

§ 2634.907

5 CFR Ch. XVI (1–1–23 Edition)

the agency head or designee regarding the complaint will be final.

§ 2634.907 Report contents.

(a) Other than the reports described in § 2634.904(a)(3), each confidential financial disclosure report must comply with instructions issued by the Office of Government Ethics and include on the standardized form prescribed by OGE (see § 2634.601) the information described in paragraphs (b) through (g) of this section for the filer. Each report must also include the information described in paragraph (h) of this section for the filer's spouse and dependent children.

(b) *Noninvestment income.* Each financial disclosure report must disclose the source of earned or other noninvestment income in excess of \$1,000 received by the filer from any one source during the reporting period, including:

(1) Salaries, fees, commissions, wages and any other compensation for personal services (other than from United States Government employment);

(2) Any honoraria, including payments made or to be made to charitable organizations on behalf of the filer in lieu of honoraria; and

NOTE TO PARAGRAPH (b)(2): In determining whether an honorarium exceeds the \$1,000 threshold, subtract any actual and necessary travel expenses incurred by the filer and one relative, if the expenses are paid or reimbursed by the filer. If such expenses are paid or reimbursed by the honorarium source, they will not be counted as part of the honorarium payment.

(3) Any other noninvestment income, such as prizes, scholarships, awards, gambling income or discharge of indebtedness.

Example to paragraphs (b)(1) and (b)(3): A filer teaches a course at a local community college, for which she receives a salary of \$3,000 per year. She also received, during the previous reporting period, a \$1,250 award for outstanding local community service. She must disclose both.

(c) *Assets and investment income.* Each financial disclosure report must disclose separately:

(1) Each item of real and personal property having a fair market value in excess of \$1,000 held by the filer at the end of the reporting period in a trade or business, or for investment or the

production of income, including but not limited to:

- (i) Real estate;
- (ii) Stocks, bonds, securities, and futures contracts;
- (iii) Sector mutual funds, sector exchange-traded funds, and other pooled investment funds;
- (iv) Pensions and annuities;
- (v) Vested beneficial interests in trusts;
- (vi) Ownership interest in businesses and partnerships; and
- (vii) Accounts receivable.

(2) The source of investment income (dividends, rents, interest, capital gains, or the income from qualified or excepted trusts or excepted investment funds (see paragraph (i) of this section)), which is received by the filer during the reporting period, and which exceeds \$1,000 in amount or value from any one source, including but not limited to income derived from:

- (i) Real estate;
- (ii) Collectible items;
- (iii) Stocks, bonds, and notes;
- (iv) Copyrights;
- (v) Vested beneficial interests in trusts and estates;
- (vi) Pensions;
- (vii) Sector mutual funds (see definition at § 2640.102(q) of this chapter);
- (viii) The investment portion of life insurance contracts;
- (ix) Loans;
- (x) Gross income from a business;
- (xi) Distributive share of a partnership;
- (xii) Joint business venture income; and
- (xiii) Payments from an estate or an annuity or endowment contract.

NOTE TO PARAGRAPHS (c)(1) AND (c)(2): For Individual Retirement Accounts (IRAs), brokerage accounts, trusts, mutual or pension funds, and other entities with portfolio holdings, each underlying asset must be separately disclosed, unless the entity qualifies for special treatment under paragraph (i) of this section.

(3) *Exceptions.* The following assets and investment income are excepted from the reporting requirements of paragraphs (c)(1) and (c)(2) of this section:

- (i) A personal residence, as defined in § 2634.105(1);

(ii) Accounts (including both demand and time deposits) in depository institutions, including banks, savings and loan associations, credit unions, and similar depository financial institutions;

(iii) Money market mutual funds and accounts;

(iv) U.S. Government obligations, including Treasury bonds, bills, notes, and savings bonds;

(v) Government securities issued by U.S. Government agencies;

(vi) Financial interests in any retirement system of the United States (including the Thrift Savings Plan) or under the Social Security Act;

(vii) Financial interest in any diversified fund held in any pension plan established or maintained by State government or any political subdivision of a State government for its employees;

(viii) A diversified fund in an employee benefit plan; and

(ix) Diversified mutual funds and unit investment trusts.

