

Example 3. A financial institution has received an application for a loan from an official which indicates her present financial status. The official has filed a public financial disclosure statement with her agency. The financial institution cannot be given access to the disclosure form for purposes of verifying the information contained on the application.

(g)(1) Any public report filed with an agency or transmitted to the Director of the Office of Government Ethics under this section shall be retained by the agency, and by the Office of Government Ethics when it receives a copy. The report shall be made available to the public for a period of six years after receipt. After the six-year period, the report shall be destroyed unless needed in an ongoing investigation, except that in the case of an individual who filed the report pursuant to § 2634.201(c) as a nominee and was not subsequently confirmed by the Senate, or who filed the report pursuant to § 2634.201(d) as a candidate and was not subsequently elected, the report, unless needed in an ongoing investigation, shall be destroyed one year after the individual either is no longer under consideration by the Senate or is no longer a candidate for nomination or election to the Office of President or Vice President. See also the OGE/GOVT-1 Governmentwide executive branch Privacy Act system of records (available for inspection at the Office of Government Ethics), as well as any applicable agency system of records.

(2) For purposes of paragraph (g)(1) of this section, in the case of a reporting individual with respect to whom a trust has been certified under subpart D of this part, a copy of the qualified trust agreement, the list of assets initially placed in the trust, and all other publicly available documents relating to the trust shall be retained and made available to the public until the periods for retention of all other reports of the individual have lapsed under paragraph (g)(1) of this section.

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[57 FR 11821, Apr. 7, 1992; 57 FR 21854, May 22, 1992, as amended at 59 FR 34756, July 7, 1994]

§ 2634.604 Custody of and denial of public access to confidential reports.

(a) Any report filed with an agency under subpart I of this part shall be retained by the agency for a period of six years after receipt. After the six-year period, the report shall be destroyed unless needed in an ongoing investigation. See also the OGE/GOVT-2 Governmentwide executive branch Privacy Act system of records (available for inspection at the Office of Government Ethics), as well as any applicable agency system of records.

(b) The reports filed pursuant to subpart I of this part are confidential. No member of the public shall have access to such reports, except pursuant to the order of a Federal court or as otherwise provided under the Privacy Act. See 5 U.S.C. 552a and the OGE/GOVT-2 Privacy Act system of records (and any applicable agency system); 5 U.S.C. app. (Ethics in Government Act of 1978, section 107(a)); sections 201(d) and 502(b) of Executive Order 12674, as modified by Executive Order 12731; and § 2634.901(d).

[57 FR 11821, Apr. 7, 1992; 57 FR 21854, May 22, 1992]

§ 2634.605 Review of reports.

(a) *In general.* The designated agency ethics official shall normally serve as the reviewing official for reports submitted to his agency. That responsibility may be delegated, except in the case of certification of nominee reports required by paragraph (c) of this section. See also § 2634.105(q). He shall note on any report or supplemental report the date on which it is received. Except as indicated in paragraph (c) of this section, all reports shall be reviewed within 60 days after the date of filing. Reports reviewed by the Director of the Office of Government Ethics shall be reviewed within 60 days from the date on which they are received by that Office. Final certification in accordance with paragraph (b)(2) of this section may, of necessity, occur later, where additional information is being sought or remedial action is being taken under this section.

(b) *Responsibilities of reviewing officials*—(1) *Initial review.* The reviewing official may request an intermediate

review by the filer's supervisor. In the case of a filer who is detailed to another agency for more than 60 days during the reporting period, the reviewing official shall obtain an intermediate review by the agency where the filer served as a detailee. After obtaining any intermediate review or determining that such review is not required, the reviewing official shall examine the report to determine, to his satisfaction that:

(i) Each required item is completed; and

(ii) No interest or position disclosed on the form violates or appears to violate:

(A) Any applicable provision of chapter 11 of title 18, United States Code;

(B) The Act, as amended, and the implementing regulations;

(C) Executive Order 12674, as modified by Executive Order 12731, and the implementing regulations; or

(D) Any other agency-specific statute or regulation which governs the filer.

