

PART 2634 -- EXECUTIVE BRANCH FINANCIAL DISCLOSURE, QUALIFIED TRUSTS, AND CERTIFICATES OF DIVESTITURE

Subpart A -- General Provisions

Sec.

2634.101 Authority.

2634.102 Purpose and overview.

2634.103 Executive agency supplemental regulations.

2634.104 Policies.

2634.105 Definitions.

Subpart B -- Persons Required to File Public Financial Disclosure Reports

2634.201 General requirements, filing dates, and extensions.

2634.202 Public filer defined.

2634.203 Persons excluded by rule.

2634.204 Employment of sixty days or less.

2634.205 Special waiver of public reporting requirements.

Subpart C -- Contents of Reports

2634.301 Interests in property.

2634.302 Income.

2634.303 Purchases, sales, and exchanges.

2634.304 Gifts and reimbursements.

2634.305 Liabilities.

2634.306 Agreements and arrangements.

2634.307 Outside positions.

2634.308 Reporting periods and contents of public financial disclosure reports.

2634.309 Spouses and dependent children.

2634.310 Trusts, estates, and investment funds.

2634.311 Special rules.

Subpart D -- Qualified Trusts

2634.401 General considerations.

2634.402 Special notice for advice-and-consent nominees.

2634.403 Qualified blind trusts.

2634.404 Qualified diversified trusts.

2634.405 Certification of trusts.

2634.406 Independent trustees.

2634.407 Restrictions on fiduciaries and interested parties.

2634.408 Special filing requirements for qualified trusts.

Subpart E -- Revocation of Trust Certificates and Trustee Approvals

2634.501 Purpose and scope.

2634.502 Definitions.

2634.503 Determinations.

Subpart F -- Procedure

2634.601 Report forms.

2634.602 Filing of reports.

2634.603 Custody of and access to public reports.

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

2634.605 Review of reports.

2634.606 Updated disclosure of advice-and-consent nominees.

2634.607 Advice and opinions.

Subpart G -- Penalties

2634.701 Failure to file or falsifying reports.

2634.702 Breaches by trust fiduciaries and interested parties.

2634.703 Misuse of public reports.

2634.704 Late filing fee.

Subpart H -- Ethics Agreements

2634.801 Scope.

2634.802 Requirements.

2634.803 Notification of ethics agreements.

2634.804 Evidence of compliance.

2634.805 Retention.

Subpart I -- Confidential Financial Disclosure Reports

2634.901 Policies of confidential financial disclosure reporting.

2634.902 Transition to the new confidential financial disclosure reporting system.

2634.903 General requirements, filing dates, and extensions.

2634.904 Confidential filer defined.

2634.905 Exclusions from filing requirements.

2634.906 Review of confidential filer status.

2634.907 Report contents.

2634.908 Reporting periods.

2634.909 Procedures, penalties, and ethics agreements.

Subpart J -- Certificates of Divestiture

2634.1001 Nonrecognition for sales to comply with conflict of interest requirements; general considerations.

2634.1002 Issuance of Certificates of Divestiture.

2634.1003 Permitted property.

2634.1004 Special rule.

Appendix A to Part 2634 -- Certificate of Independence

Appendix B to Part 2634 -- Certificate of Compliance

Appendix C to Part 2634 -- Privacy Act and Paperwork Reduction Act Notices for Appendixes A and B

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 A -- General Provisions

Source: 57 FR 11804, Apr. 7, 1992, unless otherwise noted.

2634.101 Authority.

The regulation in this part is issued pursuant to the authority of title I of the Ethics in Government Act of 1978, (Pub. L. 95 - 521, as amended) ('`the Act'') as modified by the Ethics Reform Act of 1989 (Pub. L. 101 - 194, as amended by Pub. L. 101 - 280) ('`the Reform Act''); section 502 of the Reform Act; and section 201(d) of Executive Order 12674 of April 12, 1989, as modified by Executive Order 12731 of October 17, 1990.

[57 FR 11804, Apr. 7, 1992; 57 FR 21854, May 22, 1992]

2634.102 Purpose and overview.

(a) This regulation supplements and implements title I of the Act and section 201(d) of Executive Order 12674 (as modified by Executive Order 12731) with respect to executive branch employees, by setting forth more specifically the uniform procedures and requirements for financial disclosure and for the certification and use of qualified blind and diversified trusts. Additionally, this regulation implements section 502 of the Reform Act by establishing procedures for executive branch personnel to obtain Certificates of Divestiture, which permit deferred recognition of capital gain in certain instances.