NOTE TO PARAGRAPHS (c)(3)(vii) THROUGH (ix): For purposes of this section, “diversified” means that the fund does not have a stated policy of concentrating its investments in any industry, business, single country other than the United States, or bonds of a single State within the United States and, in the case of an employee benefit plan, means that the plan’s independent trustee has a written policy of varying plan investments. Whether a fund meets this standard may be determined by checking the fund’s prospectus or by calling a broker or the manager of the fund.

Example 1: A filer owns a beach house which he rents out for several weeks each summer, receiving annual rental income of approximately \$5,000. He must report the rental property, as well as the city and state in which it is located.

Example 2: A filer’s investment portfolio consists of several stocks, U.S. Treasury bonds, several cash bank deposit accounts, an account in the Government’s Thrift Savings Plan, and shares in sector mutual funds and diversified mutual funds. He must report the name of each sector mutual fund in which he owns shares, and the name of each company in which he owns stock, valued at over \$1,000 at the end of the reporting period or from which he received income of more than \$1,000 during the reporting period. He need not report his diversified mutual funds, U.S. Treasury bonds, bank deposit accounts, or Thrift Savings Plan holdings.

(d) *Liabilities.* Each financial disclosure report filed pursuant to this subpart must identify liabilities in excess of \$10,000 owed by the filer at any time during the reporting period, and the name and location of the creditors to whom such liabilities are owed, except:

(1) Personal liabilities owed to a spouse or to the parent, brother, sister, or child of the filer, spouse, or dependent child;

(2) Any mortgage secured by a personal residence of the filer or the filer’s spouse;

(3) Any loan secured by a personal motor vehicle, household furniture, or appliances, provided that the loan does not exceed the purchase price of the item which secures it;

(4) Any revolving charge account;

(5) Any student loan; and

(6) Any loan from a bank or other financial institution on terms generally available to the public.

Example: A filer owes \$2,500 to his mother-in-law and \$12,000 to his best friend. He also has a \$15,000 balance on his credit card, a \$200,000 mortgage on his personal residence, and a car loan. Under the financial disclosure reporting requirements, he need not report the debt to his mother-in-law, his credit card balance, his mortgage, or his car loan. He must, however, report the debt of over \$10,000 to his best friend.

(e) *Positions with non-Federal organizations*—(1) *In general.* Each financial disclosure report filed pursuant to this subpart must identify all positions held at any time by the filer during the reporting period, other than with the United States, as an officer, director, trustee, general partner, proprietor, representative, executor, employee, or consultant of any corporation, company, firm, partnership, trust, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution.

(2) *Exceptions.* The following positions are excepted from the reporting requirements of paragraph (e)(1) of this section:

(i) Positions held in religious, social, fraternal, or political entities; and

(ii) Positions solely of an honorary nature, such as those with an emeritus designation.

Example 1: A filer holds outside positions as the trustee of his family trust, the secretary

of a local political party committee, and the “Chairman” of his town’s Lions Club. He also is a principal of a tutoring school on weekends. The individual must report his outside positions as trustee of the family trust and as principal of the school. He does not need to report his positions as secretary of the local political party committee or “Chairman” because each of these positions is excepted from disclosure.

Example 2: An official recently terminated her role as the managing member of a limited liability corporation upon appointment to a position in the executive branch. The managing member position must be disclosed in the official’s new entrant financial disclosure report pursuant to this section.

Example 3: An official is a member of the board of his church. The official does not need to disclose the position in his financial disclosure report.

Example 4: An official is an officer in a fraternal organization that exists for the purpose of performing service work in the community. The official does not need to disclose this position in her financial disclosure report.

Example 5: An official is the ceremonial Parade Marshal for a local town’s annual Founders’ Day event and, in that capacity, leads a parade and serves as Master of Ceremonies for an awards ceremony at the town hall. The official does not need to disclose this position in her financial disclosure report.

