

Debt after the proposed rule was published.

Consistent with the additional grace period extensions at 59 FR 4779-4780 and 60 FR 6390-6391, § 3101.111 has been modified to grandfather until no later than January 3, 1996, the Secret Service rules prohibiting certain kinds of outside employment.

V. Matters of Regulatory Procedure

Executive Order 12866, Regulatory Planning and Review

This rule is limited to agency organization, management and personnel matters; therefore, it is not subject to Executive Order 12866.

Regulatory Flexibility Act

It is hereby certified that this rule will not have significant economic impact on a substantial number of small entities. This rule affects only Federal employees and their immediate families.

List of Subjects in 5 CFR Part 3101

Conflict of interests, Government employees.

Dated: January 29, 1995.

Edward S. Knight,

General Counsel, Department of the Treasury.

Approved: February 28, 1995.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Department of the Treasury, in concurrence with the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations by adding a new chapter XXI, consisting of part 3101, to read as follows:

CHAPTER XXI—DEPARTMENT OF THE TREASURY

PART 3101—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF THE TREASURY

Sec.

- 3101.101 General.
- 3101.102 Designation of separate agency components.
- 3101.103 Prohibition on purchase of certain assets.
- 3101.104 Outside employment.
- 3101.105 Additional rules for Bureau of Alcohol, Tobacco and Firearms employees.
- 3101.106 Additional rules for Internal Revenue Service employees.
- 3101.107 Additional rules for Legal Division employees.
- 3101.108 Additional rules for Office of the Comptroller of the Currency employees.
- 3101.109 Additional rules for Office of Thrift Supervision employees.

3101.110 Additional rules for United States Customs Service employees.

3101.111 Additional rules for United States Secret Service employees.

Authority: 5 U.S.C. 301, 7301, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 7214(b); 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.; 5 CFR 2635.105, 2635.203(a), 2635.403(a), 2635.803, 2635.807(a)(2)(ii).

§ 3101.101 General.

(a) *Purpose.* In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Department of the Treasury and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635.

Employees are required to comply with 5 CFR part 2635, this part, and bureau guidance and procedures established pursuant to this section. Department employees are also subject to any additional rules of conduct that the Department or their employing bureaus are authorized to issue. See 31 CFR part 0, Department of the Treasury Employee Rules of Conduct.

(b) *Bureau instructions.* With the concurrence of the Designated Agency Ethics Official (DAEO), bureaus of the Department of the Treasury are authorized to issue instructions or manual issuances providing explanatory guidance and establishing procedures necessary to implement this part and part 2635 of this title. See 5 CFR 2635.105(c).

(c) *Definition of "agency designee".* As used in this part and in part 2635 of this title, the term "agency designee" refers to any employee who has been delegated authority by an instruction or manual issuance issued by a bureau under paragraph (b) of this section to make a determination, give an approval, or take other action required or permitted by this part or part 2635 of this title with respect to another employee. See 5 CFR 2635.102(b).

§ 3101.102 Designation of separate agency components.

Pursuant to 5 CFR 2635.203(a), each of the following components of the Department of the Treasury is designated as a separate agency for purposes of the regulations contained in subpart B of 5 CFR part 2635 governing gifts from outside sources and 5 CFR 2635.807 governing teaching, speaking or writing:

- (a) Bureau of Alcohol, Tobacco and Firearms (ATF);
- (b) Bureau of Engraving and Printing;
- (c) Bureau of the Public Debt;
- (d) Federal Law Enforcement Training Center;

- (e) Financial Management Service;
- (f) Internal Revenue Service (IRS);
- (g) Office of the Comptroller of the Currency (OCC);
- (h) Office of the Inspector General;
- (i) Office of Thrift Supervision (OTS);
- (j) United States Customs Service (USCS);
- (k) United States Mint; and
- (l) United States Secret Service.

For purposes of this section, employees in the Legal Division shall be considered to be part of the bureaus or offices in which they serve.

Note: As a result of the designations contained in this section, employees of the remaining parts of the Department of the Treasury (e.g., employees in Departmental Offices, including the Financial Crimes Enforcement Network) will also be treated as employees of an agency that is separate from all of the above listed bureaus and offices for purposes of determining whether the donor of a gift is a prohibited source under 5 CFR 2635.203(d) and for identifying an employee's "agency" under 5 CFR 2635.807 governing teaching, speaking and writing.

§ 3101.103 Prohibition on purchase of certain assets.

(a) *General prohibition.* Except as provided in paragraph (b) of this section, no employee of the Department of the Treasury shall purchase, directly or indirectly, property:

- (1) Owned by the Government and under the control of the employee's bureau (or a bureau over which the employee exercises supervision); or
- (2) Sold under the direction or incident to the functions of the employee's bureau.

(b) *Exceptions.* The prohibition in paragraph (a) of this section does not apply to the purchase of Government securities or items sold generally to the public at fixed prices, such as numismatic items produced by the United States Mint or foreign gifts deposited with the Department pursuant to 5 U.S.C. 7342 that an employee may purchase pursuant to 41 CFR part 101-49.

(c) *Waiver.* An employee may make a purchase otherwise prohibited by this section where a written waiver of the prohibition has been given to the employee by an agency designee with the advice and legal clearance of the DAEO, or the appropriate Office of Chief or Legal Counsel. Such a waiver may be granted only on a determination that the waiver is not otherwise prohibited by law and that, in the mind of a reasonable person with knowledge of the particular circumstances, the purchase of the asset will not raise a question as to whether the employee has used his or her official position or inside information to obtain an

advantageous purchase or create an appearance of loss of impartiality in the performance of the employee's duties.

