at the end of paragraph (h)(6) and adding in its place a semicolon followed by the word "or"; and
c. Adding a new paragraph (h)(7).

The addition reads as follows:

§ 2634.105 Definitions.

* * * * *
(h) * * *
(7) Exclusions and exceptions as described at § 2634.304(c) and (d).
* * * * *

§ 2634.201 [Amended]

3. Section 2634.201 is amended by adding the sentence "In addition, he must file a new entrant report the first time he serves more than 60 days in a calendar year in the position, in accordance with § 2634.201(b) and § 2634.204(c)(1)." at the end of Example 2 following paragraph (a).

§ 2634.304 [Amended]

4. Section 2634.304 is amended by removing Example 2 following paragraph (e), redesignating Example 1 as Example following paragraph (e), and adding the sentence "The value of food and beverages may be excludable under § 2634.105(h)(4), if applicable, by making a good faith estimate, or by determining their actual cost from the

caterer, restaurant, or similar source." at the end of the note after the newly redesignated Example following paragraph (e).

§ 2634.902 [Removed and Reserved]

5. Section 2634.902 is removed and reserved.

§ 2634.903 [Amended]

6. Section 2634.903 is amended by adding the new sentence "This requirement does not apply if the employee has left Government service prior to the due date for the report." following the first sentence of the text in paragraph (a).

§ 2634.904 [Amended]

7. Section 2634.904 is amended by adding the words "(as defined in § 2635.402(b)(4) of this chapter)" following the words "personally and substantially" in the introductory text of paragraph (a)(1).

§ 2634.907 [Amended]

8. Section 2634.907 is amended by adding the words "about himself, his spouse and his dependent children," following the word "information" in the introductory text of paragraph (a).

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OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2635

RIN 3209-AA04

Standards of Ethical Conduct for Employees of the Executive Branch

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule; amendments.

SUMMARY: The Office of Government Ethics is amending portions of the regulation governing standards of ethical conduct for executive branch employees which concern gifts from outside sources, to conform with interpretive advice and to improve clarity.

EFFECTIVE DATE: January 19, 1999.

FOR FURTHER INFORMATION CONTACT: G. Sid Smith, Senior Associate General Counsel, Office of Government Ethics; telephone: 202-208-8000; TDD: 202-208-8025; FAX: 202-208-8037.

SUPPLEMENTARY INFORMATION: On August 4, 1998, the Office of Government Ethics (OGE) published proposed minor amendments to the standards of ethical conduct for executive branch employees (5 CFR part 2635), to codify interpretive advice and clarify intended meaning in