Example 6: An official recently terminated his role as a campaign manager for a candidate for the Office of the President of the United States upon appointment to a non-career position in the executive branch. The official does not need to disclose the campaign manager position in his financial disclosure report.

Example 7: Immediately prior to her recent appointment to a position in an agency, an official terminated her employment as a corporate officer. In connection with her employment, she served for several years as the corporation’s representative to an incorporated association that represents members of the industry in which the corporation operates. She does not need to disclose her role as her employer’s representative to the association because she performed her representative duties in her capacity as a corporate officer.

Example 8: An official holds a position on the board of directors of a local food bank. The official must disclose the position in his financial disclosure report.

(f) *Agreements and arrangements.* Each financial disclosure report filed pursuant to this subpart must identify the parties to, and must briefly describe the terms of, any agreement or arrangement of the filer in existence at

any time during the reporting period with respect to:

(1) Future employment (including the date on which the filer entered into the agreement for future employment);

(2) A leave of absence from employment during the period of the filer’s Government service;

(3) Continuation of payments by a current or former employer other than the United States Government; and

(4) Continuing participation in an employee welfare or benefit plan maintained by a current or former employer other than the United States Government. Confidential filers are not required to disclose continuing participation in a defined contribution plan, such as a 401(k) plan, to which a former employer is no longer making contributions.

NOTE TO PARAGRAPH (f)(4): Even if the agreement is not reportable, the filer must disclose any reportable asset, such as a sector fund or a stock, held in the account.

Example 1: A filer plans to retire from Government service in eight months. She has negotiated an arrangement for part-time employment with a private-sector company, to commence upon her retirement. On her financial disclosure report, she must identify the future employer, and briefly describe the terms of, this agreement and disclose the date on which she entered into the agreement.

Example 2: A new employee has entered a position which requires the filing of a confidential form. During his Government tenure, he will continue to receive deferred compensation from his former employer and will continue to participate in its pension plan. He must report the receipt of deferred compensation and the participation in the defined benefit plan.

Example 3: An employee has a defined contribution plan with a former employer. The employer no longer makes contributions to the plan. In the account, the employee holds shares worth \$15,000 in an S&P 500 Index fund and shares worth \$7,000 in an U.S. Financial Services fund. The employee does not need to disclose either the agreement to continue to participate in the plan or the S&P 500 Index Fund. The employee must disclose the U.S. Financial Services Fund sector fund.

(g) *Gifts and travel reimbursements.* (1) Each annual financial disclosure report filed pursuant to this subpart must contain a brief description of all gifts and travel reimbursements aggregating more than \$415 in value which are received by the filer during the reporting

Office of Government Ethics

§ 2634.907

period from any one source, as well as the identity of the source. For travel-related items, the report must include a travel itinerary, the dates, and the nature of expenses provided. Special government employees are not required to report the travel reimbursements received from their non-Federal employers.

(2) *Aggregation exception.* Any gift or travel reimbursement with a fair market value of \$166 or less need not be aggregated for purposes of the reporting rules of this section. However, the acceptance of gifts, whether or not reportable, is subject to the restrictions imposed by Executive Order 12674, as modified by Executive Order 12731, and the implementing regulations on standards of ethical conduct.

NOTE TO PARAGRAPH (g)(2): The Office of Government Ethics sets these amounts every 3 years using the same disclosure thresholds as those for public financial disclosure filers. In 2020, the reporting thresholds were set at \$415 and the aggregation threshold was set at \$166. The Office of Government Ethics will update this part in 2023 and every three years thereafter to reflect the new amount.

(3) *Valuation of gifts and travel reimbursements.* The value to be assigned to a gift or travel reimbursement is its fair market value. For most reimbursements, this will be the amount actually received. For gifts, the value should be determined in one of the following manners:

(i) If the gift is readily available in the market, the value will be its retail price. The filer need not contact the donor, but may contact a retail establishment selling similar items to determine the present cost in the market.

(ii) If the item is not readily available in the market, such as a piece of art, the filer may make a good faith estimate of the value of the item.