(b) The rules in this part govern both the public and confidential (nonpublic) financial disclosure systems, except as otherwise indicated. Subpart I of this part contains special rules unique to the confidential disclosure system.

2634.103 Executive agency supplemental regulations.

(a) This regulation is intended to provide uniformity for executive branch financial disclosure systems. However, an agency may, subject to the prior written approval of the Office of Government Ethics, issue supplemental regulations implementing this part, if necessary to address special or unique agency circumstances. Such regulations:

(1) Shall be consistent with the Act, Executive Orders 12674 and 12731, and this part; and

(2) Shall impose no additional reporting requirements on either public or confidential filers, unless specifically authorized by the Office of Government Ethics as supplemental confidential reporting.

Note: Supplemental regulations will not be used to satisfy the separate requirement of 5 U.S.C. App. (Ethics in Government Act of 1978, Section 402(d)(1)) that each agency have established written procedures on how to collect, review, evaluate, and, where appropriate, make publicly available, financial disclosure statements filed with it.

(b) Requests for approval of supplemental regulations under paragraph (a) of this section shall be submitted in writing to the Office of Government Ethics, and shall set forth the agency's need for any proposed supplemental reporting requirements. See 2634.901 (b) and (c).

(c) Agencies should review all of their existing financial disclosure regulations to determine which of those regulations must be modified or revoked in order to conform with the requirements of this part. Any amendatory agency regulations shall be processed in accordance with paragraphs (a) and (b) of this section.

2634.104 Policies.

(a) Title I of the Act requires that high-level Federal officials disclose publicly their personal financial interests, to ensure confidence in the integrity of the Federal Government by demonstrating that they are able to carry out their duties without compromising the public trust. Title I also authorizes the Office of Government Ethics to establish a confidential (nonpublic) financial disclosure system for less senior executive branch personnel in certain designated positions, to facilitate internal agency conflict-of-interest review.

(b) Public and confidential financial disclosure serves to prevent conflicts of interest and to identify potential conflicts, by providing for a systematic review of the financial interests of both current and prospective officers and employees. These reports assist agencies in administering their ethics programs and providing counseling to employees.

(c) Financial disclosure reports are not net worth statements. Financial disclosure systems seek only the information that the President, Congress, or OGE as the supervising ethics office for the executive branch has deemed relevant to the administration and application of the criminal conflict of interest laws, other statutes on ethical conduct or financial interests, and Executive orders or regulations on standards of ethical conduct.

(d) Nothing in the Act or this part requiring reporting of information or the filing of any report shall be deemed to authorize receipt of income, honoraria, gifts, or reimbursements; holding of assets, liabilities, or positions; or involvement in transactions that are prohibited by law, Executive order or regulation.

(e) The provisions of title I of the Act and this part requiring the reporting of information shall supersede any general requirement under any other provision of law or regulation on the reporting of information required for purposes of preventing conflicts of interest or apparent conflicts of interest. However, the provisions of title I and this part shall not supersede the requirements of 5 U.S.C. 7342 (the Foreign Gifts and Decorations Act).

(f) This regulation is intended to be gender-neutral; therefore, use of the terms he, his, and him include she, hers, and her, and vice versa.

2634.105 Definitions.

For purposes of this part:

(a) Act means the Ethics in Government Act of 1978 (Pub. L. 95 - 521, as amended), as modified by the Ethics Reform Act of 1989 (Pub. L. 101 - 194, as amended).

(b) Agency means any executive agency as defined in 5 U.S.C. 105 (any executive department, Government corporation, or independent establishment in the executive branch), any military department as defined in 5 U.S.C. 102, and the Postal Service and the Postal Rate Commission. It does not include the General Accounting Office.

(c) Confidential filer. For the definition of ``confidential filer,`` see 2634.904.

(d) Dependent child means, when used with respect to any reporting individual, any individual who is a son, daughter, stepson, or stepdaughter and who:

(1) Is unmarried, under age 21, and living in the household of the reporting individual; or

(2) Is a dependent of the reporting individual within the meaning of section 152 of the Internal Revenue Code of 1986, 26 U.S.C. 152.

