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OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2634

RIN 3209-AA00

Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture

AGENCY: Office of Government Ethics (OGE).

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Government Ethics is amending its interim rule on executive branch financial disclosure. The amendments contain procedural clarifications for filing public and confidential financial disclosure reports. With regard to public reports, OGE is eliminating the requirement that agencies provide an annual update to the list of nonpolicy-making positions excluded from filing. Additionally, the amendments clarify what constitutes the date of filing for purposes of determining when a public report is subject to a late filing fee. For confidential report filers, the amendments codify earlier informal OGE guidance to agencies on two matters: the exclusion of special Government employees (SGEs) from the requirement for incumbent reports, and the exclusion of employees (other than SGEs) from the requirement for new entrant reports if they are not expected to serve for more than 60 days in a position otherwise designated for filing. Finally, the amendments supply the form number for the standard confidential disclosure form, which was not known when the interim rule was first published.

DATES: Interim rule amendments effective July 21, 1993. Public comments on these amendments are welcome and must be received on or before September 20, 1993.

ADDRESSES: Comments should be sent to the Office of Government Ethics, suite 500, 1201 New York Avenue NW., Washington, DC 20005-3917, Attention: G. Sid Smith.

FOR FURTHER INFORMATION CONTACT: G. Sid Smith, Office of Government Ethics, telephone (202) 523-5757, FAX (202) 523-6325.

SUPPLEMENTARY INFORMATION: This document amends an interim rule which revised both the public and confidential financial disclosure systems for executive branch employees, pursuant to title I of the Ethics in Government Act of 1978 (Pub. L. 95-521, as amended by, *inter alia*, the Ethics Reform Act of 1989, Pub. L. 101-194), and Executive Order 12674 of April 12, 1989 (as amended). That interim rule was published on April 7, 1992 (57 FR 11800-11830) and corrected on May 22 and December 31, 1992 at 57 FR 21854-21855 and 57 FR 62605, respectively.

Executive branch employees in certain positions of a confidential or policy-making character which are excepted from the competitive service are required to file public financial disclosure reports, unless excluded under regulatory guidelines. The interim rule which was published in April 1992 requires agencies to provide OGE with a list of such positions being excluded prior to the due dates for reports which such employees would otherwise have to file. That interim rule also required agencies to provide an annual update to that list, reflecting deletions, additions, or an indication of no change. It has been determined that the annual update is unnecessary and redundant. Therefore, that requirement is being eliminated by an amendment to § 2634.203 of subpart B of the interim rule.

For filers of public financial disclosure reports, the interim rule of April 1992 implemented a statutory late filing fee for reports filed more than thirty-days after the normal due date, including any authorized extensions. Questions have arisen as to what should constitute the date of filing for purposes of determining whether a report is filed more than thirty days late. After examining the nature of this thirty-day period, OGE concluded that the date of filing for purposes of determining whether a public report is more than thirty days late should be the date of

receipt by the agency (which the rule already requires agencies to note on reports when received), not the filer's submission date. Accordingly, an amendment to § 2634.704 of subpart G of the interim rule specifies that the date of receipt by the agency will constitute the date of filing for purposes of determining whether a report is filed more than thirty days late and therefore subject to a late filing fee. The thirty-day period was not intended to be an extension of the due date, but merely a grace period for purposes of imposing the late filing fee. While it would be reasonable for agencies to consider the filer's submission date and to allow for any attendant administrative delays in determining whether a report meets normal due dates, it would not be reasonable to leave similarly indeterminate the thirty-day grace period for purposes of imposing a late filing fee. That grace period is itself full allowance for administrative delays. To extend the thirty-day grace period for additional administrative delays inappropriately suggests to filers that they may view the thirty days as a due date extension. This has resulted in submission delays by some of those subject to public disclosure until the end of the grace period.

For filers of confidential financial disclosure reports, the April 1992 interim rule included SGEs among those required to file annual incumbent reports if they serve more than sixty days. That was not intended, since SGEs are also required to file new entrant reports upon each annual appointment or reappointment. Therefore, an amendment to § 2634.903 of subpart I of the interim rule eliminates the requirement for SGEs to file incumbent confidential disclosure reports.