(iii) The term “readily available in the market” means that an item generally is available for retail purchase.

(4) New entrants, as described in § 2634.903(b), need not report any information on gifts and travel reimbursements.

(5) *Exceptions.* Reports need not contain any information about gifts and travel reimbursements received from relatives (see § 2634.105(o)) or during a period in which the filer was not an of-

ficer or employee of the Federal Government. Additionally, any food, lodging, or entertainment received as “personal hospitality of any individual,” as defined in § 2634.105(k), need not be reported. See also exclusions specified in the definitions of “gift” and “reimbursement” at § 2634.105(h) and (n).

Example: A filer accepts a laptop bag, a t-shirt, and a cell phone from a community service organization he has worked with solely in his private capacity. He determines that the value of these gifts is:

Gift 1—Laptop bag: \$200

Gift 2—T-shirt: \$20

Gift 3—Cell phone: \$275

The filer must disclose Gift 1 and Gift 3 because, together, they aggregate more than \$415 in value from the same source. He need not aggregate or report Gift 2 because the gift’s value does not exceed \$166.

(h) *Disclosure rules for spouses and dependent children—(1) Noninvestment income.* (i) Each financial disclosure report required by the provisions of this subpart must disclose the source of earned income in excess of \$1,000 from any one source, which is received by the filer’s spouse during the reporting period. If earned income is derived from a spouse’s self-employment in a business or profession, the report must disclose the nature of the business or profession. The filer is not required to report other noninvestment income received by the spouse such as prizes, scholarships, awards, gambling income, or a discharge of indebtedness.

(ii) Each report must disclose the source of any honoraria received by the spouse (or payments made or to be made to charity on the spouse’s behalf in lieu of honoraria) in excess of \$1,000 from any one source during the reporting period.

Example to paragraph (h)(1): A filer’s husband has a seasonal part-time job as a sales clerk at a department store, for which he receives a salary of \$1,000 per year, and an honorarium of \$1,250 from the state university. The filer need not report her husband’s outside earned income because it did not exceed \$1,000. She must, however, report the source of the honorarium because it exceeded \$1,000.

(2) *Assets and investment income.* Each confidential financial disclosure report must disclose the assets and investment income described in paragraph (c)

of this section and held by the spouse or dependent child of the filer.

(3) *Liabilities.* Each confidential financial disclosure report must disclose all information concerning liabilities described in paragraph (d) of this section and owed by a spouse or dependent child.

(4) *Gifts and travel reimbursements.* (i) Each annual confidential financial disclosure report must disclose gifts and reimbursements described in paragraph (g) of this section and received by a spouse or dependent child which are not received totally independently of their relationship to the filer.

(ii) A filer who is a new entrant as described in § 2634.903(b) is not required to report information regarding gifts and reimbursements received by a spouse or dependent child.

(5) *Divorce and separation.* A filer need not report any information about:

(i) A spouse living separate and apart from the filer with the intention of terminating the marriage or providing for permanent separation;

(ii) A former spouse or a spouse from whom the filer is permanently separated; or

(iii) Any income or obligations of the filer arising from dissolution of the filer's marriage or permanent separation from a spouse.

Example: A filer and her husband are living apart in anticipation of divorcing. The filer need not report any information about her spouse's sole assets and liabilities, but she must continue to report their joint assets and liabilities.

(6) *Unusual circumstances.* In very rare cases, certain interests in property, transactions, and liabilities of a spouse or a dependent child are excluded from reporting requirements, provided that each requirement of this paragraph is strictly met.

(i) The filer must certify without qualification that the item represents the spouse's or dependent child's sole financial interest or responsibility, and that the filer has no knowledge regarding that item;

(ii) The item must not be in any way, past or present, derived from the income, assets or activities of the filer; and

(iii) The filer must not derive, or expect to derive, any financial or economic benefit from the item.