(e) Designated agency ethics official means the primary officer or employee who is designated by the head of an agency to administer the provisions of title I of the Act and this part within an agency, and in his absence the alternate who is designated by the head of the agency. The term also includes a delegate of such an official, unless otherwise indicated. See subpart B of part 2638 of this chapter on the appointment and additional responsibilities of a designated agency ethics official and alternate.

(f) Executive branch means any agency as defined in paragraph (b) of this section and any other entity or administrative unit in the executive branch.

(g) Filer is used interchangeably with ``reporting individual,' ' and may refer to a ``confidential filer'' as defined in paragraph (c) of this section, a ``public filer'' as defined in paragraph (m) of this section, or a nominee or candidate as described in 2634.201.

(h) Gift means a payment, advance, forbearance, rendering, or deposit of money, or anything of value, unless consideration of equal or greater value is received by the donor, but does not include:

(1) Bequests and other forms of inheritance;

(2) Suitable mementos of a function honoring the reporting individual;

(3) Food, lodging, transportation, and entertainment provided by a foreign government within a foreign country or by the United States Government, the District of Columbia, or a State or local government or political subdivision thereof;

(4) Food and beverages which are not consumed in connection with a gift of overnight lodging;

(5) Communications to the offices of a reporting individual, including subscriptions to newspapers and periodicals; or

(6) Consumable products provided by home-State businesses to the offices of the President or Vice President, if those products are intended for consumption by persons other than the President or Vice President.

(i) Honorarium means a payment of money or anything of value for an appearance, speech, or article. For guidance on the propriety of receiving honoraria, see part 2636 of this subchapter.

(j) Income means all income from whatever source derived. It includes but is not limited to the following items: earned income such as compensation for services, fees, commissions, salaries, wages and similar items; gross income derived from business (and net income if the individual elects to include it) ; gains derived from dealings in property including capital gains; interest; rents; royalties; dividends; annuities; income from the investment portion of life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; and income from an interest in an estate or trust. The term includes all income items, regardless of whether they are taxable for Federal income tax purposes, such as interest on municipal bonds. Generally, income means ``gross income'' as determined in conformity with the Internal Revenue Service principles at 26 CFR 1.61 - 1 through 1.61 - 15 and 1.61 - 21.

(k) Personal hospitality of any individual means hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of or on property or facilities owned by that individual or his family.

(l) Personal residence means any real property used exclusively as a private dwelling by the reporting individual or his spouse, which is not rented out during any portion of the reporting period. The term is not limited to one's domicile; there may be more than one personal residence, including a vacation home.

(m) Public filer. For the definition of ``public filer,`` see 2634.202.

(n) Reimbursement means any payment or other thing of value received by the reporting individual (other than gifts, as defined in paragraph (h) of this section) to cover travel-related expenses of such individual, other than those which are:

(1) Provided by the United States Government, the District of Columbia, or a State or local government or political subdivision thereof;

(2) Required to be reported by the reporting individual under 5 U.S.C. 7342 (the Foreign Gifts and Decorations Act); or

(3) Required to be reported under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434) (relating to reports of campaign contributions).

Note: Payments which are not made to the individual are not reimbursements for purposes of this part. Thus, payments made to the filer's employing agency to cover official travel-related expenses do not fit this definition of reimbursement. For example, payments being accepted by the agency pursuant to statutory authority such as 31 U.S.C. 1353, as implemented by 41 CFR part 304 - 1, are not considered reimbursements under this part 2634, because they are not payments received by the reporting individual. On the other hand, travel payments made to the employee by an outside entity for private travel are considered reimbursements for purposes of this part. Likewise, travel payments received from certain nonprofit entities under authority of 5 U.S.C. 4111 are considered reimbursements, even though for official travel, since that statute specifies that such payments must be made to the individual directly (with prior approval from the individual's agency).

(o) Relative means an individual who is related to the reporting individual, as father, mother, son, daughter, brother, sister, uncle, aunt, great uncle, great aunt, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather,

stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or who is the grandfather or grandmother of the spouse of the reporting individual, and shall be deemed to include the fiance or fiancée of the reporting individual.

