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OFFICE OF GOVERNMENT ETHICS

5 CFR Parts 2634 and 2635

RIN 3209-AA52

Executive Branch Financial Disclosure and Standards of Ethical Conduct Regulations

AGENCY: Office of Government Ethics.

ACTION: Final rule; technical amendments.

SUMMARY: The U.S. Office of Government Ethics (OGE) is updating its executive branch regulation on financial disclosure to reflect the retroactive statutory increase of the reporting thresholds for gifts and travel reimbursements. OGE is also updating the executive branchwide standards of ethical conduct regulation to raise the widely attended gatherings nonsponsor gifts exception dollar ceiling tied to these thresholds. This change is not retroactive.

DATES: *Effective date:* This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Applicability date: The amendments to 5 CFR 2634.304 and 2634.907 are applicable as of January 1, 2020.

FOR FURTHER INFORMATION CONTACT: Patrick J. Lightfoot, Assistant Counsel, or Christie Chung, Assistant Counsel; Telephone: 202-482-9300.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Office of Government Ethics (OGE) is amending pertinent sections of its executive branchwide ethics regulations on financial disclosure and standards of ethical conduct, as codified at 5 CFR parts 2634 and 2635, in order to update the thresholds for gifts and travel reimbursements, as well as the widely attended gatherings nonsponsor gifts exception dollar ceiling.

Increased Gifts and Travel Reimbursements Reporting Thresholds

First, OGE is revising its executive branch financial disclosure regulation at 5 CFR part 2634 to reflect the increased reporting thresholds for gifts, reimbursements, and travel expenses for both the public and confidential executive branch financial disclosure systems. The increased thresholds are applicable as of January 1, 2020. These increases conform to the statutorily mandated public disclosure reporting thresholds under section 102(a)(2)(A) and (B) of the Ethics in Government Act as amended, 5 U.S.C. app. 102(a)(2)(A) and (B), (Ethics Act) and are extended to confidential disclosure reporting by OGE's regulation. Under the Ethics Act, the gifts and travel reimbursements reporting thresholds are tied to the dollar amount for the "minimal value" threshold for foreign gifts as the General Services Administration (GSA) periodically redefines it.

GSA raised the "minimal value" amount under the Foreign Gifts and Decorations Act, 5 U.S.C. 7342, to \$415 for the three-year period 2020-2022 (from the prior level of \$390) in a March 10, 2020, Federal Management Regulation Bulletin. See Gen. Servs. Admin., FMR B-50, Foreign Gift and Decoration Minimal Value (2020) (revising

retroactively to January 1, 2020, the foreign gifts minimal value definition as codified at 41 CFR 102-42.10).

Accordingly, applicable as of that same date, OGE is increasing the thresholds for reporting of gifts and travel reimbursements from any one source in 5 CFR 2634.304 and 2634.907(g). The thresholds have been raised to “more than \$415” for the gifts and travel reimbursements aggregation thresholds and “\$166 or less” for the de minimis exception for gifts and travel reimbursements that do not have to be aggregated. As noted, these regulatory increases implement the underlying statutory increases effective January 1, 2020. OGE is also updating the examples following those sections, including appropriate adjustments to gift values.

OGE will continue to adjust the gifts and travel reimbursements reporting thresholds in its part 2634 regulation in the future as needed in light of GSA’s redefinition of “minimal value” every three years for foreign gifts purposes. See OGE’s prior three-year adjustment of those regulatory reporting thresholds, as published at 82 FR 22735 (May 18, 2017) (for 2017-2019, the aggregate reporting thresholds were more than \$390, with a \$156 or less de minimis exception).

Increased Dollar Ceiling for the Exception for Nonsponsor Gifts of Free Attendance at Widely Attended Gatherings

OGE is also increasing the exception ceiling for nonsponsor gifts of free attendance at widely attended gatherings from \$390 to \$415 in the executive branch standards of ethical conduct regulation, as codified at 5 CFR 2635.204(g)(3) (and as illustrated in the examples following paragraph (g)). This separate regulatory change is

effective upon publication in the **Federal Register**, on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. As OGE noted in the preambles to the proposed and final rules on such nonsponsor gifts, that ceiling is tied to the financial disclosure gifts reporting threshold. See 60 FR 31415 (June 15, 1995) and 61 FR 42965 (Aug. 20, 1996). Thus, OGE is again increasing the nonsponsor gift ceiling to match the further increase in the gifts and travel reimbursements reporting thresholds described above. The nonsponsor gift ceiling was last raised May 2017. See 82 FR 22735 (May 18, 2017). The other requirements for acceptance of such nonsponsor gifts, including an agency interest determination and expected attendance by more than 100 persons, remain unchanged.

II. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b), as 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 concern matters of agency organization, procedure and practice. It is also in the public interest that the accurate and up-to-date information be contained in the affected sections of OGE's regulations as soon as possible. The increase in the reporting thresholds for gifts and reimbursements is based on a statutory formula and lessens the reporting burden. Therefore, that regulatory

revision is retroactively applicable as of January 1, 2020, when the change became effective under the Ethics Act.

Regulatory Flexibility Act

As the 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 final 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.

Congressional Review Act

The Office of Government Ethics has determined that this amendatory rulemaking is a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and will submit a report thereon to the U.S. Senate, House of Representatives and Government Accountability Office in accordance with that law at the same time this rulemaking

document is sent to the Office of the Federal Register for publication in the Federal Register.

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. In promulgating this rulemaking, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in Executive Orders 12866 and 13563. The rule has not been reviewed by the Office of Management and Budget because it is not a significant regulatory action for the purposes of Executive Order 12866.

Executive Order 12988

As 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 2635

Conflict of interests, Executive branch standards of ethical conduct, Government employees.

Approved: May 19, 2020.

Emory Rounds,

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 2635 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. Amend § 2634.304 as follows:

a. Revise the Note to paragraph (a);

b. In paragraphs (a) and (b), remove the dollar amount “\$390” and add in its place “\$415” wherever it appears;

c. In example 1 following paragraph (d), remove the dollar amount “\$220” following “Gift 1-Print” and add in its place “\$240” and remove the dollar amount “\$390” in the sentence following “Gift 3” and add in its place “\$415”;

d. In paragraph (d) and examples 1 and 2, remove the dollar amount “\$156” and add in its place “\$166” wherever it appears; and

e. In examples 2 and 3 following paragraph (d), remove the year “2017” and add in its place “2020”.

The revision reads as follows:

§ 2634.304 Gifts and reimbursements.

(a) * * *

Note to paragraph (a): Under sections 102(a)(2)(A) and (B) of the Ethics in Government Act, the reporting thresholds for gifts, reimbursements, and travel expenses are tied to the dollar amount for the “minimal value” threshold for foreign gifts established by the Foreign Gifts and Decoration Act, 5 U.S.C. 7342(a)(5). The General Services Administration (GSA), in consultation with the Secretary of State, redefines the value every 3 years. In 2020, the amount was set at \$415. In subsection (d), the Office of Government Ethics sets the aggregation exception amount and redefines the value every 3 years. In 2020, the amount was set at \$166. The Office of Government Ethics will update this part in 2023 and every three years thereafter to reflect the new amounts.

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3. Amend § 2634.907 as follows:

a. In paragraph (g)(1), remove the dollar amount of “\$390” and add in its place “\$415”;

b. In paragraph (g)(2) introductory text, remove the dollar amount “\$156” and add in its place “\$166”;

c. Revise the Note to paragraph (g)(2);

d. In the last sentence of the example following paragraph (g)(5), remove the dollar amount of “\$390” and add in its place “\$415” and remove the dollar amount “\$156” and add in its place “\$166”.

The revision reads as follows:

§ 2634.907 Report contents.

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(g) * * *

(2) * * *

Note to paragraph (g)(2): The Office of Government Ethics sets these amounts every 3 years using the same disclosure thresholds as those for public financial disclosure filers. In 2020, the reporting thresholds were set at \$415 and the aggregation threshold was set at \$166. The Office of Government Ethics will update this part in 2023 and every three years thereafter to reflect the new amount.

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PART 2635 – STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH

4. The authority citation for part 2635 continues to read as follows:

Authority: 5 U.S.C. 7301, 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); 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.

§ 2635.204 [Amended]

5. In § 2635.204, in paragraph (g)(3)(iv) and examples 1 and 4 following paragraph (g)(6), remove the dollar amount “\$390” and add in its place “\$415” wherever it occurs.

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