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OFFICE OF GOVERNMENT ETHICS

5 CFR Parts 2634 and 2636

RIN 3209-AA38

Civil Monetary Penalties Inflation Adjustments for Ethics in Government Act Violations

AGENCY: Office of Government Ethics.

ACTION: Final rule.

SUMMARY: In accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, the U.S. Office of Government Ethics (OGE) is issuing this final rule to make the 2018 annual adjustments to the Ethics in Government Act civil monetary penalties.

DATES: *Effective date:* This final rule is effective [insert date of publication in the Federal Register]. *Applicability date:* This final rule is applicable January 15, 2018.

FOR FURTHER INFORMATION CONTACT: Kimberly L. Sikora Panza, Associate Counsel, General Counsel and Legal Policy Division, Office of Government Ethics, Telephone: 202-482-9300; TTY: 800-877-8339; FAX: 202-482-9237.

SUPPLEMENTARY INFORMATION:

I. Background

In November 2015, Congress passed the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Public Law 114-74) (the 2015 Act), which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 101-410). The 2015 Act required Federal agencies to make inflationary adjustments to the civil monetary penalties (CMPs) within their jurisdiction with an initial “catch-up” adjustment through an interim final rule effective no later than August 1, 2016, and further mandates that Federal agencies make subsequent annual inflationary adjustments of their CMPs, to be effective no later than January 15 of each year.

The Ethics in Government Act of 1978 as amended, 5 U.S.C. appendix (the Ethics Act) provides for five CMPs.¹ Specifically, the Ethics Act provides for penalties that can be assessed by an appropriate United States district court, based upon a civil action brought by the Department of Justice, for the following five types of violations:

¹ OGE has previously determined, after consultation with the Department of Justice, that the \$200 late filing fee for public financial disclosure reports that are more than 30 days overdue (see section 104(d) of the Ethics Act, 5 U.S.C. appendix, 104(d), and 5 CFR 2634.704 of OGE’s regulations thereunder) is not a CMP as defined under the Federal Civil Penalties Inflation Adjustment Act, as amended. Therefore, that fee is not being adjusted in this rulemaking (nor was it adjusted by OGE in previous CMP rulemakings), and will remain at its current amount of \$200.

(1) knowing and willful failure to file, report required information on, or falsification of a public financial disclosure report, 5 U.S.C. appendix 104(a), 5 CFR 2634.701(b);

(2) knowing and willful breach of a qualified trust by trustees and interested parties, 5 U.S.C. appendix 102(f)(6)(C)(i), 5 CFR 2634.702(a);

(3) negligent breach of a qualified trust by trustees and interested parties, 5 U.S.C. appendix 102(f)(6)(C)(ii), 5 CFR 2634.702(b);

(4) misuse of a public report, 5 U.S.C. appendix 105(c)(2), 5 CFR 2634.703; and

(5) violation of outside employment/activities provisions, 5 U.S.C. appendix 504(a), 5 CFR 2636.104(a).

In compliance with the 2015 Act and guidance issued by the Office of Management and Budget (OMB), on June 28, 2016, the U.S. Office of Government Ethics (OGE) published in the FEDERAL REGISTER an interim final rule, 81 FR 41787 (June 28, 2016), that made the “catch up” inflationary adjustments to the five Ethics Act CMPs. On January 24, 2017, OGE published in the FEDERAL REGISTER a rule adopting as final that interim regulation, and also making the 2017 annual inflationary adjustments to the Ethics Act CMPs. See 82 FR 8131 (Jan. 24, 2017).

This rulemaking effectuates the 2018 annual inflationary adjustments to the Ethics Act CMPs. In accordance with the 2015 Act, these adjustments are based on the percent change between the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October preceding the date of the adjustment, and the prior year’s October CPI-U. Pursuant to OMB guidance, the cost-of-living adjustment multiplier for 2018, based

on the CPI-U for October 2017, not seasonally adjusted, is 1.02041. To calculate the 2018 annual adjustment, agencies must multiply the most recent penalty by the 1.02041 multiplier, and round to the nearest dollar.

Applying the formula established by the 2015 Act and OMB guidance, OGE is amending the Ethics Act CMPs through this rulemaking to:

(1) Increase the three penalties reflected in 5 CFR 2634.702(a), 5 CFR 2634.703, and 5 CFR 2636.104(a) – which were previously adjusted to a maximum of \$19,246 – to a maximum of \$19,639;

(2) Increase the penalty reflected in 5 CFR 2634.702(b) – which was previously adjusted to a maximum of \$9,623 – to a maximum of \$9,819; and

(3) Increase the penalty reflected in 5 CFR 2634.701(b) – which was previously adjusted to a maximum of \$57,847 – to a maximum of \$59,028.

These adjusted penalty amounts will apply to penalties assessed after January 15, 2018 (the applicability date of this final rule) whose associated violations occurred after November 2, 2015.

OGE will continue to make future annual inflationary adjustments to the Ethics Act CMPs in accordance with the statutory formula set forth in the 2015 Act and OMB guidance.

II. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b), as Acting Director of the Office of Government Ethics, I find that good cause exists for waiving the general notice of proposed rulemaking and public comment procedures as to these technical amendments. The notice and comment procedures are being waived because these amendments, which concern matters of agency organization, procedure and practice, are being adopted in accordance with statutorily mandated inflation adjustment procedures of the 2015 Act, which specifies that agencies shall adjust civil monetary penalties notwithstanding Section 553 of the Administrative Procedure Act. It is also in the public interest that the adjusted rates for civil monetary penalties under the Ethics in Government Act become effective as soon as possible in order to maintain their deterrent effect.

Regulatory Flexibility Act

As the Acting Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this final rule would not have a significant economic impact on a substantial number of small entities because it primarily affects current Federal executive branch employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain information collection requirements that require approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 5, subchapter II), this rule would not significantly or uniquely affect small governments and

will not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (as adjusted for inflation) in any one year.

Executive Order 13563 and Executive Order 12866

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select the regulatory approaches that maximize net benefits (including economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget has determined that rulemakings such as this implementing annual inflationary adjustments under the 2015 Act are not significant regulatory actions under Executive Order 12866.

Executive Order 12988

As Acting Director of the Office of Government Ethics, I have reviewed this rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

List of Subjects

5 CFR Part 2634

Certificates of divestiture, Conflict of interests, Government employees, Penalties, Reporting and recordkeeping requirements, Trusts and trustees.

5 CFR Part 2636

Conflict of interests, Government employees, Penalties.

Dated: January 11, 2018.

David J. Apol,

Acting Director, U.S. Office of Government Ethics.

For the reasons set forth in the preamble, the U.S. Office of Government Ethics is amending 5 CFR parts 2634 and 2636 as follows:

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

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; Pub. L. 101-410, 104 Stat. 890, 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Sec. 31001, Pub. L. 104-134, 110 Stat. 1321 (Debt Collection Improvement Act of 1996) and Sec. 701, Pub. L. 114-74 (Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015); 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.

2. Section 2634.701 is amended by revising paragraph (b) to read as follows:

§ 2634.701 Failure to file or falsifying reports.

* * * * *

(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 the amounts set forth below, as provided by section 104(a) of the Act, as amended, and as adjusted in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended:

Date of Violation	Penalty
Violation occurring between Sept. 14, 2007 and Nov. 2, 2015	\$50,000
Violation occurring after Nov. 2, 2015	\$59,028

* * * * *

3. Section 2634.702 is revised to read as follows:

§ 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 § 2634.408(d)(1) or (e)(1). The court in which the action is brought may assess against the individual a civil monetary penalty in any amount, not to exceed the amounts set forth below, as provided by section 102(f)(6)(C)(i) of the Act and as adjusted in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended:

Date of Violation	Penalty
Violation occurring between Sept. 29, 1999 and Nov. 2, 2015	\$11,000
Violation occurring after Nov. 2, 2015	\$19,639

(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 § 2634.408(d)(1) or (e)(1). The court in which the action is brought may assess against the individual a civil monetary penalty in any amount, not to exceed the amounts set forth below, as provided by section 102(f)(6)(C)(ii) of the Act and as adjusted in accordance with the inflation adjustment procedures of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended:

Date of Violation	Penalty
Violation occurring between Sept. 29, 1999 and Nov. 2, 2015	\$5,500
Violation occurring after Nov. 2, 2015	\$9,819

4. Section 2634.703 is revised to read as follows:

§ 2634.703 Misuse of public reports.

(a) 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 the amounts set forth below, as provided by section 105(c)(2) of the Act and as adjusted in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended:

Date of Violation	Penalty
Violation occurring between Sept. 29, 1999 and Nov. 2, 2015	\$11,000
Violation occurring after Nov. 2, 2015	\$19,639

(b) This remedy shall be in addition to any other remedy available under statutory or common law.

**PART 2636 – LIMITATIONS ON OUTSIDE EARNED INCOME,
EMPLOYMENT AND AFFILIATIONS FOR CERTAIN NONCAREER
EMPLOYEES**

5. The authority citation for part 2636 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); Pub. L. 101-410, 104 Stat. 890, 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Sec. 31001, Pub. L. 104-134, 110 Stat. 1321 (Debt Collection Improvement Act of 1996) and Sec. 701, Pub. L. 114-74 (Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015); 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.

6. Section 2636.104 is amended by revising paragraph (a) to read as follows:

§ 2636.104 Civil, disciplinary and other action.

(a) Civil action. Except when the employee engages in conduct in good faith reliance upon an advisory opinion issued under § 2636.103, an employee who engages in any conduct in violation of the prohibitions, limitations and restrictions contained in this part may be subject to civil action under 5 U.S.C. app. 504(a) and a civil monetary penalty of not more than the amounts set forth below, as adjusted in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, or the amount of the compensation the individual received for the prohibited conduct, whichever is greater.

Date of Violation	Penalty
Violation occurring between Sept. 29, 1999 and Nov. 2, 2015	\$11,000
Violation occurring after Nov. 2, 2015	\$19,639

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