



United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

January 14, 1994
DO-94-002

MEMORANDUM

TO: Designated Agency Ethics Officials, General Counsels and Inspectors General

FROM: Stephen D. Potts
Director

SUBJECT: Guidance on Public Financial Disclosure (SF 278) Late Filing Fee Waivers

During the September 1993 Ethics Conference in Hershey, Pennsylvania, the Office of Government Ethics (OGE) made available written guidance about: the public financial disclosure late filing fee waiver process in an effort to increase agency awareness of the criteria used in evaluating fee waiver requests. This DAEOgram ensures the executive branch-wide dissemination of this guidance.

The Ethics Reform Act of 1989 instituted a \$200 late filing fee (see 5 U.S.C. App. §104) to ensure the timely filing of public financial disclosure reports by the appropriate executive branch employees. Effective January 1, 1991, in accordance with section 104(d) of the Ethics in Government Act (the Act), any employee who is required to file a public financial disclosure report and does so more than 30 days after the report is required to be filed, or, if an extension has been granted, more than 30 days after the last day of the filing extension, shall be subject to a \$200 late filing fee. The fee shall be remitted to the appropriate agency, which will then forward it to the United States Treasury. (See 5 C.F.R. § 2634.704.)

The Act gives OGE the sole authority to waive the fee if extraordinary circumstances cause the late filing. Over the past two years, OGE has granted fee waivers in cases where filers have made a good-faith effort to file their reports and have encountered unusual circumstances beyond their control. Despite this precedent, however, OGE considers each request on its own merits.

Listed below are several general categories under which fee waiver requests have been granted and denied. We provide this information only to enhance agency understanding of the fee waiver process. We discourage any effort to force situations to fit into the listed categories.

CATEGORIES OF GRANTED AND DENIED WAIVER REQUESTS

The statutory language indicates that the responsibility to file rests with the employee. OGE, however, believes that filers should be held strictly accountable only after gaining familiarity with the filing process through the periodic filing of reports. As a result, we view the lack of

notification to new entrant and first annual filers as justification for granting waivers because these filers are new to the filing process, and they may be initially unaware of filing requirements.¹ In addition, the lack of notification by the agency to termination filers also justifies granting a fee waiver because employees who are terminating employment may be unaware of the requirement to file a termination public financial disclosure report. Similarly, employees who transfer positions should be allowed some latitude until they have been clearly apprised of the requirement to file reports in those positions. In contrast, we would not waive the late filing fee for "experienced" annual filers who were not notified about filing requirements.

The following are reasons for which we have GRANTED waivers:

- A family emergency, such as illness, death, or a fire prevented timely filing.
- The employee was a new entrant, first annual or termination filer, and the agency did not notify him or her of the need to file.
- The employee was not aware of the filing requirements of the position into which he or she recently transferred.
- Agency administrative errors (other than the notification process) prevented filers from filing their reports on time.
- An employee's official agency duties (agency emergencies) impeded him or her from filing in a timely manner.

The following are several reasons for which we have DENIED waivers:

- The employee was an incumbent filer who had previously filed an annual report, and the agency failed to notify the individual about the filing requirement and the due date.
- Due to postal delays, the agency received the report after the 30-day grace period. (The grace period accommodates external delays, such as mailing.)
- The employee mistook the due date. (Filer error, not agency error.)

In considering a fee waiver request, OGE examines several other factors about the individual filing:

- The position of the filer. (If the filer is an agency head or in a similarly ranked position, the employee should be held to a higher standard.)
- Whether the filer requested any extensions. (This may indicate a good-faith effort to file on the part of the employee.)
- The opinion of the DAEO on the merits of the request.
- The filing history of the employee. (Chronic lateness in filing might influence the reviewing official's opinion.)

PROCEDURES FOR PROCESSING FEE WAIVER REQUESTS

Procedures for processing requests for a waiver of the late filing fee are set forth at 5 C.F.R. § 2634.704. In order to ensure that we have all relevant information, the agency forwarding letter should include the following:

- The written request from the employee.
- The DAEO's recommendation on the merits of the waiver request.
- A clear, concise statement of the facts that led to the delayed filing.
- The position of the filer.
- Whether the report is an annual, new entrant, or a termination report (including whether it is a first annual).
- Whether the filer received any extensions and the final report due date, including any extensions.
- The length of time between the day the filer was notified by the agency about the delinquency and the actual submission date of the filer's report.
- Whether the filer has been delinquent in the past.

REQUIREMENTS FOR RECONSIDERATION OF A DENIAL

Although the Ethics Reform Act does not provide for appeal of an OGE decision to deny a fee waiver request, we will evaluate requests for reconsideration if new information is presented. These are the prerequisites:

- Requests must be made within 30 days of the OGE denial letter.
- Requests must be in writing.
- Requests must present new facts to merit consideration.
- Only one request for reconsideration will be permitted.
- Decisions to grant or deny a reconsideration request will be consistent with the same principles outlined in this DAEOgram.

1. An effective notification system which identifies financial disclosure filers is an integral part of an effective ethics program. This system increases the efficiency of report collection and ultimately reduces the frequency of late filings. (See DAEOgram dated September 3, 1992.)