NOTE TO PARAGRAPH (h)(6): The exception described in paragraph (6) of this section is not available to most filers. One who prepares or files a joint tax return with a spouse will normally derive a financial or economic benefit from assets held by the spouse, and will also be presumed to have knowledge of such items; therefore one could not avail oneself of this exception after preparing or filing a joint tax return. If the filer and the spouse cohabitate and share household expenses, the filer will be deemed to derive an economic benefit from the item, unless the item is beyond the filer's control.

Example: The spouse of a filer has a managed account with a brokerage firm. The filer knows the account exists but the spouse does not share any information about the holdings and does not want the information disclosed on a financial disclosure statement. The filer must disclose the holdings in the spouse's managed account because the spouse shares in paying expenses (for example, household, vacation, or child related).

(i) *Trusts, estates, and investment funds—(1) In general.* (i) Except as otherwise provided in this section, each confidential financial disclosure report must include the information required by this subpart about the holdings of any trust, estate, investment fund or other financial arrangement from which income is received by, or with respect to which a beneficial interest in principal or income is held by, the filer, the filer's spouse, or dependent child.

(ii) Information about the underlying holdings of a trust is required if the filer, filer's spouse, or dependent child currently is entitled to receive income from the trust or is entitled to access the principal of the trust. If a filer, filer's spouse, or dependent child has a beneficial interest in a trust that either will provide income or the ability to access the principal in the future, the filer should determine whether there is a vested interest in the trust under controlling state law. However, no information about the underlying holdings of the trust is required for a nonvested beneficial interest in the principal or income of a trust.

NOTE TO PARAGRAPH (i)(1): Nothing in this section requires the reporting of the holdings of a revocable inter vivos trust (also known as a "living trust") with respect to which the

filer, the filer's spouse or dependent child has only a remainder interest, whether or not vested, provided that the grantor of the trust is neither the filer, the filer's spouse, nor the filer's dependent child. Furthermore, nothing in this section requires the reporting of the holdings of a revocable inter vivos trust from which the filer, the filer's spouse or dependent child receives any discretionary distribution, provided that the grantor of the trust is neither the filer, the filer's spouse, nor the filer's dependent child.

(2) *Qualified trusts and excepted trusts.*

(i) A filer should not report information about the holdings of any qualified blind trust (as defined in § 2634.402) or any qualified diversified trust (as defined in § 2634.402).

(ii) In the case of an excepted trust, a filer should indicate the general nature of its holdings, to the extent known, but does not otherwise need to report information about the trust's holdings. For purposes of this part, the term "excepted trust" means a trust:

(A) Which was not created directly by the filer, spouse, or dependent child; and

(B) The holdings or sources of income of which the filer, spouse, or dependent child have no specific knowledge through a report, disclosure, or constructive receipt, whether intended or inadvertent.

(3) *Excepted investment funds.* (i) No information is required under paragraph (i)(1) of this section about the underlying holdings of an excepted investment fund as defined in paragraph (i)(3)(ii) of this section, except that the fund itself must be identified as an interest in property and/or a source of income.

(ii) For purposes of financial disclosure reports filed under the provisions of this subpart, an "excepted investment fund" means a widely held investment fund (whether a mutual fund, regulated investment company, common trust fund maintained by a bank or similar financial institution, pension or deferred compensation plan, or any other investment fund), if:

(A)(1) The fund is publicly traded or available; or

(2) The assets of the fund are widely diversified; and

(B) The filer neither exercises control over nor has the ability to exercise

control over the financial interests held by the fund.

(iii) A fund is widely diversified if it does not have a stated policy of concentrating its investments in any industry, business, single country other than the United States, or bonds of a single State within the United States.

NOTE TO PARAGRAPH (i)(3): The fact that an investment fund qualifies as an excepted investment fund is not relevant to a determination as to whether the investment qualifies for an exemption to the criminal conflict of interest statute at 18 U.S.C. 208(a), pursuant to part 2640 of this chapter. Some excepted investment funds qualify for exemptions pursuant to part 2640, while other excepted investment funds do not qualify for such exemptions. If an employee holds an excepted investment fund that is not exempt from 18 U.S.C. 208(a), the ethics official may need additional information from the filer to determine if the holdings of the fund create a conflict of interest and should advise the employee to monitor the fund's holdings for potential conflicts of interest.