The April 1992 interim rule included as new entrant confidential disclosure filers all employees who serve in positions designated for filing, regardless of the number of days it was anticipated that they would be performing duties in the position. That was not intended for employees (other than SGEs) who are not anticipated to perform duties for more than 60 days in a designated filing position, such as employees who serve temporarily in a position in an acting capacity. Therefore, another amendment to § 2634.903 of subpart I of the interim rule eliminates the requirement for

employees (other than SGEs) to file new entrant reports when the agency ethics official determines that they are not anticipated to perform duties for more than 60 days in a confidential filer position.

Finally, at the time the interim rule was published, the form number for the standard confidential disclosure form was not yet known. Therefore, an amendment to § 2634.601 of subpart F of the interim rule supplies that number, SF 450.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b) and (d), as Director of the Office of Government Ethics, I find good cause for waiving the general notice of proposed rulemaking and 30-day delay in effectiveness as to these revisions. The notice and delayed effective date are being waived because these amendments to an interim rule concern minor procedural clarifications which conform with current practice. The Office of Government Ethics will review any comments received during the comment period and consider any modifications which appear warranted prior to issuing a final rule.

Executive Order 12291

As Director of the Office of Government Ethics, I have determined that these amendments do not constitute a major rule as defined under section 1(b) of Executive Order 12291.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that these amendments to the interim rule will not have a significant economic impact on a substantial number of small entities because they will affect only Federal executive branch agencies and employees.

Paperwork Reduction Act

The Paperwork Reduction Act (5 U.S.C. chapter 35) does not apply to these amendments to the interim rule because they do not contain any additional information collection requirements which require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2634

Administrative practice and procedure, Certificates of divestiture, Conflict of interests, Financial disclosure, Government employees, Penalties, Privacy, Reporting and recordkeeping requirements, and Trusts and trustees.

Approved: April 26, 1993.
 Stephen D. Potts,
 Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending part 2634 of subchapter B of Chapter XVI of title 5 of the Code of Federal Regulations as follows:

PART 2634—[AMENDED]

1. The authority citation for part 2634 continues to read as follows:

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 B—Persons Required To File Public Financial Disclosure Reports

2. Section 2634.203 is amended by revising paragraph (c)(1) to read as follows:

§ 2634.203 Persons excluded by rule.

(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.

Subpart F—Procedure

3. Section 2634.601 is amended by revising paragraph (a) to read as follows:

§ 2634.601 Report Forms.

(a) The Office of Government Ethics provides, through the Federal Supply Service of the General Services Administration, two standard forms for financial disclosure reporting: the SF 278 (Public Financial Disclosure Report) for reporting the information described in subpart B of this part on executive branch public disclosure; and the SF 450 (Confidential Financial Disclosure Report) for reporting the information described in subpart I of this part on executive branch confidential disclosure.

Subpart G—Penalties

4. Section 2634.704 is amended by adding a new paragraph (f) to read as follows:

§ 2634.704 Late filing fee.

(f) Date of filing. The date of filing for purposes of determining whether a public financial disclosure report is filed more than thirty days late under this section will be the date of receipt by the agency, which should be noted on the report in accordance with § 2634.605(a). The thirty-day grace period on imposing a late filing fee is adequate allowance for administrative delays in the receipt of reports by an agency.

Subpart I—Confidential Financial Disclosure Reports

- 5. Section 2634.903 is amended as set forth below:
 - A. Revising paragraph (a);
 - B. Republishing the introductory text of paragraph (b)(2);
 - C. Revising the last sentence of paragraph (b)(2)(ii); and
 - D. Adding a new paragraph (b)(2)(iii).
 The revisions, republication and addition read as follows:

§ 2634.903 General requirements, filing dates, and extensions.

(a) Incumbents. A confidential filer who holds a position or office described in § 2634.904 of this subpart and who performs the duties of that position or office for a period in excess of 60 days during the twelve-month period ending September 30 (including more than 60 days in an acting capacity) shall file a confidential report as an incumbent, containing the information prescribed in §§ 2634.907 and 2634.908 of this subpart on or before October 31 immediately following that period. No incumbent reports are required of special Government employees described in § 2634.904(b) of this subpart, but they must file new entrant reports under § 2634.903(b) of this subpart upon each appointment or reappointment. For confidential filers under § 2634.904(c) of this subpart, consult agency supplemental regulations.