(2) *Signature by reviewing official.* If the reviewing official determines that the report meets the requirements of paragraph (b)(1) of this section, he shall certify it by signature and date. The reviewing official need not audit the report to ascertain whether the disclosures are correct. Disclosures shall be taken at "face value" as correct, unless there is a patent omission or ambiguity or the official has independent knowledge of matters outside the report. However, a report which is signed by a reviewing official certifies that the filer's agency has reviewed the report, and that the reviewing official has concluded that each required item has been completed and that on the basis of information contained in such report the filer is in compliance with applicable laws and regulations noted in paragraph (b)(1)(ii) of this section.

(3) *Requests for, and review based on, additional information.* If the reviewing official believes that additional information is required, he shall request that it be submitted by a specified date. This additional information shall be made a part of the report. If the reviewing official concludes, on the basis of the information disclosed in the report and any additional information submitted, that the report fulfills the

requirements of paragraph (b)(1) of this section, the reviewing official shall sign and date the report.

(4) *Compliance with applicable laws and regulations.* If the reviewing official concludes that information disclosed in the report may reveal a violation of applicable laws and regulations as specified in paragraph (b)(1)(ii) of this section, the official shall:

(i) Notify the filer of that conclusion;

(ii) Afford the filer a reasonable opportunity for an oral or written response; and

(iii) Determine, after considering any response, whether or not the filer is then in compliance with applicable laws and regulations specified in paragraph (b)(1)(ii) of this section. If the reviewing official concludes that the report does fulfill the requirements, he shall sign and date the report. If he determines that it does not, he shall:

(A) Notify the filer of the conclusion;

(B) Afford the filer an opportunity for personal consultation if practicable;

(C) Determine what remedial action under paragraph (b)(5) of this section should be taken to bring the report into compliance with the requirements of paragraph (b)(1)(ii) of this section; and

(D) Notify the filer in writing of the remedial action which is needed, and the date by which such action should be taken.

(5) *Remedial action.* (i) Except in unusual circumstances, which must be fully documented to the satisfaction of the reviewing official, remedial action shall be completed not later than three months from the date on which the filer received notice that the action is required.

(ii) Remedial action may include, as appropriate:

(A) Divestiture of a conflicting interest (see subpart J of this part);

(B) Resignation from a position with a non-Federal business or other entity;

(C) Restitution;

(D) Establishment of a qualified blind or diversified trust under the Act and subpart D of this part;

(E) Procurement of a waiver under 18 U.S.C. 208(b)(1) or (b)(3);

(F) Preparation of a written instrument of recusal (disqualification); or

(G) Voluntary request by the filer for transfer, reassignment, limitation of duties, or resignation.

(6) *Compliance or referral.* (i) If the filer complies with a written request for remedial action under paragraph (b)(4) of this section, the reviewing official shall indicate, in the comment section of the report, what remedial action has been taken. The official shall also sign and date the report.

(ii) If the filer does not comply by the designated date with the written request for remedial action transmitted under paragraph (b)(4) of this section, the reviewing official shall, in the case of a public filer under subpart B of this part, notify the head of the agency and the Office of Government Ethics, for appropriate action. Where the filer is in a position in the executive branch (other than in the uniformed services or the Foreign Service), appointment to which requires the advice and consent of the Senate, the Director of the Office of Government Ethics shall refer the matter to the President. In the case of the Postmaster General or Deputy Postmaster General, the Director of the Office of Government Ethics shall recommend to the Governors of the Board of Governors of the United States Postal Service the action to be taken. For confidential filers, the reviewing official will follow agency procedures.

(c) *Expedited procedure in the case of individuals appointed by the President and subject to confirmation by the Senate.* In the case of a report filed by an individual described in § 2634.201(c) who is nominated by the President for appointment to a position that requires the advice and consent of the Senate:

(1) The Executive Office of the President shall furnish the applicable financial disclosure report form to the nominee. It shall forward the completed report to the designated agency ethics official at the agency where the nominee is serving or will serve, or it may direct the nominee to file the completed report directly with the designated agency ethics official.

