

§ 2634.606

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

5 CFR Ch. XVI (1–1–08 Edition)

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.

(c) *Criminal action.* An individual may also be prosecuted under criminal statutes for supplying false information on any financial disclosure report.

(d) *Administrative remedies.* The President, the Vice President, the Director of the Office of Government Ethics, the Secretary concerned, the head of each agency, and the Office of Personnel Management may take appropriate personnel or other action in accordance with applicable law or regulation against any individual for failing to file public or confidential reports required by this part, for filing such reports late, or for falsifying or failing to report required information. This may include adverse action under 5 CFR part 752, if applicable.

[57 FR 11824, Apr. 7, 1992, as amended at 64 FR 47096, Aug. 30, 1999]

§ 2634.702 Breaches by trust fiduciaries and interested parties.

(a) The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully violates the provisions of § 2634.407 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 102(f)(6)(C)(i) of the Act, for 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.

(b) The Attorney General may bring a civil action in any appropriate United States district court against any individual who negligently violates the provisions of § 2634.407. The court in which the action is brought may assess against the individual a civil monetary penalty in any amount, not to exceed \$5,000, as provided by section 102(f)(6)(C)(ii) of the Act, for any such violation occurring before September 29, 1999, as adjusted effective September 29, 1999 to \$5,500 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.

[57 FR 11824, Apr. 7, 1992, as amended at 64 FR 47097, Aug. 30, 1999]

§ 2634.703 Misuse of public reports.

The Attorney General may bring a civil action against any person who obtains or uses a report filed under this part for any purpose prohibited by section 105(c)(1) of the Act, as incorporated in § 2634.603(f). The court in which the action is brought may assess against the person a civil monetary penalty in any amount, not to exceed \$10,000, as provided by section 105(c)(2) 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. This remedy shall be in addition to any other remedy available under statutory or common law.

[57 FR 11824, Apr. 7, 1992, as amended at 64 FR 47097, Aug. 30, 1999]

§ 2634.704 Late filing fee.

(a) *In general.* In accordance with section 104(d) of the Act, any reporting individual who is required to file a public financial disclosure report by the provisions of this part shall remit a late filing fee of \$200 to the appropriate agency, payable to the U.S. Treasury, if such report is filed more than thirty days after the later of:

(1) The date such report is required to be filed pursuant to the provisions of this part; or

(2) The last day of any filing extension period granted pursuant to § 2634.201(f).

(b) *Exceptions.* (1) The designated agency ethics official may waive the late filing fee if he determines that the delay in filing was caused by extraordinary circumstances, including the agency's failure to notify a new entrant, first-time annual filer, or termination filer of the requirement to file the public financial disclosure report, which made the delay reasonably necessary.