(j) *Special rules.* (1) Political campaign funds, including campaign receipts and expenditures, need not be included in any report filed under this subpart. However, if the individual has authority to exercise control over the fund's assets for personal use rather than campaign or political purposes, that portion of the fund over which such authority exists must be reported.

(2) With permission of the designated agency ethics official, a filer may attach to the reporting form a copy of a statement which, in a clear and concise fashion, readily discloses all information which the filer would otherwise have been required to enter on the concerned part of the report form.

(k) For reports of confidential filers described in § 2634.904(a)(3), each supplemental confidential financial disclosure report will include only the supplemental information:

(1) Which is more extensive than that required in the reporting individual's public financial disclosure report under this part; and

(2) Which has been approved by the Office of Government Ethics for collection by the agency concerned, as set

§ 2634.908

forth in supplemental agency regulations and forms, issued under §§ 2634.103 and 2634.601(b) (see § 2634.901(b) and (c)).

[83 FR 33981, July 18, 2018, as amended at 85 FR 36716, June 18, 2020]

§ 2634.908 Reporting periods.

(a) *Incumbents.* Each confidential financial disclosure report filed under § 2634.903(a) must include the information required to be reported under this subpart for the preceding calendar year, or for any portion of that period not covered by a previous confidential or public financial disclosure report filed under this part.

(b) *New entrants.* Each confidential financial disclosure report filed under § 2634.903(b) must include the information required to be reported under this subpart for the following reporting periods:

(1) Noninvestment income for the preceding 12 months;

(2) Assets held on the date of filing. New entrant filers are not required to report assets no longer held at the time of appointment, even if the assets previously produced income before the filers were appointed to their confidential positions;

(3) Liabilities owed on the date of filing;

(4) Positions with non-Federal organizations for the preceding 12 months; and

(5) Agreements and arrangements held on the date of filing.

§ 2634.909 Procedures, penalties, and ethics agreements.

(a) The provisions of subpart F of this part govern the filing procedures and forms for, and the custody and review of, confidential disclosure reports filed under this subpart.

(b) For penalties and remedial action which apply in the event that the reporting individual fails to file, falsifies information, or files late with respect to confidential financial disclosure reports, see subpart G of this part.

(c) Subpart H of this part on ethics agreements applies to both the public and confidential reporting systems under this part.

5 CFR Ch. XVI (1–1–23 Edition)

Subpart J—Certificates of Divestiture

§ 2634.1001 Overview.

(a) *Scope.* 26 U.S.C. 1043 and the rules of this subpart allow an eligible person to defer paying capital gains tax on property sold to comply with conflict of interest requirements. To defer the gains, an eligible person must obtain a Certificate of Divestiture from the Director of the Office of Government Ethics before selling the property. This subpart describes the circumstances when an eligible person may obtain a Certificate of Divestiture and establishes the procedure that the Office of Government Ethics uses to issue Certificates of Divestiture.

(b) *Purpose.* The purpose of section 1043 and this subpart is to minimize the burden that would result from paying capital gains tax on the sale of assets to comply with conflict of interest requirements. Minimizing this burden aids in attracting and retaining highly qualified personnel in the executive branch and ensures the confidence of the public in the integrity of Government officials and decision-making processes.

§ 2634.1002 Role of the Internal Revenue Service.

The Internal Revenue Service (IRS) has jurisdiction over the tax aspects of a divestiture made pursuant to a Certificate of Divestiture. Eligible persons seeking to defer capital gains:

(a) Must follow IRS requirements for reporting dispositions of property and electing under section 1043 not to recognize capital gains; and

(b) Should consult a personal tax advisor or the IRS for guidance on these matters.

§ 2634.1003 Definitions.

For purposes of this subpart:

(a) *Eligible person* means:

(1) Any officer or employee of the executive branch of the Federal Government, except a person who is a special Government employee as defined in 18 U.S.C. 202;

(2) The spouse or any minor or dependent child of the individual referred to in paragraph (1) of this definition; and