(p) Reporting individual is used interchangeably with ``filer,'' and may refer to a ``confidential filer'' as defined in 2634.904, a ``public filer'' as defined in 2634.202, or a nominee or candidate as described in 2634.201.

(q) Reviewing official means the designated agency ethics official or his delegate, the Secretary concerned, the head of the agency, or the Director of the Office of Government Ethics.

(r) Secretary concerned has the meaning set forth in 10 U.S.C. 101(8) (relating to the Secretaries of the Army, Navy, Air Force, and for certain Coast Guard matters, the Secretary of Transportation); and, in addition, means:

(1) The Secretary of Commerce, in matters concerning the National Oceanic and Atmospheric Administration;

(2) The Secretary of Health and Human Services, with respect to matters concerning the Public Health Service; and

(3) The Secretary of State with respect to matters concerning the Foreign Service.

(s) Special Government employee has the meaning given to that term by the first sentence of 18 U.S.C. 202(a): an officer or employee of an agency who is retained, designated, appointed, or employed to perform temporary duties, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days, either on a full-time or intermittent basis.

(t) Value means a good faith estimate of the fair market value if the exact value is neither known nor easily obtainable by the reporting individual without undue hardship or expense. In the case of any interest in property, see the alternative valuation options in 2634.301(e). For gifts and reimbursements, see 2634.304(e).

[57 FR 11804, Apr. 7, 1992; 57 FR 21854, May 22, 1992]

Subpart B -- Persons Required to File Public Financial Disclosure Reports

Source: 57 FR 11806, Apr. 7, 1992, unless otherwise noted.

2634.201 General requirements, filing dates, and extensions.

(a) Incumbents. A public filer as defined in 2634.202 of this subpart who, during any calendar year, performs the duties of his position or office, as described in that section, for a period in excess of 60 days shall file a public financial

disclosure report containing the information prescribed in subpart C of this part, on or before May 15 of the succeeding year.

Example 1. An SES official commences performing the duties of his position on November 15. He will not be required to file an incumbent report for that calendar year.

Example 2. An employee, who is classified at GS - 15, is assigned to fill an SES position in an acting capacity, from October 15 through December 31. Having performed the duties of a covered position for more than 60 days during the calendar year, he will be required to file an incumbent report.

(b) New entrants. (1) Within 30 days of assuming a public filer position or office described in 2634.202 of this subpart, an individual shall file a public financial disclosure report containing the information prescribed in subpart C of this part.

(2) However, no report shall be required if the individual:

(i) Has, within 30 days prior to assuming such position, left another position or office for which a public financial disclosure report under the Act was required to be filed; or

(ii) Has already filed such a report as a nominee or candidate for the position.

Example: Y, an employee of the Treasury Department who has previously filed reports in accordance with the rules of this section, terminates employment with that Department on January 12, 1991, and begins employment with the Commerce Department on February 10, 1991, in a Senior Executive Service position. Y is not a new entrant since he has assumed a position described in 2634.202 of this subpart within thirty days of leaving another position so described. Accordingly, he need not file a new report with the Commerce Department.

Note: While Y did not have to file a new entrant report with the Commerce Department, that Department should request a copy of the last report which he filed with the Treasury Department, so that Commerce could determine whether or not there would be any conflicts or potential conflicts in connection with Y's new employment. Additionally, Y will have to file an incumbent report covering the 1990 calendar year, in accordance with paragraph (a) of this section, due not later than May 15, 1991, with Commerce, which should provide a copy to Treasury so that both may review it.

(c) Nominees. (1) At any time after a public announcement by the President or President-elect of his intention to nominate an individual to an executive branch position, appointment to

which requires the advice and consent of the Senate, such individual may, and in any event within five days after the transmittal of the nomination to the Senate shall, file a public financial disclosure report containing the information prescribed in subpart C of this part.

(2) This requirement shall not apply to any individual who is nominated to a position as:

- (i) An officer of the uniformed services; or
- (ii) A Foreign Service Officer.

Note: Although the statute, 5 U.S.C. app. (Ethics in Government Act of 1978, section 101(b)(1)), exempts uniformed service officers only if they are nominated for appointment to a grade or rank for which the pay grade is 0 - 6 or below, the Senate confirmation committees have adopted a practice of exempting all uniformed service officers, unless otherwise specified by the committee assigned.

