

OFFICE OF GOVERNMENT ETHICS

AGENCY: Office of Government Ethics (OGE)

5 CFR Part 2634

**Executive Branch Financial Disclosure, Qualified
Trusts, and Certificates of Divestiture**

RIN 3209-AAOO

58 FR 63023

Tuesday, November 30, 1993

ACTION: Final rule.

SUMMARY: This final rule makes effective a proposed amendment to 5 CFR part 2634, which was published on September 1, 1993, at 58 FR 46096-46097. No changes are necessary, based on the public comments which were received. However, one minor technical addition is being included for internal consistency.

The rule amends subpart I of 5 CFR part 2634, an interim rule on executive branch financial disclosure. The amendment exempts certain assets and income from disclosure on confidential financial disclosure reports. Specifically, it eliminates the requirement that confidential filers disclose the existence of and income from cash accounts in depository institutions, money market mutual funds and accounts, and U.S. Government obligations and securities.

EFFECTIVE DATE: November 30, 1993.

FOR FURTHER INFORMATION CONTACT: G. Sid Smith, Office of

Government Ethics, telephone (202) 523-5757, FAX (202) 523-6325.

SUPPLEMENTARY INFORMATION: Executive branch employees who serve in positions which are designated for filing confidential financial disclosure reports must, according to the current requirements of subpart I of 5 CFR part 2634, disclose information about cash accounts in depository institutions, such as banks, savings and loan associations, credit unions, and similar depository financial institutions; money market mutual funds and accounts; U.S. Government obligations, including Treasury bonds, bills, notes, and savings bonds; and Government securities issued by U.S. Government agencies. However, for most confidential filers, the disclosure of this information was not considered by agencies to be critical in assessing the possibility of conflicts of interest. Furthermore, some concerns had been expressed about privacy, and disclosure of such information creates extra work for both filers and agency reviewing officials and could detract from the effectiveness and limited purpose of the confidential disclosure program.

These concerns were communicated to OGE by numerous confidential filers and agency reviewing officials over the eleven months between the time that subpart I of 5 CFR part 2634 became effective in October 1992, and the publication of this proposed amendment on September 1, 1993. Then during the public comment period on the proposed amendment, OGE received eight letters from agencies and one from a Federal employee, all very supportive of the change. During the comment period, OGE also received many phone calls and 16 letters which, though not directly responsive to this rulemaking, criticized various aspects of the confidential disclosure system, including the subject matter of this amendment.

One letter which commented on the proposal suggested that we clarify whether investment funds devoted to Federal Government obligations would be exempt from disclosure under the amendment. We do not believe that any modification to the amendment is necessary; any fund or other investment vehicle which is composed exclusively of these obligations would be exempt, since it is the underlying assets of a fund with which financial disclosure is concerned. Another comment letter suggested that the exemption for disclosure of Government securities should not apply automatically to employees of agencies which issue such securities. However, since none of the agencies which issue Government securities commented on that matter, we believe that it can be handled by separate agency rules or policies prohibiting such holdings or

specially requiring their disclosure, in accordance with the appropriate procedures under 5 CFR part 2634 and part 2635.

The remaining comment letters were either general statements in favor of the amendment or suggesting that OGE expand the scope of the amendment to encompass other subject areas. Those recommendations for additional exemptions will be addressed by separate future rulemaking, if necessary.

For internal consistency, we have added the parenthetical

phrase "including both demand and time deposits" to modify the phrase "accounts in depository institutions" in the text of the amendment to § 2634.907(a)(2)(i). This replicates the language already contained in the text of the proposed amendment to § 2634.907(a)(1)(i).

Accordingly, this rule amends § 2634.907 of subpart I of 5 CFR, effective November 30, 1993, to exempt all confidential filers from the requirement to disclose the specific assets detailed in the first paragraph of this Supplementary Information discussion, as well as the income therefrom. The Office of Government Ethics will also make conforming modifications to the SF 450 (Executive Branch Personnel Confidential Financial Disclosure Report), subject to Office of Management and Budget paperwork approval and General Services Administration standard form approval. If an agency finds that disclosure of the information which this rule eliminates for confidential filers is nonetheless necessary for an effective confidential disclosure system within that agency because of its mission or other special circumstances, it may seek approval from OGE, pursuant to § 2634.901(b) of subpart I of 5 CFR, for a supplemental reporting requirement, to include any or all of these elements for its employees.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(d), as Director of the Office of Government Ethics, I find good cause for waiving the 30-day delayed effective date as to this final rule amendment. The Office of Government Ethics already published a notice of this amendment as a proposed rule at 58 FR 46096-46097 (September 1, 1993) and received highly favorable comments on it. As a result, OGE is making only one technical clarification of the amendment, as proposed, for consistency in adopting it as final. In addition, this amendment relieves the burden of confidential reporting as

to the items identified for removal. It is important that this relief be provided promptly and, if possible, in time for the January 1, 1994 cut-off for inclusion in the 1994 edition of OGE's part of volume 5 of the Code of Federal Regulations.

Executive Order 12866

In promulgating this final rule amendment to the executive branch-wide Government financial disclosure regulation, the Office of Government Ethics 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 that Executive order, as it is not deemed "significant."

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 amendment to the interim rule will not have a significant economic impact on a substantial number of small entities because it will affect only Federal executive branch agencies and employees.

Paperwork Reduction Act

The Paperwork Reduction Act (5 U.S.C. chapter 35) does not apply to this amendment to the interim rule because the amendment does not contain any additional information collection requirements which 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 19, 1993.

Stephen D. Potts,
Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the

Office of Government Ethics is amending part 2634 of subchapter B of Chapter XVI of title 5 of the Code of Federal Regulations 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.

Subpart I--Confidential Financial Disclosure Reports

2. Section 2634.907 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 2634.907 Report contents.

(a) * * *

(1) **Interests in property.** All the interests in property specified by § 2634.301, except:

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

(ii) Money market mutual funds and accounts;

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

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

(2) **Income.** All the income items specified by § 2634.302, except from:

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

institutions;

(ii) Money market mutual funds and accounts;

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

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

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