

# Rules and Regulations

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## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### 5 CFR Part 6501

RINs 3136-AA20, 3209-AA15

#### Supplemental Standards of Ethical Conduct for Employees of the National Endowment for the Arts

**AGENCY:** National Endowment for the Arts (NEA).

**ACTION:** Interim final rule, with request for comments.

**SUMMARY:** The National Endowment for the Arts, with the concurrence of the Office of Government Ethics (OGE), is issuing regulations for officers and employees of the NEA that supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE. The supplemental regulations require NEA employees, other than special Government employees, to obtain prior written approval to engage in certain outside employment or related activities.

**DATES:** These regulations take effect on September 5, 2003. Comments are invited and must be received on or before October 6, 2003.

**ADDRESSES:** Send comments to Karen Elias, Deputy General Counsel, National Endowment for the Arts, Room 518, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

**FOR FURTHER INFORMATION CONTACT:** Karen Elias, Deputy General Counsel, National Endowment for the Arts, Room 518, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. Telephone (202) 682-5418. Individuals who use a telecommunications device for the deaf (TDD) may contact the NEA's TDD terminal at (202) 682-5496 Voice/T.T.

#### SUPPLEMENTARY INFORMATION:

##### 1. Background

On August 7, 1992, OGE published in the **Federal Register** new Standards of Ethical Conduct for Employees of the Executive Branch (the "Standards"), 57 FR 35006-35067. The Standards, as corrected and amended, are codified at 5 CFR part 2635 and generally became effective February 3, 1993. Those regulations established uniform standards of ethical conduct that apply to all executive branch personnel.

With the concurrence of OGE, 5 CFR 2635.105 authorizes executive branch agencies to publish agency-specific supplemental regulations necessary to implement their respective ethics programs. With OGE's concurrence, the NEA has determined that the following supplemental regulations contained in a new chapter LV, consisting of part 6501, of 5 CFR as set forth in this interim rule are necessary to implement the NEA's ethics program successfully, in light of the NEA's unique programs and operations.

The Foundation's old standards of conduct regulations at 45 CFR part 1105 were applicable to employees of both the NEA and the National Endowment for the Humanities (NEH) until they were superseded by the executive branchwide Standards at 5 CFR part 2635, and by OGE's executive branchwide financial disclosure regulations at 5 CFR part 2634. In a separate rulemaking document being published in the **Federal Register** today, the Foundation's superseded old conduct regulations and certain redundant provisions thereof are being removed and 45 CFR part 1105 is being revised to contain a cross-reference section referring to the NEA's and the NEH's new supplemental regulations (also being published in the **Federal Register** today), to 5 CFR parts 2634 and 2635, to 5 CFR part 2640, OGE's executive branch financial interest regulations, and to the executive branchwide employee responsibilities and conduct regulations issued by the Office of Personnel Management, as codified at 5 CFR part 735.

##### II. Analysis of the Regulations

###### Section 6501.101 General

Section 6501.101 explains that the regulations contained in this interim

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rule will apply to NEA employees and are supplemental to the executive branchwide standards. Employees of the NEA are also subject to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635, the executive branch financial disclosure and financial interests regulations at 5 CFR parts 2634 and 2640, and the executive branch employees responsibilities and conduct regulations at 5 CFR part 735.

###### Section 6501.102 Prior Approval for Outside Employment

Under 5 CFR 2635.803, an agency that determines it is necessary or desirable for the purposes of administering its ethics program may, by supplemental regulation with OGE's concurrence and co-signature, require its employees to obtain written approval before engaging in outside employment. The

Foundation's superseded regulation at 45 CFR part 1105 required NEA employees to obtain advance approval for certain outside employment (that advance approval requirement remained in effect until February 3, 1994 by operation of the prior note following 5 CFR 2635.803 of the Standards (see the January 1, 1997 edition of 5 CFR)). The NEA has determined that it is necessary to the administration of its ethics program to reinstitute the requirement that employees, other than special Government employees, obtain prior approval before engaging in certain types of outside employment that pose the most potential for employees to engage in conduct that might violate applicable conflicts laws and regulations.