(3) Section 2634.605(c) provides expedited procedures in the case of individuals described in paragraph (c)(1) of this section. Those individuals referred to in paragraph (c)(2) of this section as being exempt from filing nominee reports shall file new entrant reports, if required by paragraph (b) of this section.

(d) Candidates. A candidate (as defined in section 301 of the Federal Election Campaign Act of 1971, 2 U.S.C. 431) for nomination or election to the office of President or Vice President (other than an incumbent) shall file a public financial disclosure report containing the information prescribed in subpart C of this part, in accordance with the following:

(1) Within 30 days of becoming a candidate or on or before May 15 of the calendar year in which the individual becomes a candidate, whichever is later, but in no event later than 30 days before the election; and

(2) On or before May 15 of each successive year an individual continues to be a candidate. However, in any calendar year in which an individual continues to be a candidate but all elections relating to such candidacy were held in prior calendar years, the individual need not file a report unless he becomes a candidate for a vacancy during that year.

Example. P became a candidate for President in January 1991. P will be required to file a public financial disclosure report on or before May 15, 1991. If P had become a candidate on June 1, 1991, he would have been required to file a disclosure report within 30 days of that date.

(e) Termination of employment. (1) On or before the thirtieth day after termination of employment from a public filer

position or office described in 2634.202 of this subpart, an individual shall file a public financial disclosure report containing the information prescribed in subpart C of this part.

(2) However, if within 30 days of such termination the individual assumes employment in another position or office for which a public report under the Act is required to be filed, no report shall be required by the provisions of this paragraph. See the related Example in paragraph (b) of this section.

(f) Extensions. The reviewing official may, for good cause shown, grant to any public filer or class thereof an extension of time for filing which shall not exceed 45 days. The Director of the Office of Government Ethics, for good cause shown, may grant an additional extension of time which shall not exceed 45 days. The employee shall set forth specific reasons for such additional extension, which shall be forwarded to the Director through the reviewing official. The reviewing official shall also submit his comments on the request. (For extensions on confidential financial disclosure reports, see 2634.903(d).)

[57 FR 11806, Apr. 7, 1992; 57 FR 21854, May 22, 1992]

2634.202 Public filer defined.

The term public filer includes:

(a) The President;

(b) The Vice President;

(c) Each officer or employee in the executive branch, including a special Government employee as defined in 18 U.S.C. 202(a), whose position is classified above GS - 15 of the General Schedule prescribed by 5 U.S.C. 5332, or the rate of basic pay for which is fixed, other than under the General Schedule, at a rate equal to or greater than 120% of the minimum rate of basic pay for GS - 15 of the General Schedule; each member of a uniformed service whose pay grade is at or in excess of 0 - 7 under 37 U.S.C. 201; and each officer or employee in any other position determined by the Director of the Office of Government Ethics to be of equal classification;

(d) Each employee who is an administrative law judge appointed pursuant to 5 U.S.C. 3105;

(e) Any employee not otherwise described in paragraph (c) of this section who is in a position in the executive branch which is excepted from the competitive service by reason of being of a confidential or policy - making character, unless excluded by virtue of a determination under 2634.203 of this subpart;

(f) The Postmaster General, the Deputy Postmaster General, each Governor of the Board of Governors of the United States Postal Service and each officer or employee of the United States Postal Service or Postal Rate Commission whose basic rate of pay

is equal to or greater than 120% of the minimum rate of basic pay for GS - 15 of the General Schedule;

(g) The Director of the Office of Government Ethics and each agency's primary designated agency ethics official;

(h) Any civilian employee not otherwise described in paragraph (c) of this section who is employed in the Executive Office of the President (other than a special Government employee, as defined in 18 U.S.C. 202(a)) and holds a commission of appointment from the President; and

(i) Anyone whose employment in a position or office described in paragraphs (a) through (h) of this section has terminated, but who has not yet satisfied the filing requirements of 2634.201(e) of this subpart.

Note: References in this section and in 2634.203 and 2634.904 to position classifications have been adjusted to reflect elimination of General Schedule classifications GS - 16, GS - 17, and GS - 18 by the Federal Employees Pay Comparability Act of 1990, as incorporated in section 529 of Public Law 101 - 509.

