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## OFFICE OF GOVERNMENT ETHICS

### 5 CFR Part 2634

RIN 3209-AA00

#### Technical Amendment to Executive Branch Regulation Governing the Reporting Period for Incumbent Public Financial Disclosure Reports

**AGENCY:** Office of Government Ethics (OGE).

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Office of Government Ethics is issuing a final rule to amend the executive branchwide regulation that describes the reporting period for incumbent public financial disclosure reports to conform with the Ethics in Government Act, OGE regulations, and the report form instructions.

**EFFECTIVE DATE:** October 15, 2002.

**FOR FURTHER INFORMATION CONTACT:** Lorna A. Syme, Government Ethics Specialist, Program Services Division, Office of Government Ethics; Telephone: 202-208-8000, extension 1141; TDD: 202-208-8025; FAX: 202-208-8039.

**SUPPLEMENTARY INFORMATION:** In this rulemaking, OGE is making a technical amendment to subpart C of its executive branchwide financial disclosure regulation codified at 5 CFR part 2634. Section 2634.308(a) of subpart C sets forth the reporting period for incumbent public financial disclosure reports, which shall be either the preceding calendar year or any portion of that year not already covered by a new entrant or nominee report. The Office of Government Ethics is revising this provision in order to eliminate the language which permits exclusion of any portion of the preceding calendar year already covered by a new entrant or nominee report, so that the reporting period conforms with the time periods

specified in the Ethics in Government Act of 1978, 5 U.S.C. appendix, OGE regulations, and the instructions to the public financial disclosure report form (SF 278). The Office of Government Ethics believes that the change to the reporting period embodied in this technical amendment is consistent with its oversight responsibilities pursuant to the Ethics Act, as well as the applicable provisions (section 102(a) dealing with contents of reports) of the Act.

#### Matters of Regulatory Procedure

##### *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 and the opportunity for public comment as to this revision. The notice and comment are being waived because this technical amendment concerns matters of agency organization, practice and procedure, and it is in the public interest that the amendment take effect promptly.

##### *Executive Order 12866*

In promulgating this technical amendment, 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. This amendment has not been reviewed by the Office of Management and Budget under the Executive order, since it is not deemed "significant" thereunder.

##### *Executive Order 12988*

As Director of the Office of Government Ethics, I have reviewed this final amendatory regulation in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

##### *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 only affects executive branch public financial disclosure filers and the administration of the reporting system within executive branch agencies.

#### *Paperwork Reduction Act*

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this final rule technical amendment does not contain information collection requirements that require the approval of the Office of Management and Budget.

#### *Unfunded Mandates Reform Act*

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (as adjusted for inflation) in any one year.

#### *Congressional Review Act*

The Office of Government Ethics has determined that this amendatory rulemaking is a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and has submitted a report thereon to the United States Senate, House of Representatives and General Accounting Office in accordance with that law.

#### List of Subjects in 5 CFR Part 2634

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

Approved: September 6, 2002.

**Amy L. Comstock,**

*Director, Office of Government Ethics.*

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

#### **PART 2634—EXECUTIVE BRANCH FINANCIAL DISCLOSURE, QUALIFIED TRUSTS, AND CERTIFICATES OF DIVESTITURE**

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; Pub. L. 101-410, 104 Stat. 890, 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Sec. 31001, Pub. L. 104-134, 110 Stat. 1321 (Debt Collection Improvement Act of 1996); 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.

**Subpart C—Contents of Reports**

2. Section 2634.308 is amended by revising paragraph (a) to read as follows:

**§ 2634.308 Reporting periods and contents of public financial disclosure reports.**

(a) *Incumbents.* Each public financial disclosure report filed pursuant to § 2634.201(a) shall include on the standard form prescribed by the Office of Government Ethics consistent with subpart F of this part and in accordance with instructions issued by that Office, a full and complete statement of the information required to be reported according to the provisions of subpart C of this part, for the preceding calendar year (except for §§ 2634.303 and 2634.304, relating to transactions and gifts/reimbursements, for which the reporting period does not include any portion of the previous calendar year during which the filer was not a Federal employee), and in the case of §§ 2634.306 and 2634.307, to include the additional period up to the date of filing.

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**FEDERAL RESERVE SYSTEM****12 CFR Part 208**

[Regulation H; Docket No. R-1129]

**Reporting and Disclosure Requirements for State Member Banks With Securities Registered Under the Securities Exchange Act of 1934**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Interim final rule with request for public comment.

