



United States  
**Office of Government Ethics**  
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## LEGAL ADVISORY

TO: Designated Agency Ethics Officials

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SUBJECT: PERIODIC TRANSACTION REPORTING—LAPSE OF PENALTY  
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On July 3, 2012, the requirement that public financial disclosure filers periodically report securities transactions became effective. *See* 5 U.S.C. app § 103(l); Pub. L. No. 112-105, § 6 (2012). In light of the significant changes to the financial disclosure system, OGE exercised its authority under 5 U.S.C. app. § 104(d)(2), to waive the statutory late filing fee for unintentionally untimely transaction reports occurring prior to July 3, 2013. *See* LA-12-04 (Question 13). This Legal Advisory reminds ethics officials that the blanket waiver for late periodic transaction reports will lapse on July 3, 2013. Agencies may wish to take this opportunity to review the periodic transaction reporting requirements with public filers and emphasize that filers may now become subject to a \$200 penalty for late filing.

Under the Ethics in Government Act, a periodic transaction report is considered late if it is filed more than 45 days after the occurrence of the transaction, or is filed 30 days after the employee has received actual notification that the transaction occurred. *See* 5 U.S.C. app. § 103(l). If an employee has received an extension of the filing deadline, a report is not late if filed before the end of the extension period. *See* 5 C.F.R. § 2634.704(a)(2). Filers become subject to a \$200 late fee if they fail to file a report within 30 days of the relevant deadline. *See* 5 U.S.C. app. § 104(d)(1); 5 C.F.R. § 2635.704(a).

In applying the penalty provision to periodic transaction reporting, ethics officials should be aware that the “late fee covers all transactions that the employee could have timely included in a single report.” LA-12-04 (Question 12). Additionally, subsequent amendment of a timely filed report will not trigger the late filing fee provision if the designated agency ethics official (DAEO) or the DAEO’s designee is “satisfied that the employee attempted in good faith to comply fully with applicable disclosure requirements and merely made an inadvertent error or omission.” *Id.*

Agencies should also be mindful that after July 3, 2013, late fees may be waived by the agency when the agency's DAEO determines the delay was caused by extraordinary circumstances. *See* 5 C.F.R. § 2634.704(b) (stating that extraordinary circumstances exist, e.g., when "the agency's failure to notify a new entrant, first-time annual filer, or termination filer of the requirement to file the public financial disclosure report . . . made the delay reasonably necessary."). What constitutes an "extraordinary circumstance," necessarily depends on the facts of a given situation, but OGE has affirmed that "an extraordinary circumstance logically exists when an employee has no legal right or ability to acquire transaction information before the deadline." LA-12-04 (Question 13). Additional events qualifying as extraordinary circumstances may include "family emergency, . . . the employee's unawareness that a position to which the employee was transferred or detailed was subject to public filing, . . . [or when] agency administrative errors prevented the filer from filing reports on time." *Id.*