2634.203 Persons excluded by rule.

(a) In general. Any individual or group of individuals described in 2634.202(e) of this subpart (relating to positions of a confidential or policy-making character) may be excluded by rule from the public reporting requirements of this subpart when the Director of the Office of Government Ethics determines, in his sole discretion, that such exclusion would not affect adversely the integrity of the Government or the public's confidence in the integrity of the Government.

(b) Exclusion determination. The determination required by paragraph (a) of this section has been made for the following group of individuals who, therefore, may be excluded from the public reporting requirements of this subpart, pursuant to the procedures in paragraph (c) of this section: Individuals in any position classified at GS - 15 of the General Schedule or below, or the rate of basic pay for which is less than 120% of the minimum rate of basic pay fixed for GS - 15, who have no policy-making role with respect to agency programs. Such individuals may include chauffeurs, private secretaries, stenographers, and others holding positions of a similar nature whose exclusion would be consistent with the basic criterion set forth in paragraph (a) of this section. See 2634.904(d) for possible coverage by confidential disclosure rules.

(c) Procedure. (1) The exclusion of any individual from reporting requirements pursuant to this section will be effective as of the time the employing agency files with the Office of Government Ethics a list and description of each position for which exclusion is sought, and the identity of any incumbent employees in those positions. Exclusions should be requested

prior to due dates for the reports which such employees would otherwise have to file. A subsequent list or description showing any additions to or deletions from the original submissions, or a statement that no changes have been made, must be filed annually with the Office of Government Ethics on or before May 15.

(2) If the Office of Government Ethics finds that one or more positions has been improperly excluded, it will advise the agency and set a date for the filing of the report.

[57 FR 11806, Apr. 7, 1992; 57 FR 21854, May 22, 1992]

2634.204 Employment of sixty days or less.

(a) In general. Any public filer or nominee who, as determined by the official specified in this paragraph, is not reasonably expected to perform the duties of an office or position described in 2634.201(c) or 2634.202 of this subpart for more than 60 days in any calendar year shall not be subject to the reporting requirements of 2634.201 (b), (c), or (e) of this subpart. This determination will be made by:

(1) The designated agency ethics official or Secretary concerned, in a case to which the provisions of 2634.201 (b) or (e) of this subpart (relating to new entrant and termination reports) would otherwise apply; or

(2) The Director of the Office of Government Ethics, in a case to which the provisions of 2634.201(c) of this subpart (relating to nominee reports) would otherwise apply.

(b) Alternative reporting. Any new entrant who is exempted from filing a public financial report under paragraph (a) of this section and who is a special Government employee is subject to confidential reporting under 2634.903(b). See 2634.904(b).

(c) Exception. If the public filer or nominee actually performs the duties of an office or position referred to in paragraph (a) of this section for more than 60 days in a calendar year, the public report otherwise required by:

(1) Section 2634.201 (b) or (c) of this subpart (relating to new entrant and nominee reports) shall be filed within 15 calendar days after the sixtieth day of duty; and

(2) Section 2634.201(e) of this subpart (relating to termination reports) shall be filed as provided in that paragraph.

2634.205 Special waiver of public reporting requirements.

(a) General rule. In unusual circumstances, the Director of the Office of Government Ethics may grant a request for a waiver of the public reporting requirements under this subpart for an individual who is reasonably expected to perform, or has

performed, the duties of an office or position for fewer than 130 days in a calendar year, but only if the Director determines that:

(1) The individual is a special Government employee, as defined in 18 U.S.C. 202(a), who performs temporary duties either on a full-time or intermittent basis;

(2) The individual is able to provide services specially needed by the Government;

(3) It is unlikely that the individual's outside employment or financial interests will create a conflict of interest; and

(4) Public financial disclosure by the individual is not necessary under the circumstances.

(b) Procedure. (1) Requests for waivers must be submitted to the Office of Government Ethics, via the requester's agency, within 10 days after an employee learns that he will hold a position which requires reporting and that he will serve in that position for more than 60 days in any calendar year, or upon serving in such a position for more than 60 days, whichever is earlier.

(2) The request shall consist of:

(i) A cover letter which identifies the individual and his position, states the approximate number of days in a calendar year which he expects to serve in that position, and requests a waiver of public reporting requirements under this section;

(ii) An enclosure which states the reasons for the individual's belief that the conditions of paragraphs (a) (1) through (4) of this section are met in the particular case; and

(iii) The report otherwise required by this subpart B, as a factual basis for the determination required by this section. The report shall bear the legend at the top of page 1:

``CONFIDENTIAL: WAIVER REQUEST PENDING PURSUANT TO 5 CFR 2634.205.''

