

any subcommittee or other subgroup of any advisory committee, but does not include the Advisory Commission on Intergovernmental Relations, the Commission on Government Procurement, or any committee composed wholly of full-time officers or employees of the Federal Government.

(d) *Extensions*—(1) *Agency extensions*. The agency reviewing official may, for good cause shown, grant to any employee or class of employees a filing extension or several extensions totaling not more than 90 days.

(2) *Certain service during period of national emergency*. In the case of an active duty military officer or enlisted member of the Armed Forces, a Reserve or National Guard member on active duty under orders issued pursuant to title 10 or title 32 of the United States Code, a commissioned officer of the Uniformed Services (as defined in 10 U.S.C. 101), or any other employee, who is deployed or sent to a combat zone or required to perform services away from his permanent duty station in support of the Armed Forces or other governmental entities following a declaration by the President of a national emergency, the agency reviewing official may grant such individual a filing extension to last no longer than 90 days after the last day of:

(i) The individual's service in the combat zone or away from his permanent duty station; or

(ii) The individual's hospitalization as a result of injury received or disease contracted while serving during the national emergency.

(3) *Agency procedures*. Each agency may prescribe procedures to provide for the implementation of the extensions provided for by this paragraph.

(e) *Termination reports not required*. An employee who is required to file a confidential financial disclosure report is not required to file a termination report upon leaving the filing position.

[57 FR 11826, Apr. 7, 1992, as amended at 58 FR 38912, July 21, 1993; 63 FR 69992, Dec. 18, 1998; 66 FR 55872, Nov. 5, 2001; 71 FR 28234, May 16, 2006]

§ 2634.904 Confidential filer defined.

(a) The term *confidential filer* includes:

(1) Each officer or employee in the executive branch whose position is classified at GS-15 or below 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 which is less than 120% of the minimum rate of basic pay for GS-15 of the General Schedule; each officer or employee of the United States Postal Service or Postal Rate Commission whose basic rate of pay is less 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 less than O-7 under 37 U.S.C. 201; and each officer or employee in any other position determined by the designated agency ethics official to be of equal classification; if:

(i) The agency concludes that the duties and responsibilities of the employee's position require that employee to participate personally and substantially (as defined in §§ 2635.402(b)(4) and 2640.103(a)(2) of this chapter) through decision or the exercise of significant judgment, and without substantial supervision and review, in taking a Government action regarding:

(A) Contracting or procurement;

(B) Administering or monitoring grants, subsidies, licenses, or other federally conferred financial or operational benefits;

(C) Regulating or auditing any non-Federal entity; or

(D) Other activities in which the final decision or action will have a direct and substantial economic effect on the interests of any non-Federal entity; or

(ii) The agency concludes that the duties and responsibilities of the employee's position require the employee to file such a report to avoid involvement in a real or apparent conflict of interest, and to carry out the purposes behind any statute, Executive order, rule, or regulation applicable to or administered by the employee. Positions which might be subject to a reporting requirement under this subparagraph include those with duties which involve investigating or prosecuting violations of criminal or civil law.

Example 1 to paragraph (a)(1). A contracting officer develops the requests for proposals for

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data processing equipment of significant value which is to be purchased by his agency. He works with substantial independence of action and exercises significant judgment in developing the requests. By engaging in this activity, he is participating personally and substantially in the contracting process. The contracting officer should be required to file a confidential financial disclosure report.

Example 2 to paragraph (a)(1). An agency environmental engineer inspects a manufacturing plant to ascertain whether the plant complies with permits to release a certain effluent into a nearby stream. Any violation of the permit standards may result in civil penalties for the plant, and in criminal penalties for the plant's management based upon any action which they took to create the violation. If the agency engineer determines that the plant does not meet the permit requirements, he can require the plant to terminate release of the effluent until the plant satisfies the permit standards. Because the engineer exercises substantial discretion in regulating the plant's activities, and because his final decisions will have a substantial economic effect on the plant's interests, the engineer should be required to file a confidential financial disclosure report.

Example 3 to paragraph (a)(1). A GS-13 employee at an independent grant making agency conducts the initial agency review of grant applications from nonprofit organizations and advises the Deputy Assistant Chairman for Grants and Awards about the merits of each application. Although the process of reviewing the grant applications entails significant judgment, the employee's analysis and recommendations are reviewed by the Deputy Assistant Chairman, and the Assistant Chairman, before the Chairman decides what grants to award. Because his work is subject to "substantial supervision and review," the employee is not required to file a confidential financial disclosure report unless the agency determines that filing is necessary under § 2634.904(a)(1)(ii).

Example 4 to paragraph (a)(1). As a senior investigator for a criminal law enforcement agency, an employee often leads investigations, with substantial independence, of suspected felonies. The investigator usually decides what information will be contained in the agency's report of the suspected misconduct. Because he participates personally and substantially through the exercise of significant judgment in investigating violations of criminal law, and because his work is not substantially supervised, the investigator should be required to file a confidential financial disclosure report.