Note: Employees of the OCC and OTS are subject to additional limitations on the purchase of assets that are set out in bureau-specific rules contained in §§ 3101.108 and 3101.109.

§ 3101.104 Outside employment.

(a) *General requirement for prior approval.* All Department of the Treasury employees shall obtain prior written approval before engaging in any outside employment or business activities, with or without compensation, except to the extent that the employing bureau issues an instruction or manual issuance pursuant to paragraph (b) of this section exempting an activity or class of activities from this requirement. Approval shall be granted only on a determination that the employment or activity is not expected to involve conduct prohibited by statute, part 2635 of this title, or any provision of this part.

Note: Employees of the ATF, IRS, Legal Division, OCC, USCS and United States Secret Service are subject to additional limitations on outside employment and activities that are set out in bureau-specific rules contained in this part.

(b) *Bureau responsibilities.* Each bureau, which for the purposes of this section includes the Departmental Offices and the Office of the Inspector General, shall issue instructions or manual issuances governing the submission of requests for approval of outside employment or business activities and designating appropriate officials to act on such requests. The instructions or manual issuances may exempt categories of employment or activities from the prior approval requirement based on a determination that employment or activities within those categories would generally be approved and are not likely to involve conduct prohibited by statute, part 2635 of this title or any provision of this part. Bureaus may include in their instructions or issuances examples of outside employment or activities that are permissible or impermissible consistent with this part and part 2635 of this title. Bureaus shall retain in employees' Official Personnel Folders (temporary side) all requests for approval whether granted or denied.

§ 3101.105 Additional rules for Bureau of Alcohol, Tobacco and Firearms employees.

The following rules apply to the employees of the Bureau of Alcohol, Tobacco and Firearms and are in addition to §§ 3101.101 through 3101.104:

(a) *Prohibited financial interests.* Except as provided in this section, no employee of the ATF, or spouse or minor child of an ATF employee, shall have, directly or indirectly, any financial interest, including compensated employment, in the alcohol, tobacco, firearms or explosives industries. The term financial interest is defined in § 2635.403(c) of this title.

(b) *Waiver.* An agency designee, with the advice and legal clearance of the DAEO or Office of the Chief Counsel, may grant a written waiver of the prohibition in paragraph (a) of this section on a determination that the financial interest is not prohibited by 26 U.S.C. 7214(b) and that, in the mind of a reasonable person with knowledge of the particular circumstances, the financial interest will not create an appearance of misuse of position or loss of impartiality, or call into question the impartiality and objectivity with which the ATF's programs are administered. A waiver under this paragraph may require appropriate conditions, such as execution of a written disqualification.

§ 3101.106 Additional rules for Internal Revenue Service employees.

The following rules apply to the employees of the Internal Revenue Service and are in addition to §§ 3101.101 through 3101.104:

(a) *Prohibited recommendations.* Employees of the IRS shall not recommend, refer or suggest, specifically or by implication, any attorney, accountant, or firm of attorneys or accountants to any person in connection with any official business which involves or may involve the IRS.

(b) *Prohibited outside employment.* Involvement by an employee of the IRS in the following types of outside employment or business activities is prohibited and shall constitute a conflict with the employee's official duties pursuant to 5 CFR 2635.802:

(1) Performance of legal services involving Federal, State or local tax matters;

(2) Appearing on behalf of any taxpayer as a representative before any Federal, State, or local government agency, in an action involving a tax matter except on written authorization of the Commissioner of Internal Revenue;

(3) Engaging in accounting, or the use, analysis, and interpretation of financial records when such activity involves tax matters;

(4) Engaging in bookkeeping, the recording of transactions, or the record-making phase of accounting, when such activity is directly related to a tax determination; and

(5) Engaging in the preparation of tax returns for compensation, gift, or favor.

(c) *Seasonal employees.* Seasonal employees of the IRS while in non-duty status may engage in outside employment or activities other than those prohibited by paragraph (b) of this section without obtaining prior written permission.

§ 3101.107 Additional rules for Legal Division employees.

The following rules apply to the employees of the Legal Division and are in addition to §§ 3101.101 through 3101.104:

(a) *Application of rules of other bureaus.* In addition to the rule contained in paragraph (b) of this section, employees in the Legal Division shall be covered by the rules contained in this part that are applicable to employees of the bureaus or offices in which the Legal Division employees serve, subject to any instructions which the General Counsel or appropriate Chief or Legal Counsel may issue in accordance with § 3101.101(b).

(b) *Prohibited outside employment.* Pursuant to 5 CFR 2635.802, it is prohibited and shall constitute a conflict with the employee's official duties for an attorney employed in the Legal Division to engage in the outside practice of law that might require the attorney to:

(1) Take a position that is or appears to be in conflict with the interests of the Department of the Treasury which is the client to whom the attorney owes a professional responsibility; or

(2) Interpret any statute, regulation or rule administered or issued by the Department.

§ 3101.108 Additional rules for Office of the Comptroller of the Currency employees.

The following rules apply to the employees of the Office of the Comptroller of the Currency and are in addition to §§ 3101.101–3101.104:

(a) *Prohibited financial interests—(1) Prohibition.* Except as provided in paragraphs (a)(3) and (g) of this section, no OCC employee, or spouse or minor child of an OCC employee, shall own, directly or indirectly, securities of any commercial bank (including both national and State-chartered banks) or commercial bank affiliate, including a bank holding company.

(2) *Definition of "securities".* For purposes of paragraphs (a)(1) and (a)(3) of this section, the term "securities" includes all interests in debt or equity instruments. The term includes, without limitation, secured and unsecured bonds, debentures, notes, securitized assets and commercial paper, as well as