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OFFICE OF GOVERNMENT ETHICS

5 CFR Parts 2634 and 2636

RIN 3209-AA55

2021 Civil Monetary Penalties Inflation Adjustments for Ethics in Government Act Violations

AGENCY: Office of Government Ethics.

ACTION: Final rule.

SUMMARY: In accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, the U.S. Office of Government Ethics is issuing this final rule to make the 2021 annual adjustments to the Ethics in Government Act civil monetary penalties.

DATES:

Effective date: This final rule is effective February 1, 2021.

Applicability date: This final rule is applicable beginning January 15, 2021.

FOR FURTHER INFORMATION CONTACT: Margaret Dylus-Yukins, Assistant Counsel, General Counsel and Legal Policy Division, Office of Government Ethics, Telephone: 202-482-9300; TTY: 800-877-8339; FAX: 202-482-9237.

SUPPLEMENTARY INFORMATION:

I. Background

In November 2015, Congress passed the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114-74) (the 2015 Act), which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410). The 2015 Act required Federal agencies to make inflationary adjustments to the civil monetary penalties (CMPs) within their jurisdiction with an initial “catch-up” adjustment through an interim final rule effective no later than August 1, 2016, and further mandates that Federal agencies make subsequent annual inflationary adjustments of their CMPs, to be effective no later than January 15 of each year.

The Ethics in Government Act of 1978 as amended, 5 U.S.C. appendix (the Ethics Act) provides for five CMPs.¹ Specifically, the Ethics Act provides for penalties that can be assessed by an appropriate United States district court, based upon a civil action brought by the Department of Justice, for the following five types of violations:

(1) Knowing and willful failure to file, report required information on, or falsification of a public financial disclosure report, 5 U.S.C. appendix 104(a), 5 CFR 2634.701(b);

(2) Knowing and willful breach of a qualified trust by trustees and interested parties, 5 U.S.C. appendix 102(f)(6)(C)(i), 5 CFR 2634.702(a);

(3) Negligent breach of a qualified trust by trustees and interested parties, 5 U.S.C. appendix 102(f)(6)(C)(ii), 5 CFR 2634.702(b);

(4) Misuse of a public report, 5 U.S.C. appendix 105(c)(2), 5 CFR 2634.703; and

(5) Violation of outside employment/activities provisions, 5 U.S.C. appendix 504(a), 5 CFR 2636.104(a).

In compliance with the 2015 Act and guidance issued by the Office of Management and Budget (OMB), the U.S. Office of Government Ethics (OGE) made previous inflationary adjustments to the five Ethics Act CMPs, and is issuing this rulemaking to effectuate the 2021 annual inflationary adjustments to those CMPs. In accordance with the 2015 Act, these adjustments are based on the percent change between the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October preceding the date of the adjustment, and the prior year’s October CPI-U. Pursuant to OMB guidance, the cost-of-living adjustment multiplier for 2021, based on the CPI-U for October 2020, not seasonally adjusted, is 1.01182. To calculate the 2021 annual adjustment, agencies must multiply the most recent penalty by the 1.01182 multiplier, and round to the nearest dollar.

¹ OGE has previously determined, after consultation with the Department of Justice, that the \$200 late filing fee for public financial disclosure reports that are more than 30 days overdue (see section 104(d) of the Ethics Act, 5 U.S.C. appendix, 104(d), and 5 CFR 2634.704 of OGE’s regulations thereunder) is not a CMP as defined under the Federal Civil Penalties Inflation Adjustment Act, as amended. Therefore, that fee is not being adjusted in this rulemaking (nor was it adjusted by OGE in previous CMP rulemakings), and will remain at its current amount of \$200.

Applying the formula established by the 2015 Act and OMB guidance, OGE is amending the Ethics Act CMPs through this rulemaking to:

(1) Increase the three penalties reflected in 5 CFR 2634.702(a), 5 CFR 2634.703, and 5 CFR 2636.104(a)—which were previously adjusted to a maximum of \$20,489—to a maximum of \$20,731;

(2) Increase the penalty reflected in 5 CFR 2634.702(b)—which was previously adjusted to a maximum of \$10,245—to a maximum of \$10,366; and

(3) Increase the penalty reflected in 5 CFR 2634.701(b)—which was previously adjusted to a maximum of \$61,585—to a maximum of \$62,313.

These adjusted penalty amounts will apply to penalties assessed after January 15, 2021 (the applicability date of this final rule) whose associated violations occurred after November 2, 2015.

OGE will continue to make future annual inflationary adjustments to the Ethics Act CMPs in accordance with the statutory formula set forth in the 2015 Act and OMB guidance.

II. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b), as Director of the Office of Government Ethics, I find that good cause exists for waiving the general notice of proposed rulemaking and public comment procedures as to these technical amendments. The notice and comment procedures are being waived because these amendments, which concern matters of agency organization, procedure and practice, are being adopted in accordance with statutorily mandated inflation adjustment procedures of the 2015 Act, which specifies that agencies shall adjust civil monetary penalties notwithstanding Section 553 of the Administrative Procedure Act. It is also in the public interest that the adjusted rates for civil monetary penalties under the Ethics in Government Act become effective as soon as possible in order to maintain their deterrent effect.