Example 5 to paragraph (a)(1). An investigator is principally assigned as the field agent to investigate alleged violations of conflict of interest laws. The investigator works under the direct supervision of an agent-in-charge. The agent-in-charge reviews

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all of the investigator's work product and then uses those materials to prepare the agency's report which is submitted under his own name. Because of the degree of supervision involved in the investigator's duties, the investigator is not required to file a confidential disclosure report unless the agency determines that filing is necessary under § 2634.904(a)(1)(ii).

(2) Unless required to file public financial disclosure reports by subpart B of this part, all executive branch special Government employees.

Example 1 to paragraph (a)(2). A consultant to an agency periodically advises the agency regarding important foreign policy matters. The consultant must file a confidential report if he is retained as a special Government employee and not an independent contractor.

Example 2 to paragraph (a)(2). A special Government employee serving as a member of an advisory committee (who is not a private group representative) attends four committee meetings every year to provide advice to an agency about pharmaceutical matters. No compensation is received by the committee member, other than travel expenses. The advisory committee member must file a confidential disclosure report because she is a special Government employee.

(3) Each public filer referred to in § 2634.202 on public disclosure who is required by agency regulations and forms issued in accordance with §§ 2634.103 and 2634.601(b) to file a supplemental confidential financial disclosure report which contains information that is more extensive than the information required in the reporting individual's public financial disclosure report under this part.

(4) Any employee who, notwithstanding his exclusion from the public financial reporting requirements of this part by virtue of a determination under § 2634.203, is covered by the criteria of paragraph (a)(1) of this section.

(b) Any individual or class of individuals described in paragraph (a) of this section, including special Government employees unless otherwise noted, may be excluded from all or a portion of the confidential reporting requirements of this subpart, when the agency head or designee determines that the duties of a position make remote the possibility that the incumbent will be involved in a real or apparent conflict of interest.

Example 1 to paragraph (b). A special Government employee who is a draftsman prepares the drawings to be used by an agency in soliciting bids for construction work on a bridge. Because he is not involved in the contracting process associated with the construction, the likelihood that this action will create a conflict of interest is remote. As a result, the special Government employee is not required to file a confidential financial disclosure report.

Example 2 to paragraph (b). An agency has just hired a GS-5 Procurement Assistant who is responsible for typing and processing procurement documents, answering status inquiries from the public, performing office support duties such as filing and copying, and maintaining an on-line contract database. The Assistant is not involved in contracting and has no other actual procurement responsibilities. Thus, the possibility that the Assistant will be involved in a real or apparent conflict of interest is remote, and the Assistant is not required to file.

[71 FR 28234, May 16, 2006]

§ 2634.905 Use of alternative procedures.

(a) With the prior written approval of OGE, an agency may use an alternative procedure in lieu of filing the OGE Form 450 or OGE Optional Form 450-A. The alternative procedure may be an agency-specific form to be filed in place thereof. An agency must submit for approval a description of its proposed alternative procedure to OGE.

Example to paragraph (a). A nonsupervisory auditor at an agency is regularly assigned to cases involving possible loan improprieties by financial institutions. Prior to undertaking each enforcement review, the auditor reviews the file to determine if she, her spouse, minor or dependent child, or any general partner, organization in which she serves as an officer, director, trustee, employee, or general partner, or organization with which she is negotiating or has an agreement or an arrangement for future employment, or a close friend or relative is a subject of the investigation, or will be in any way affected by the investigation. Once she determines that there is no such relationship, she signs and dates a certification which verifies that she 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 alter-

native procedure, if approved by the Office of Government Ethics in writing, may be used in lieu of requiring the auditor to file a confidential financial disclosure report.

(b) An agency may use the OGE Optional Form 450-A (Confidential Certificate of No New Interests) in place of the OGE Form 450 if the agency head or designee determines it is adequate to prevent possible conflicts of interest. This form may be used by eligible filers, as described in this paragraph, who can certify, after reexamining their most recent previous OGE Form 450, that they (and their spouse and dependent children) have acquired no new interests required to be reported on OGE Form 450, and that they have not changed jobs (no new position description or other significant change in duties) at their agency since filing that previous report. OGE Optional Form 450-A will be used under the following conditions:

(1) OGE Optional Form 450-A will only be made available for use by current employees who are not special Government employees.

(2) OGE Optional Form 450-A will only be used by incumbent filers, as described in § 2634.903(a) of this subpart, in lieu of filing an annual OGE Form 450, who have a previous OGE Form 450 on file with their agency for the position they currently hold. Its due date is as specified in § 2634.903(a), unless extended under § 2634.903(d).

(3) As indicated on the OGE Optional Form 450-A, eligible filers may use OGE Optional Form 450-A, if applicable to their circumstances, or they may file a new OGE Form 450, at their option. Therefore, a blank OGE Form 450 and its accompanying written instructions should ordinarily be distributed to them, along with the blank OGE Optional Form 450-A. The instructions to OGE Form 450 will also provide guidance on what is meant by "reportable" interests on OGE Optional Form 450-A. In lieu of distributing a blank OGE Form 450 and its instructions, agencies may choose to develop separate guidance on the meaning of "reportable" interests, or they may refer certificate users to guidance contained in any available source, such as the Office of Government Ethics' Web site on the Internet or agency-approved electronic