Therefore, § 6501.102(a) requires prior approval of outside employment when the outside employment involves a prohibited source. In identifying a "prohibited source" for purposes of this prior approval requirement, the NEA will apply the definition of that term found in the Standards at 5 CFR 2635.203(d). Thus, an employee will have to obtain approval before engaging in outside employment with any person (including an organization more than half of whose members are persons) seeking official action by the NEA; doing business or seeking to do business with the NEA; conducting activities regulated by the NEA; or having interests that may be substantially affected by the performance or

nonperformance of the employee's official duties. Section 6501.102(a) also requires written requests for approval to be submitted to the employee's immediate supervisor and his or her Designated Agency Ethics Official and specifies the information to be included in the employee's request. Section 6501.102(b) states the standard to be used in approving or denying requests for approval of outside employment. The basis for denial, if any, must be found in applicable statutes or Federal regulations, including the executive branchwide Standards.

Section 6501.102(c) defines outside employment as including any form of compensated or uncompensated non-Federal employment or business relationship involving the provision of personal services by the employee. It includes writing done under arrangement with another person for production or publication of the written product.

### III. Matters of Regulatory Procedure

#### *Waiver of Proposed Rulemaking*

As Deputy General Counsel of the NEA, I have found good cause pursuant to 5 U.S.C. 553(b) and (d)(3) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking, the opportunity for advance public comments, and the 30-day delay in effectiveness as to this interim rule. The reason for this determination is that this rulemaking is related to the NEA's organization, procedure and practice. Nonetheless, this is an interim rulemaking, with provision for a 30-day public comment period. The NEA will review all comments received during the comment period and will consider any modifications that appear appropriate in adopting these rules as final, with the concurrence and co-signature of the Office of Government Ethics.

#### *Regulatory Flexibility Act*

As Deputy General Counsel of the NEA, I have determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects NEA employees.

#### *Paperwork Reduction Act*

As Deputy General Counsel of the NEA, I have determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because these regulations do not contain any information collection requirements that require the approval of the Office of Management and Budget.

#### *Unfunded Mandates Reform Act*

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, or by the private sector, of \$100 million or more (as adjusted for inflation) in any one year.

#### **List of Subjects in 5 CFR Part 6501**

Conflict of interests, Government employees, Standards of conduct.

Dated: August 13, 2003.

**Karen Elias,**

*Deputy General Counsel, National Endowment for the Arts.*

Approved: August 26, 2003.

**Amy L. Comstock,**

*Director, Office of Government Ethics.*

■ For the reasons set forth in the preamble, the National Endowment for the Arts with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations by adding a new chapter LV, consisting of part 6501, to read as follows:

#### **CHAPTER LV—NATIONAL ENDOWMENT FOR THE ARTS**

#### **PART 6501—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE NATIONAL ENDOWMENT FOR THE ARTS**

Sec.

6501.101 General.

6501.102 Prior approval for outside employment.

**Authority:** 5 U.S.C. 7301, 5 U.S.C. App. (Ethics in Government Act of 1978); 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, 2635.803.

#### **§ 6501.101 General.**

In accordance with 5 CFR 2635.105, the regulations of this part apply to employees of the National Endowment for the Arts (NEA) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. In addition to the regulations in 5 CFR part 2635 and this part, employees of the NEA are subject to the executive branch employee responsibilities and conduct regulations at 5 CFR part 735, the executive branch financial disclosure regulations at 5 CFR part 2634, and the executive branch financial interests regulations at 5 CFR part 2640.

#### **§ 6501.102 Prior approval for outside employment.**

(a) Before engaging in any outside employment with a prohibited source within the meaning of 5 CFR 2635.203(d), whether or not for compensation, an employee other than a special Government employee must obtain written approval from his or her immediate supervisor and the Designated Agency Ethics Official. The request for approval shall include the following:

(1) The name of the person, group or other organization for whom the work is to be performed, the type of work to be performed, and the proposed hours of work and approximate dates of employment; and

(2) A description of the employee's NEA responsibilities and the employee's certification that the outside employment will not depend on nonpublic information obtained as a result of the employee's official Government position and that no official duty time or Government property, resources, or facilities not available to the general public will be used in connection with the outside employment.

(b) Approval shall be granted only upon determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

(c) *Outside employment* means any form of compensated or uncompensated non-Federal employment or business relationship involving the provision of personal services by the employee. It includes, but is not limited to personal services such as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher or speaker. It includes writing when done under an arrangement with another person for production or publication of the written product.

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### **NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES**

#### **5 CFR Part 6601**

#### **RINs 3136-AA21, 3209-AA15**

#### **Supplemental Standards of Ethical Conduct for Employees of the National Endowment for the Humanities**

**AGENCY:** National Endowment for the Humanities (NEH).

**ACTION:** Interim final rule, with request for comments.