(3) The agency in which the individual serves shall advise the Office of Government Ethics as to the justification for a waiver.

(4) In the event a waiver is granted, the report shall not be subject to the public disclosure requirements of 2634.603; however, the waiver request cover letter shall be subject to those requirements. In the event that a waiver is not granted, the confidential legend shall be removed from the report, and the report shall be subject to public disclosure; however, the waiver request cover letter shall not then be subject to public disclosure.

Subpart C -- Contents of Reports

Source: 57 FR 11808, Apr. 7, 1992, unless otherwise noted.

2634.301 Interests in property.

(a) In general. Each financial disclosure report filed pursuant to this part, whether public or confidential, shall include a brief description of any interest in property held by the filer at the end of the reporting period in a trade or business, or for investment or the production of income, having a fair market value in excess of \$1,000. In the case of public financial disclosure reports, the report shall designate the category of value of the property in accordance with paragraph (d) of this section. Each item of real and personal property shall be disclosed separately. Note that for Individual Retirement Accounts (IRA's), 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 2634.310 of this subpart.

(b) Types of property reportable. Subject to the exceptions in paragraph (c) of this section, examples of the types of property required to be reported include, but are not limited to:

- (1) Real estate;
- (2) Stocks, bonds, securities, and futures contracts;
- (3) Livestock owned for commercial purposes;
- (4) Commercial crops, either standing or held in storage;
- (5) Antiques or art held for resale or investment;
- (6) Beneficial interests in trusts and estates;
- (7) Deposits in banks or other financial institutions;
- (8) Pensions and annuities;
- (9) Mutual funds;
- (10) Accounts or other funds receivable; and
- (11) Capital accounts or other asset ownership in a business.

(c) Exceptions. The following property interests are exempt from the reporting requirements under paragraphs (a) and (b) of this section:

- (1) Any personal liability owed to the filer, spouse, or dependent child by a spouse, or by a parent, brother, sister, or child of the filer, spouse, or dependent child;

(2) Personal savings accounts (defined as any form of deposit in a bank, savings and loan association, credit union, or similar financial institution) in a single financial institution or holdings in a single money market mutual fund, aggregating \$5,000 or less in that institution or fund;

(3) A personal residence of the filer or spouse, as defined in 2634.105(1); and

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

(d) Valuation categories. The valuation categories specified for property items on public financial disclosure reports are as follows:

(1) Not more than \$15,000;

(2) Greater than \$15,000 but not more than \$50,000;

(3) Greater than \$50,000 but not more than \$100,000;

(4) Greater than \$100,000 but not more than \$250,000;

(5) Greater than \$250,000 but not more than \$500,000;

(6) Greater than \$500,000 but not more than \$1,000,000; and

(7) Greater than \$1,000,000.

(e) Valuation of interests in property. A good faith estimate of the fair market value of interests in property may be made in any case in which the exact value cannot be obtained without undue hardship or expense to the filer. Fair market value may also be determined by:

(1) The purchase price (in which case, the filer should indicate date of purchase);

(2) Recent appraisal;

(3) The assessed value for tax purposes (adjusted to reflect the market value of the property used for the assessment if the assessed value is computed at less than 100 percent of that market value);

(4) The year-end book value of nonpublicly traded stock, the year-end exchange value of corporate stock, or the face value of corporate bonds or comparable securities;

(5) The net worth of a business partnership;

(6) The equity value of an individually owned business; or

(7) Any other recognized indication of value (such as the last sale on a stock exchange).

Example 1. An official has a \$4,000 savings account in Bank A. His spouse has a \$2,500 certificate of deposit issued by Bank B and his dependent daughter has a \$200 savings account in Bank C. The official does not have to disclose the deposits, as the total value of the deposits in any one bank does not exceed \$5,000. Note, however, that the source, and if he is a public filer the amount, of interest income from any bank is required to be reported under 2634.302(b) of this subpart if it exceeds the reporting threshold for income. See 2634.309 of this subpart for disclosure coverage of spouses and dependent children.