Regulatory Flexibility Act

As the Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this final rule would not have a significant economic impact on a substantial number of small entities

because it primarily affects current Federal executive branch employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain information collection requirements that require 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 5, subchapter II), this rule would 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.

Executive Order 13563 and Executive Order 12866

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select the regulatory approaches that maximize net benefits (including economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget has determined that rulemakings such as this implementing annual inflationary adjustments under the 2015 Act are not significant regulatory actions under Executive Order 12866.

Executive Order 12988

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

List of Subjects

5 CFR Part 2634

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

5 CFR Part 2636

Conflict of interests, Government employees, Penalties.

Dated: January 11, 2021.

Emory Rounds,

Director, U.S. Office of Government Ethics.

For the reasons set forth in the preamble, the U.S. Office of Government Ethics is amending 5 CFR parts 2634 and 2636 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.; 26 U.S.C. 1043; Pub. L. 101-410, 104 Stat. 890, 28 U.S.C. 2461 note, as amended by Sec. 31001, Pub. L. 104-134, 110 Stat. 1321 and Sec. 701, Pub. L. 114-74; Pub. L. 112-105, 126 Stat. 291; 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 2634.701 is amended by revising paragraph (b) to read as follows:

§ 2634.701 Failure to file or falsifying reports.

* * * * *

(b) Civil action. The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully falsifies or who knowingly and willfully fails to file or report any information required by filers of public reports under subpart B of this part. The court in which the action is brought may assess against the individual a civil monetary penalty in any amount, not to exceed the amounts set forth in Table 1 to this section, as provided by section 104(a) of the Act, as amended, and as adjusted in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

TABLE 1 TO § 2634.701

Table with 2 columns: Date of violation, Penalty. Rows: Violation occurring between Sept. 14, 2007 and Nov. 2, 2015 (\$50,000); Violation occurring after Nov. 2, 2015 (62,313).

* * * * *

3. Section 2634.702 is revised to read as follows:

§ 2634.702 Breaches by trust fiduciaries and interested parties.

(a) The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully violates the provisions of § 2634.408(d)(1) or (e)(1). The court in which the action is brought may assess

against the individual a civil monetary penalty in any amount, not to exceed the amounts set forth in Table 1 to this section, as provided by section 102(f)(6)(C)(i) of the Act and as adjusted in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

TABLE 1 TO § 2634.702

Table with 2 columns: Date of violation, Penalty. Rows: Violation occurring between Sept. 29, 1999 and Nov. 2, 2015 (\$11,000); Violation occurring after Nov. 2, 2015 (20,731).

(b) The Attorney General may bring a civil action in any appropriate United States district court against any individual who negligently violates the provisions of § 2634.408(d)(1) or (e)(1). The court in which the action is brought may assess against the individual a civil monetary penalty in any amount, not to exceed the amounts set forth in Table 2 to this section, as provided by section 102(f)(6)(C)(ii) of the Act and as adjusted in accordance with the inflation adjustment procedures of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

TABLE 2 TO § 2634.702

Table with 2 columns: Date of violation, Penalty. Rows: Violation occurring between Sept. 29, 1999 and Nov. 2, 2015 (\$5,500); Violation occurring after Nov. 2, 2015 (10,366).

4. Section 2634.703 is amended by revising paragraph (a) to read as follows:

§ 2634.703 Misuse of public reports.

(a) The Attorney General may bring a civil action against any person who obtains or uses a report filed under this part for any purpose prohibited by section 105(c)(1) of the Act, as incorporated in § 2634.603(f). The court in which the action is brought may assess against the person a civil monetary penalty in any amount, not to exceed the amounts set forth in Table 1 to this section, as provided by section 105(c)(2) of the Act and as adjusted in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

TABLE 1 TO § 2634.703

Table with 2 columns: Date of violation, Penalty. Rows: Violation occurring between Sept. 29, 1999 and Nov. 2, 2015 (\$11,000); Violation occurring after Nov. 2, 2015 (20,731).

* * * * *

PART 2636—LIMITATIONS ON OUTSIDE EARNED INCOME, EMPLOYMENT AND AFFILIATIONS FOR CERTAIN NONCAREER EMPLOYEES

■ 5. The authority citation for part 2636 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 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) and Sec. 701, Pub. L. 114–74 (Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015); 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.

■ 6. Section 2636.104 is amended by revising paragraph (a) to read as follows:

§ 2636.104 Civil, disciplinary and other action.

(a) *Civil action.* Except when the employee engages in conduct in good faith reliance upon an advisory opinion issued under § 2636.103, an employee who engages in any conduct in violation of the prohibitions, limitations and restrictions contained in this part may be subject to civil action under 5 U.S.C. app. 504(a) and a civil monetary penalty of not more than the amounts set in Table 1 to this section, as adjusted in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, or the amount of the compensation the individual received for the prohibited conduct, whichever is greater.

