



July 21, 2016
LA-16-04

LEGAL ADVISORY

TO: Designated Agency Ethics Officials

FROM: Walter M. Shaub, Jr.
Director

SUBJECT: Inflationary Adjustments to Ethics in Government Act Civil Monetary Penalties

This Legal Advisory announces increases in five civil monetary penalties related to the executive branch ethics program. The United States Office of Government Ethics (“OGE”) recently issued an interim final regulation establishing these inflationary adjustments, pursuant to a recent legislative enactment.

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (“2015 Act”), which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 and requires all federal agencies to make inflationary adjustments to civil monetary penalties (“penalties”) within their jurisdiction. Specifically, the 2015 Act required agencies to make an initial “catch-up” inflationary adjustment to penalty levels through an interim final rulemaking, and requires agencies to make subsequent annual inflationary adjustments to their penalties. The inflation adjustments mandated by the 2015 Act are based on changes in the Consumer Price Index for all Urban Consumers.

There are five penalties¹ set forth in Ethics in Government Act of 1978, 5 U.S.C. appendix §§ 101-505, as amended. Specifically, civil penalties 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 violations:

- Knowing and willful failure to file, report required information on, or falsification of a public financial disclosure report;
- Knowing and willful breach of a qualified trust by trustees and interested parties;

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* 5 U.S.C. app. § 104(d) and 5 C.F.R. § 2634.704, is not a civil monetary penalty as defined under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended. Therefore, that fee was not adjusted pursuant to the rulemaking discussed in this Legal Advisory and remains at its current amount of \$200.

- Negligent breach of a qualified trust by trustees and interested parties;
- Misuse of a public report; and
- Violation of outside employment/activities provisions.

See 5 U.S.C. app. §§ 104(a), 102(f)(6)(C)(i) & (ii), 105(c)(2), 504(a). These penalties are reflected in OGE's executive branchwide financial disclosure regulation, 5 C.F.R. §§ 2634.701(b), 2634.702(a) & (b), and 2634.703, and in OGE's executive branchwide covered noncareer employee outside employment/activities regulation, 5 C.F.R. § 2636.104(a).

Applying the formula for calculating the "catch-up" adjustment set forth in the 2015 Act and OMB guidance, OGE recently issued an interim final rule adjusting the Ethics in Government Act penalties. See 81 Fed. Reg. 41,787 (June 28, 2016). The increased penalty amounts calculated in the rule are applicable only to penalties assessed after August 1, 2016, for which the underlying violations occurred after November 2, 2015, the date of enactment of the 2015 Act. Therefore, the penalty amounts in effect prior to this increase remain in effect for both (1) assessments made through August 1, 2016, without regard to the timing of the violations, and (2) violations occurring on or before November 2, 2015, without regard to the timing of the assessment.

As set forth in the rule, the applicable maximum penalties for Ethics in Government Act violations are as follows:

Ethics in Government Act Provision	Date of Violation or Assessment	Maximum Penalty
Failure to file or falsifying a report 5 U.S.C. app. § 104(a) 5 C.F.R. § 2634.701(b)	Violation occurring between September 14, 2007 and November 2, 2015	\$50,000
	Violation occurring after November 2, 2015 and penalty assessed on or before August 1, 2016	\$50,000
	Violation occurring after November 2, 2015 and penalty assessed after August 1, 2016	\$56,916
Knowing and willful breach by a trust fiduciary or an interested party 5 U.S.C. app. § 102(f)(6)(C)(i) 5 C.F.R. § 2634.702(a)	Violation occurring between September 29, 1999 and November 2, 2015	\$11,000
	Violation occurring after November 2, 2015 and penalty assessed on or before August 1, 2016	\$11,000
	Violation occurring after November 2, 2015 and penalty assessed after August 1, 2016	\$18,936

Ethics in Government Act Provision	Date of Violation or Assessment	Maximum Penalty
Negligent breach by a trust fiduciary or an interested party 5 U.S.C. app. § 102(f)(6)(C)(ii) 5 C.F.R. § 2634.702(b)	Violation occurring between September 29, 1999 and November 2, 2015	\$5,500
	Violation occurring after November 2, 2015 and penalty assessed on or before August 1, 2016	\$5,500
	Violation occurring after November 2, 2015 and penalty assessed after August 1, 2016	\$9,468
Misuse of a public report 5 U.S.C. app. § 105(c)(2) 5 C.F.R. § 2634.703	Violation occurring between September 29, 1999 and November 2, 2015	\$11,000
	Violation occurring after November 2, 2015 and penalty assessed on or before August 1, 2016	\$11,000
	Violation occurring after November 2, 2015 and penalty assessed after August 1, 2016	\$18,936
Violation of outside employment/activities provisions 5 U.S.C. app. § 504(a) 5 C.F.R. § 2636.104(a)	Violation occurring between September 29, 1999 and November 2, 2015	\$11,000*
	Violation occurring after November 2, 2015 and penalty assessed on or before August 1, 2016	\$11,000*
	Violation occurring after November 2, 2015 and penalty assessed after August 1, 2016	\$18,936*

* In the case of outside employment/activities violations, an alternative maximum penalty, if greater than the penalty in this chart, is the amount of compensation received (if any) by an individual for prohibited conduct. See 5 C.F.R. § 2636.104(a).

For additional information on the history of prior Ethics in Government Act penalty adjustments, and OGE's methodology in calculating the inflationary adjustments mandated by the 2015 Act, please see *Civil Monetary Penalties Inflation Adjustments for Ethics in Government Act Violations*, 81 Fed. Reg. 41,787 (June 28, 2016), available at <https://www.gpo.gov/fdsys/pkg/FR-2016-06-28/pdf/2016-15193.pdf>.