(2) The designated agency ethics official shall complete an accelerated review of the report, in accordance with the standards and procedures in paragraph (b) of this section. If that official

concludes that the report reveals no conflict of interest under applicable laws and regulations, the official shall:

(i) Attach to the report a description (when available) of the position to be filled by the nominee;

(ii) Personally certify the report by signature, and date the certification;

(iii) Write an opinion letter to the Director of the Office of Government Ethics, personally certifying that there is no unresolved conflict of interest under applicable laws and regulations, and discussing:

(A) Any actual or apparent conflicts of interest that were detected during the review process; and

(B) The resolution of those real or apparent conflicts, including any specific commitment, ethics agreement entered under the provisions of subpart H of this part, or other undertaking by the nominee to resolve any such conflicts. A copy of any commitment, agreement, or other undertaking which is reduced to writing shall be sent to the Director, in accordance with subpart H of this part; and

(iv) Deliver the letter and the report to the Director of the Office of Government Ethics, within three working days after the designated agency ethics official receives the report.

NOTE: The designated agency ethics official's certification responsibilities in § 2634.605(c) are nondelegable and must be accomplished by him personally, or by the agency's alternate designated agency ethics official, in his absence. See § 2638.203 of this chapter.

(3) The Director of the Office of Government Ethics shall review the report and the letter from the designated agency ethics official. If the Director is satisfied that no unresolved conflicts of interest exist, then the Director shall sign and date the report form. The Director shall then submit the report with a letter to the appropriate Senate committee, expressing the Director's opinion whether, on the basis of information contained in the report, the nominee has complied with all applicable conflict laws and regulations.

(4) If, in the case of any nominee or class of nominees, the expedited procedure specified in this paragraph cannot be completed within the time set forth in paragraph (c)(2)(iv) of this section, the designated agency ethics official

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shall inform the Director. When necessary and appropriate, the Director may modify the rule of that paragraph for a nominee or a class of nominees with respect to a particular department or agency.

§ 2634.606 Updated disclosure of advice-and-consent nominees.

(a) *General rule.* Each individual described in § 2634.201(c) who is nominated by the President for appointment to a position that requires advice and consent of the Senate, shall, at or before the commencement of the first Senate committee hearing to consider the nomination, submit to the committee an amendment to the report previously filed under § 2634.201(c) and transmit copies of the amendment to the designated agency ethics official referred to in § 2634.605(c)(1) of this subpart and to the Office of Government Ethics, which shall update, through the period ending no more than five days prior to the commencement of the hearing, the disclosure of information required with respect to receipt of:

(1) Outside earned income; and

(2) Honoraria, as defined in § 2634.105(i).

(b) *Additional certification.* In each case to which this section applies, the Director of the Office of Government Ethics shall, at the request of the committee considering the nomination, submit to the committee an opinion letter of the nature described in § 2634.605(c)(3) of this subpart concerning the updated disclosure. If the committee requests such a letter, the expedited procedure provided by § 2634.605(c) of this subpart shall govern review of the updated disclosure, which shall be deemed a report filed for purposes of that paragraph.

§ 2634.607 Advice and opinions.

To assist employees in avoiding situations in which they might violate applicable financial disclosure laws and regulations:

(a) The Director of the Office of Government Ethics shall render formal advisory opinions and informal advisory letters on generally applicable matters, or on important matters of first impression. See also subpart C of part 2638 of this chapter. The Director shall

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insure that these advisory opinions and letters are compiled, published, and made available to agency ethics officials and the public. Good faith reliance on such opinions shall provide a defense to any penalty or sanction provided by this part for fact situations indistinguishable in all material aspects from those in the opinion.

(b) Designated agency ethics officials will offer advice and guidance to employees as needed, to assist them in complying with the requirements of the Act and this part on financial disclosure.

Subpart G—Penalties

SOURCE: 57 FR 11824, Apr. 7, 1992, unless otherwise noted.

§ 2634.701 Failure to file or falsifying reports.

(a) *Referral of cases.* The head of each agency, each Secretary concerned, or the Director of the Office of Government Ethics, as appropriate, shall refer to the Attorney General the name of any individual when there is reasonable cause to believe that such individual has willfully failed to file a public report or information required on such report, or has willfully falsified any information (public or confidential) required to be reported under this part.

(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 \$10,000, as provided by section 104(a) of the Act, for any such violation occurring before September 29, 1999, as adjusted effective September 29, 1999 to \$11,000 for any such violation occurring on or after that date, in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.