TABLE 1 TO § 2636.104

Date of violation	Penalty
Violation occurring between Sept. 29, 1999 and Nov. 2, 2015	\$11,000
Violation occurring after Nov. 2, 2015	20,731

* * * * *

[FR Doc. 2021–00714 Filed 1–29–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–90667; File No. S7–08–11]

RIN 3235–AK74

Exemption From the Definition of “Clearing Agency” for Certain Activities of Security-Based Swap Dealers and Security-Based Swap Execution Facilities

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (“Commission”) is adopting a rule pursuant to Section 36 of the Securities Exchange Act of 1934 (“Exchange Act”) to exempt from the definition of “clearing agency” in Section 3(a)(23) of the Exchange Act certain activities of a registered security-based swap dealer, a registered security-based swap execution facility, and a person engaging in dealing activity in security-based swaps that is eligible for an exception from registration as a security-based swap dealer because the quantity of dealing activity is de minimis.

DATES: Effective date: April 2, 2021.

FOR FURTHER INFORMATION CONTACT: Matthew Lee, Assistant Director, or Jesse Capelle, Special Counsel, Office of Clearance and Settlement, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–7010, at (202) 551–5710.

SUPPLEMENTARY INFORMATION: The Commission is adopting 17 CFR 240.17Ad–24 (“Rule 17Ad–24”) to exempt certain activities of a registered security-based swap execution facility,¹ a registered security-based swap dealer,² and an entity that is eligible for an

¹ 15 U.S.C. 78c–4(a) (setting forth the registration requirement for security-based swap execution facilities). The Commission has not yet adopted rules regarding the registration of security-based swap execution facilities. The Commission has granted a temporary exemption from the registration requirement for security-based swap execution facilities. See Release No. 34–64678 (June 15, 2011), 76 FR 36287, 36292–93, 36306 (June 22, 2011). This exemption will expire on the earliest compliance date set forth in any of the final rules regarding registration of security-based swap execution facilities. See id. at 36292–93, 36306.

² 15 U.S.C. 78o–10(a)(1); see also Release No. 34–75611 (Aug. 5, 2015), 80 FR 48964, 48988 (Aug. 14, 2015). A security-based swap market participant that meets the definition of “security-based swap dealer” as of August 6, 2021 is required to register with the Commission no later than November 1, 2021. See Release No. 34–87780 (Dec. 18, 2019), 85 FR 6270, 6345–46 (Feb. 4, 2020).

exception under 17 CFR 240.3a71–2(a) (or subject to the period set forth in 17 CFR 240.3a71–2(b))³ from the definition of “clearing agency.”

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I. Background

The term “clearing agency” is broadly defined in Section 3(a)(23)(A) of the Exchange Act and includes a variety of functions.⁴ Section 3(a)(23)(B) of the Exchange Act excludes a number of

³ In contrast to the definition of “dealer” in Section 3(a)(5) of the Exchange Act, Section 3(a)(71)(D) of the Exchange Act and 17 CFR 240.3a71–2(a) thereunder contain an exception from the definition of “security-based swap dealer” for any entity that engages in a de minimis quantity of security-based swap dealing in connection with transactions with or on behalf of its customers. See 15 U.S.C. 78c(a)(71)(D); 17 CFR 240.3a71–2(a). In addition, 17 CFR 240.3a71–2(b) provides that a person that has not registered as a security-based swap dealer by virtue of satisfying the requirements of paragraph (a) of the rule, but that no longer can take advantage of the de minimis exception, will be deemed not to be a security-based swap dealer under section 3(a)(71) of the Act (15 U.S.C. 78c(a)(71)) and subject to the requirements of section 15F of the Act (15 U.S.C. 78o–10) and the rules, regulations and interpretations issued thereunder until the earlier of the date on which it submits a complete application for registration pursuant to section 15F(b) (15 U.S.C. 78o–10(b)) or two months after the end of the month in which that person becomes no longer able to take advantage of the exception.

⁴ Specifically, the term “clearing agency” includes, among other things, any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or that provides the facilities for comparison of data respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities. The definition also includes any person, such as a securities depository, who (i) acts as a custodian of securities in connection with a system for the central handling of securities whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible and may be transferred, loaned, or pledged by bookkeeping entry without physical delivery of securities certificates, or (ii) otherwise permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical delivery of securities certificates. 15 U.S.C. 78c(a)(23)(A); see also Release Nos. 34–71699 (Mar. 12, 2014), 79 FR 16865 (Mar. 26, 2014), corrected at 79 FR 29507, 29510–11 (May 22, 2014); 34–68080 (Oct. 22, 2012), 77 FR 66219, 66221–22 (Nov. 2, 2012) (“Clearing Agency Standards adopting release”) (discussing the same).