**SUMMARY:** The Board has modified its regulations implementing section 12(i) of the Securities Exchange Act of 1934 to reflect the amendments made to section 12(i) by the Sarbanes-Oxley Act of 2002. These amendments vest the Board with the authority to administer and enforce several of the enhanced reporting, disclosure and corporate governance obligations imposed by the Sarbanes-Oxley Act with respect to state member banks that have a class of securities registered under the Securities Exchange Act of 1934. Because some of the relevant provisions of the Sarbanes-Oxley Act to be administered by the Board are effective already, or will become effective shortly, the Board has adopted the rule on an interim basis and made the rule effective immediately. The Board

requests comment on all aspects of the interim rule, and will modify the rule as appropriate in light of the comments received.

**DATES:** The interim rule is effective on September 13, 2002. Comments on the rule must be received by October 15, 2002.

**ADDRESSES:** Comments should refer to Docket No. R-1129, and should be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551 or mailed electronically to [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Comments addressed to Ms. Johnson also may be delivered to the Board's mail facility in the west courtyard of the Eccles Building, located on 21st Street between Constitution Avenue and C Street, NW. Members of the public may inspect comments in Room MP-500 of the Martin Building, between 9 a.m. and 5 p.m. weekdays, in accordance with the Board's Rules Regarding the Availability of Information (12 CFR part 261).

**FOR FURTHER INFORMATION CONTACT:**

Kieran J. Fallon, Senior Counsel (202-452-5270), or Walter R. McEwen, Counsel (202-452-3321), Legal Division; Terrill Garrison, Supervisory Financial Analyst (202-452-2712), Division of Banking Supervision and Regulation. Users of Telecommunication Device for Deaf (TTD) only, call (202) 263-4869.

**SUPPLEMENTARY INFORMATION:****Background**

Section 12(i) of the Securities Exchange Act (15 U.S.C. 78(i)) (Exchange Act) vests the Board with the authority to administer and enforce the disclosure and reporting requirements of sections 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of the Exchange Act with respect to state member banks that have a class of securities registered under section 12(b) or 12(g) of the Exchange Act (registered banks).<sup>1</sup> Section 208.36 of the Board's Regulation H (12 CFR part 208.36) implements the reporting and disclosure provisions of sections 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of the Exchange Act for registered banks. As a general matter, Regulation H requires registered banks to comply with the rules, regulations and forms adopted by the Securities and Exchange Commission (SEC) under sections 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of the

<sup>1</sup> As of June 30, 2002, 19 state member banks had a class of securities registered under sections 12(b) or 12(g) of the Exchange Act and, thus, are considered registered banks.

Exchange Act, but requires registered banks to file any reports or forms required by such regulations with the Board (rather than the SEC) and substitutes the "Board" for the "SEC" each place that term appears in the SEC's rules and forms.

**Description of Interim Rule**

On July 30, 2002, President Bush signed into law the Sarbanes-Oxley Act of 2002 (occasionally referred to hereafter as the "Act").<sup>2</sup> Titles III and IV of the Sarbanes-Oxley Act include a number of provisions that are designed to improve the corporate governance and financial disclosures of issuers that have a class of securities registered under sections 12(b) or 12(g) of the Exchange Act, or that are required to file periodic reports with the SEC under section 15(d) of the Exchange Act (public issuers).

The Sarbanes-Oxley Act also amended section 12(i) of the Exchange Act to vest the Board with the authority to administer and enforce several of the Act's new corporate governance and disclosure requirements with respect to registered banks.<sup>3</sup> In particular, this amendment provides that the Board shall be the appropriate agency to administer and enforce the following sections of the Act with respect to registered banks. (The effective date of the relevant section, as well as any required timeframe for the SEC to adopt implementing rules, are indicated parenthetically.)

- *Section 301*, which establishes certain oversight, independence, funding and other requirements for the audit committees of public issuers, and requires the SEC to issue rules that prohibit any national securities exchange or national securities association from listing the securities of an issuer that fails to comply with these audit committee requirements. (The SEC must adopt rules implementing the listing prohibition by April 26, 2003.)<sup>4</sup>

- *Section 302*, which mandates that the SEC adopt rules that require the principal executive officer(s) and principal financial officer(s) of public issuers to include certain certifications in the issuer's annual and quarterly reports filed under the Exchange Act. (The SEC issued final rules implementing this section on August 28, 2002.)<sup>5</sup>

<sup>2</sup> Pub. L. 102-204 (2002).

<sup>3</sup> See Sarbanes-Oxley Act at § 3(b)(4) (amending 15 U.S.C. 78(i)).

<sup>4</sup> These audit committee and listing requirements were enacted as a new subsection (m) to section 10A of the Exchange Act. See 15 U.S.C. 78f(m).

<sup>5</sup> See Exchange Act Rel. No. 34-46427 (Aug. 28, 2002), available at <http://www.sec.gov/rules/>