

Office of Government Ethics

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has reviewed the file and has determined that no conflict of interest exists. She then files the certification with the head of her auditing division at the agency. On the other hand, if she cannot execute the certification, she informs the head of her auditing division. In response, the division will either reassign the case or review the conflicting interest to determine whether a waiver would be appropriate. This alternate procedure, if approved by the Office of Government Ethics in writing, will suffice for a conflict of interest review. Therefore, the agency may exclude the auditor from filing a confidential disclosure report under this subpart.

[57 FR 11826, Apr. 7, 1992; 57 FR 21855, May 22, 1992; 62 FR 33976, June 24, 1997]

§ 2634.906 Review of confidential filer status.

The head of each agency, or an officer designated by the head of the agency for that purpose, shall review any complaint by an individual that his position has been improperly determined by the agency to be one which requires the submission of a confidential financial disclosure report pursuant to this subpart. A decision by the agency head or designee regarding the complaint shall be final and conclusive for all purposes, notwithstanding any other provision of law or regulation. This procedure is the sole and exclusive means of seeking review of an agency's decision to designate positions and the employees therein for filing confidential financial disclosure reports.

NOTE: The provision in this section for a final decision by the agency head or designee is intended to preclude administrative or negotiated grievances, arbitration procedures, and any other review or appeal, either within or outside the agency. This finality of the agency head's (or designee's) decision is necessary in order to maintain the prompt and orderly administration of the executive branch confidential financial disclosure system.

[57 FR 11826, Apr. 7, 1992, as amended at 63 FR 15274, Mar. 31, 1998]

§ 2634.907 Report contents.

(a) Other than the reports of confidential filers described in § 2634.904(c), each confidential financial disclosure report filed pursuant to § 2634.903 of this subpart shall include on the standard form prescribed by the Office of Government Ethics (see § 2634.601 of subpart F of this part) and in accordance

with instructions issued by the Office, a full and complete statement of information about himself, his spouse and his dependent children, required to be reported according to the provisions of subpart C of this part, (except for those provisions in subpart C requiring the reporting of the amounts or values of any item), with respect to the following:

(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;

(3) *Gifts and reimbursements.* All gifts and reimbursements specified by § 2634.304 (except that new entrants, as described in § 2634.903(b) of this subpart, need not report any information on gifts and reimbursements);

(4) *Liabilities.* All liabilities specified by § 2634.305;

(5) *Agreements and arrangements.* All agreements and arrangements specified by § 2634.306; and

(6) *Outside positions.* All outside positions specified by § 2634.307.

(b) For reports of confidential filers described in § 2634.904(c) of this subpart, each supplemental confidential financial disclosure report shall include only the supplemental information:

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

[57 FR 11826, Apr. 7, 1992, as amended at 58 FR 63024, Nov. 30, 1993; 63 FR 69992, Dec. 18, 1998]

§ 2634.908 Reporting periods.

(a) *Incumbents.* Each confidential financial disclosure report filed under § 2634.903(a) of this subpart shall include on the standard form prescribed by the Office of Government Ethics and in accordance with instructions issued by the Office, a full and complete statement of the information required to be reported according to the provisions of this subpart for the preceding twelve months ending September 30, 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) of this subpart shall include, on the standard form prescribed by the Office of Government Ethics and in accordance with instructions issued by the Office, a full and complete statement of the information required to be reported according to the provisions of this subpart for the preceding twelve months from 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

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and confidential reporting systems under this part.

Subpart J—Certificates of Divestiture

SOURCE: 69 FR 44894, July 28, 2004, unless otherwise noted.

§ 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:

Eligible person means:

(1) Any officer or employee of the executive branch of the Federal Government, except a person who is a special