Example 2. Public filer R has a collection of post-impressionist paintings which have been carefully selected over the years. From time to time, as new paintings have been acquired to add to the collection, R has made sales of both less desirable works from his collection and paintings of various schools which he acquired through inheritance. Under these circumstances, R must report the value of all the paintings he retains as interests in property pursuant to this section, as well as income from the sales of paintings pursuant to 2634.302(b) of this subpart. Recurrent sales from a collection indicate that the collection is being held for investment or the production of income.

Example 3. A reporting individual has investments which her broker holds as an IRA and invests in stocks, bonds, and mutual funds. Each such asset having a fair market value in excess of \$1,000 at the close of the reporting period must be separately listed, and also the value must be shown if she is a public filer. See 2634.311(c) of this subpart for attachment of brokerage statements in lieu of listing, in the event of extensive holdings. Note that for a mutual fund held in this IRA investment account, its underlying assets must also be separately detailed, unless it qualifies as an excepted investment fund, pursuant to 2634.310 of this subpart.

[57 FR 11808, Apr. 7, 1992; 57 FR 21854, May 22, 1992]

2634.302 Income.

(a) Noninvestment income. (1) Each financial disclosure report filed pursuant to this part, whether public or confidential, shall disclose the source, type, and in the case of public financial disclosure reports the actual amount or value, of earned or other noninvestment income in excess of \$200 from any one source which is received by the filer or has accrued to his benefit during the reporting period, including:

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

(ii) Retirement benefits (other than from United States Government employment, including the Thrift Savings Plan, or from Social Security);

(iii) Any honoraria, and the date services were provided, including payments made or to be made to charitable organizations on behalf of the filer in lieu of honoraria; and

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

Note: In calculating the amount of an honorarium, subtract any actual and necessary travel expenses incurred by the recipient and one relative. For example, if such expenses are paid or reimbursed by the honorarium source, they shall not be counted as part of the honorarium payment; if the expenses are paid or reimbursed by the individual receiving the honorarium, the amount of honorarium shall be reduced by the amount of such expenses.

Example 1. An official is a participant in a retirement plan of Coastal Airlines. Pursuant to such plan, the official and his spouse receive passage on some Coastal flights without charge, and they receive passage on other flights at a discounted fare. The difference between what Coastal charges members of the public generally and what the official and his spouse are charged for a particular flight is deemed income in-kind and must be disclosed by this reporting individual if it exceeds the \$200 threshold.

Example 2. An official serves on the board of directors at a bank, for which he receives a \$500 fee each calendar quarter. He also receives an annual fee of \$1,500 for service as trustee of a private trust. In both instances, such fees received or earned during the reporting period must be disclosed, and if he is a public filer the actual amount must be shown.

(2) In the case of payments in lieu of honoraria made on or after January 1, 1991, the individual shall also file a separate confidential report of charitable recipients, in accordance with part 2636 of this chapter.

(b) Investment income. Each financial disclosure report filed pursuant to this part, whether public or confidential, shall disclose:

(1) The source and type of investment income, characterized as dividends, rents, interest, capital gains, or income from qualified or excepted trusts or excepted investment funds (see 2634.310 of this subpart), which is received by the filer or accrued to his benefit during the reporting period, and which exceeds \$200 in amount or value from any one source. Examples include, but are not limited to, income derived from real estate, collectible items, stocks, bonds, notes, copyrights, pensions, mutual funds, the investment portion of life insurance contracts, loans, and

personal savings accounts (as defined in 2634.301(c)(2) of this subpart). Note that for entities with portfolio holdings, such as Individual Retirement Accounts (IRA's), brokerage accounts, trusts, and mutual or pension funds, each underlying source of income must be separately disclosed, unless the entity qualifies for special treatment under 2634.310 of this subpart. For public financial disclosure reports, the amount or value of income from each reported source shall also be disclosed and categorized in accordance with the following table:

- (i) Not more than \$1,000;
- (ii) Greater than \$1,000 but not more than \$2,500;
- (iii) Greater than \$2,500 but not more than \$5,000;
- (iv) Greater than \$5,000 but not more than \$15,000;
- (v) Greater than \$15,000 but not more than \$50,000;
- (vi) Greater than \$50,000 but not more than \$100,000;
- (vii) Greater than \$100,000 but not more than \$1,000,000; and
- (viii) Greater than \$1,000,000.