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Code of Federal Regulations [Currentness](#)
 Title 5. Administrative Personnel
 Chapter XVI. Office of Government Ethics
 Subchapter B. Government Ethics
 [Part 2634](#). Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture ([Refs & Annos](#))
 [Subpart I](#). Confidential Financial Disclosure Reports ([Refs & Annos](#))

→§ 2634.904 Confidential filer defined.

(a) The term confidential filer includes:

(1) Each officer or employee in the executive branch whose position is classified at GS-15 or below of the General Schedule prescribed by [5 U.S.C. 5332](#), or the rate of basic pay for which is fixed, other than under the General Schedule, at a rate which is less than 120% of the minimum rate of basic pay for GS-15 of the General Schedule; each officer or employee of the United States Postal Service or Postal Rate Commission whose basic rate of pay is less than 120% of the minimum rate of basic pay for GS-15 of the General Schedule; each member of a uniformed service whose pay grade is less than 0-7 under [37 U.S.C. 201](#); and each officer or employee in any other position determined by the designated agency ethics official to be of equal classification; if:

(i) The agency concludes that the duties and responsibilities of the employee's position require that employee to participate personally and substantially (as defined in [§ 2635.402\(b\)\(4\)](#) and [2640.103\(a\)\(2\)](#) of this chapter) through decision or the exercise of significant judgment, and without substantial supervision and review, in taking a Government action regarding:

(A) Contracting or procurement;

(B) Administering or monitoring grants, subsidies, licenses, or other federally conferred financial or operational benefits;

(C) Regulating or auditing any non-Federal entity; or

(D) Other activities in which the final decision or action will have a direct and substantial economic effect on the interests of any non-Federal entity; or

(ii) The agency concludes that the duties and responsibilities of the employee's position require the employee to file such a report to avoid involvement in a real or apparent conflict of interest, and to carry out the purposes behind any statute, Executive order, rule, or regulation applicable to or administered by the employee. Positions which might be subject to a reporting requirement under this subparagraph include those with duties which involve investigating or prosecuting violations of criminal or civil law.

Example 1 to paragraph (a)(1). A contracting officer develops the requests for proposals for data processing equipment of significant value which is to be purchased by his agency. He works with substantial independence of action and exercises significant judgment in developing the requests. By engaging in this activity, he is participating personally and substantially in the contracting process. The contracting officer should be required to file a confidential financial disclosure report.

Example 2 to paragraph (a)(1). An agency environmental engineer inspects a manufacturing plant to ascertain whether the plant complies with permits to release a certain effluent into a nearby stream. Any violation of the permit standards may result in civil penalties for the plant, and in criminal penalties for the plant's management based upon any action which they took to create the violation. If the agency engineer determines that the plant does not meet the permit requirements, he can require the plant to terminate release of the effluent until the plant satisfies the permit standards. Because the engineer exercises substantial discretion in regulating the plant's activities, and because his final decisions will have a substantial economic effect on the plant's interests, the engineer should be required to file a confidential financial disclosure report.

Example 3 to paragraph (a)(1). A GS-13 employee at an independent grant making agency conducts the initial agency review of grant applications from

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nonprofit organizations and advises the Deputy Assistant Chairman for Grants and Awards about the merits of each application. Although the process of reviewing the grant applications entails significant judgment, the employee's analysis and recommendations are reviewed by the Deputy Assistant Chairman, and the Assistant Chairman, before the Chairman decides what grants to award. Because his work is subject to "substantial supervision and review," the employee is not required to file a confidential financial disclosure report unless the agency determines that filing is necessary under [§ 2634.904\(a\)\(1\)\(ii\)](#).

Example 4 to paragraph (a)(1). As a senior investigator for a criminal law enforcement agency, an employee often leads investigations, with substantial independence, of suspected felonies. The investigator usually decides what information will be contained in the agency's report of the suspected misconduct. Because he participates personally and substantially through the exercise of significant judgment in investigating violations of criminal law, and because his work is not substantially supervised, the investigator should be required to file a confidential financial disclosure report.

Example 5 to paragraph (a)(1). An investigator is principally assigned as the field agent to investigate alleged violations of conflict of interest laws. The investigator works under the direct supervision of an agent-in-charge. The agent-in-charge reviews all of the investigator's work product and then uses those materials to prepare the agency's report which is submitted under his own name. Because of the degree of supervision involved in the investigator's duties, the investigator is not required to file a confidential disclosure report unless the agency determines that filing is necessary under [§ 2634.904\(a\)\(1\)\(ii\)](#).

(2) Unless required to file public financial disclosure reports by subpart B of this part, all executive branch special Government employees.

Example 1 to paragraph (a)(2). A consultant to an agency periodically advises the agency regarding important foreign policy matters. The consultant must file a confidential report if he is retained as a special Government employee and not an independent contractor.

Example 2 to paragraph (a)(2). A special Government employee serving as a member of an

advisory committee (who is not a private group representative) attends four committee meetings every year to provide advice to an agency about pharmaceutical matters. No compensation is received by the committee member, other than travel expenses. The advisory committee member must file a confidential disclosure report because she is a special Government employee.

(3) Each public filer referred to in [§ 2634.202](#) on public disclosure who is required by agency regulations and forms issued in accordance with [§ 2634.103](#) and [2634.601\(b\)](#) to file a supplemental confidential financial disclosure report which contains information that is more extensive than the information required in the reporting individual's public financial disclosure report under this part.

(4) Any employee who, notwithstanding his exclusion from the public financial reporting requirements of this part by virtue of a determination under [§ 2634.203](#), is covered by the criteria of paragraph (a)(1) of this section.

(b) Any individual or class of individuals described in paragraph (a) of this section, including special Government employees unless otherwise noted, may be excluded from all or a portion of the confidential reporting requirements of this subpart, when the agency head or designee determines that the duties of a position make remote the possibility that the incumbent will be involved in a real or apparent conflict of interest.

Example 1 to paragraph (b). A special Government employee who is a draftsman prepares the drawings to be used by an agency in soliciting bids for construction work on a bridge. Because he is not involved in the contracting process associated with the construction, the likelihood that this action will create a conflict of interest is remote. As a result, the special Government employee is not required to file a confidential financial disclosure report.

Example 2 to paragraph (b). An agency has just hired a GS-5 Procurement Assistant who is responsible for typing and processing procurement documents, answering status inquiries from the public, performing office support duties such as filing and copying, and maintaining an on-line contract database. The Assistant is not involved in contracting and has no other actual procurement responsibilities. Thus, the possibility that the

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Assistant will be involved in a real or apparent conflict of interest is remote, and the Assistant is not required to file.

[[63 FR 69992](#), Dec. 18, 1998; [64 FR 2422](#), Jan. 14, 1999; [71 FR 28234](#), May 16, 2006]

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