(b) New entrants. * * *
 (2) However, no report shall be required if the individual:

- (ii) * * * The agency may request that the individual update such a report if more than six months has expired since it was filed; or
- (iii) Is not reasonably expected to perform the duties of an office or position referred to in § 2634.904 of this subpart for more than 60 days in the following twelve-month period, as determined by the designated agency ethics official or delegate. That may

occur most commonly in the case of an employee who temporarily serves in an acting capacity in a position described by § 2634.904(a) of this subpart. If the individual actually performs the duties of such position for more than 60 days in the twelve-month period, then a confidential financial disclosure report must be filed within 15 calendar days after the sixtieth day of such service in the position. Paragraph (b)(2)(iii) of § 2634.903 does not apply to new entrants filing as special Government employees under § 2634.904(b) of this subpart.

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[FR Doc. 93-17330 Filed 7-20-93; 8:45 am]

BILLING CODE 6345-01-U

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1924, 1930, 1944, 1951, 1955 and 1965

RIN 0575-AA51

Rural Rental Housing Displacement Prevention

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its rural rental housing (RRH) and labor housing (LH) regulations which address the prepayment of loans, incentives and other actions taken by the Federal Government to avert prepayment. The action is being taken to alleviate problems caused by the displacement of tenants from projects after the FmHA loans are prepaid. This rulemaking action incorporates comments to those portions of the interim rule and make the changes required by the Cranston-Gonzalez Act and the Housing and Community Development Act of 1992.

EFFECTIVE DATE: August 20, 1993.

FOR FURTHER INFORMATION CONTACT: Patrick Sheridan, Branch Chief, Multiple Housing Servicing and Property Management Division, FmHA, room 5331, South Agriculture Building, Washington, DC 20250, telephone (202) 720-1599.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291 and has been determined to be "nonmajor." It will not result in an annual effect on

the economy of \$100 million or more, and there will be no major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. There will also be no significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Intergovernmental Review

This program/activity is listed in the Catalog of Federal Domestic Assistance under Nos. 10.427, Rural Rental Assistance Payments; 10.415, Rural Renting Housing Loans; and 10.405, Farm Labor Housing Loans and Grants. For the reasons set forth in the final rule related to Notice 7 CFR part 3015, subpart V, this program/activity is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354), the Administrator, FmHA, has determined that this action will not have a significant economic impact on a substantial number of small entities, because only one to two hundred borrowers will likely attempt to prepay annually, and FmHA anticipates funding approximately 50-75 applications nationwide each year.

Civil Justice Reform

The proposed regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2(a) and 2(b)(2) of that Order. Provisions within this part which are inconsistent with state law are controlling. All administrative remedies pursuant to 7 CFR part 1900, subpart B must be exhausted prior to filing suit.

General Information

Background and Statutory Authority

The Housing and Community Development Amendments to the Housing Act of 1949, signed into law in 1979, and the Housing and Community Development Act of 1980, provided that FmHA section 514 and section 515 multi-family housing borrowers who received loans prior to December 21, 1979, and who have not subsequently become subject to restrictions due to specified servicing actions, may prepay their loans and remove their housing from the low- and moderate-income market with minimal restrictions. Those who received loans on or after December 21, 1979, are eligible to prepay only after their restrictive-use requirements expire in either 15 or 20 years from the date of the loan or the servicing action. In some areas of the country, the prepayment of FmHA multi-family loans threatened to lead to acute housing shortages for low- and moderate-income people and severe problems for displaced tenants.

To alleviate these problems, FmHA issued revised regulations on March 19, 1987 (52 FR 8606), to ease the burden of displaced tenants. Several legislative mandates for moratoriums on prepayment had been enacted until legislative action was taken with the passage of the Housing and Community Development Act of 1987 (HCDA 1987). The Act included provisions addressing "Rural Rental Housing Displacement Prevention." As part of the law, Congress mandated that FmHA issue regulations to carry out the legislation within 60 days of enactment. The mandate was addressed by an interim rule with request for comments, published on April 22, 1988 (53 FR 13244). An emergency change to the interim rule due to an initial misinterpretation of the law was published February 13, 1990 (55 FR 4985). Comments to the interim rule were extensive. As a result, a new proposed rule with request for comment was published on July 20, 1990 (55 FR 29601). The new proposed rule addressed comments received on the interim rule, provided additional guidance to field offices on implementation of the law, and made changes in additional regulations which the law impacted and/or in which changes needed to be made to be consistent with these provisions.

In addition, Congress passed the Department of Housing and Urban Development Reform Act of 1989 (H.R. 1), which included, in addition to other actions pertaining to FmHA, the provision that no rural rental housing