

Rules and Regulations

Federal Register

Vol. 73, No. 115

Friday, June 13, 2008

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COMMISSION ON CIVIL RIGHTS

5 CFR Chapter LXVIII

RINs 3035-AA05, 3209-AA15

Supplemental Standards of Ethical Conduct for Employees of the United States Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Final rule.

SUMMARY: The United States Commission on Civil Rights (Commission), with the concurrence of the Office of Government Ethics (OGE), is issuing this rule for employees of the Commission, which supplements the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE. The rule requires employees of the Commission to obtain prior approval before engaging in outside employment. The text of the rule was published in the **Federal Register** on August 30, 2006 at 71 FR 51533 as a proposed rule and provided that comments should have been received by September 29, 2006 to be considered in the formulation of the final rule. No comments were received.

DATES: This rule is effective July 14, 2008.

FOR FURTHER INFORMATION CONTACT: Emma Monroig, Esq., Solicitor and Designated Agency Ethics Official, United States Commission on Civil Rights, Office of the Staff Director, 624 Ninth Street, NW., Suite 621, Washington, DC 20425; Telephone: (202) 376-7796; Facsimile: (202) 376-1163.

SUPPLEMENTARY INFORMATION: In 1979, the United States Commission on Civil Rights adopted a set of Employee Responsibilities and Conduct rules as set forth in 45 CFR part 706. See 44 FR 75152, as revised in 2002 at 67 FR 70498. That rule in the pertinent part

required employees to obtain approval, in writing, from their supervisors before engaging in outside employment. 45 CFR 706.7.

On August 7, 1992, OGE published new executive branch Standards of Ethical Conduct regulations, which became generally effective on February 3, 1993. The Standards, as corrected and amended, are codified at 5 CFR part 2635. These regulations, together with OGE's executive branchwide financial disclosure and financial interests regulations codified at 5 CFR parts 2634 and 2640, superseded the Commission's old Employee Responsibilities and Conduct regulations at 45 CFR part 706, including the provision requiring employees to obtain prior approval before engaging in outside employment. In a separate rulemaking also being published in the **Federal Register** today, the Commission is removing its old superseded conduct regulation and replacing it with a residual crossreferences provision.

The Commission, however, has determined, with OGE concurrence, that it is necessary and desirable for the purpose of administering its ethics program to require its employees to again obtain written approval before engaging in outside employment, except for certain volunteer community service activities the DAEO has designated as "generally approved." Section 7801.102 of new chapter LXVIII of 5 CFR will now require prior approval for outside activities in order to ensure that the activity would not otherwise violate a Federal statute or regulation, including the branchwide Standards. The section includes a definition, at paragraph (d), of outside employment, to mean any form of non-Federal employment, business relationship or activity involving the provision of personal services by the employee, whether or not for compensation. It also provides, at paragraph (c), that upon a significant change in the nature or scope of the outside employment or the employee's official position, the employee is required to submit a revised request for approval. The rule does not include special Government employees in the prior approval provision, since they consist primarily of State Advisory Committee members who serve on the Commission as uncompensated employees. Accordingly, by this rulemaking, the Commission is reinstating the prior approval requirement, albeit in a modified form in light of the promulgation of the branchwide Standards. Furthermore, in § 7801.101 of 5 CFR, the Commission states the purpose of the supplemental regulation and includes cross-references to other Government ethics regulations applicable to Commission employees in addition to the new part. The cross-referenced regulations are the executive branch Standards, as well as the OGE executive branch financial disclosure and financial interests regulations noted above, and the separate specific executive branchwide employee responsibilities and conduct regulations of the Office of Personnel Management codified at 5 CFR part 735. Moreover, the section identifies the Solicitor as the Designated Agency Ethics Official and requires that employees seeking approval for outside employment obtain the approval of the Designated Agency Ethics Official, except to the extent that volunteer professional activities designated "generally approved" do not require additional prior written approval. In this final rule, the Commission is adding two references in paragraph (a) of 7801.101 to clarify that all of the other regulations referenced are executive branchwide regulations. The Commission is also adding the word "outside" to the word "employment" in definitional paragraph (d) of § 7801.102 to clarify the term being defined. Finally, the Commission is adding a new paragraph (e) to § 7801.102 on volunteer community service activities of its professional and non-professional staff to reflect its new Administrative Instruction, with a cross-reference thereto in paragraph (a). Paragraph (e) addresses the types of clearances needed for both volunteer (pro bono) community service activities that are designated as "generally approved," or pre-approved by the DAEO, and those that are not so designated. Otherwise, the Commission, with OGE concurrence, is adopting its proposed supplemental standards regulation as final without change.

Matters of Regulatory Procedure

Executive Orders 12866 and 12988

Because this rule relates to Commission personnel, it is exempt from the provisions of Executive Orders 12866 and 12988.

Regulatory Flexibility Act

It has been determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rule does not have a significant economic impact on a substantial number of small entities because it primarily affects Commission employees.

Paperwork Reduction Act

It has been determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this rulemaking document because it does not contain any information collection requirements that require the approval of the Office of Management and Budget.

Congressional Review Act

The Commission has determined that this rulemaking is not a rule as defined in 5 U.S.C. 804, and, thus, does not require review by Congress.

List of Subjects in 5 CFR Part 7801

Conflict of interests, Government employees.

Dated: March 28, 2008.

Emma Monroig,

Solicitor and Designated Agency Ethics Official, United States Commission on Civil Rights.

Dated: March 28, 2008.

Robert Lerner,

Assistant Staff Director for Civil Rights Enforcement, Delegated Duties of the Staff Director, United States Commission on Civil Rights.

Approved: April 2, 2008.

Robert I. Cusick,

Director, Office of Government Ethics.

■ For the reasons set forth in this preamble, the United States Commission on Civil Rights, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations by adding a new chapter LXVIII, consisting of part 7801, to read as follows:

CHAPTER LXVIII—COMMISSION ON CIVIL RIGHTS**PART 7801—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE UNITED STATES COMMISSION ON CIVIL RIGHTS**

Sec.

7801.101 General.

7801.102 Prior approval for outside employment

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 42 U.S.C. 1975b(d); 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.

§ 7801.101 General.

(a) **Purpose.** In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the United States Commission on Civil Rights (Commission) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained at 5 CFR part 2635. Employees of the Commission are required to comply with this part, 5 CFR part 2635, the executive branchwide financial disclosure and financial interests regulations at 5 CFR parts 2634 and 2640, and implementing guidance and procedures. Commission employees are also subject to the executive branch regulations on responsibilities and conduct at 5 CFR part 735.

(b) **Definition.** The Designated Agency Ethics Official (DAEO) is the Solicitor for the Commission.

§ 7801.102 Prior approval for outside employment.

(a) An employee, other than a special Government employee, of the Commission who wishes to engage in outside employment shall first obtain the approval, in writing, of the Designated Agency Ethics Official (DAEO). Volunteer professional services, however, may be “generally approved” in advance as described in paragraph (e) of this section.

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

(c) Upon a significant change in the nature or scope of the outside employment or the employee’s official position, the employee must submit a revised request for approval.

(d) For purposes of this section, “outside employment” means any form of non-Federal employment, business relationship or activity involving the provision of personal services by the employee, whether or not for compensation. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher, or speaker. It includes writing done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization, unless such activities involve the provision of professional services or advice or are for

compensation other than reimbursement of expenses.

(e)(1) The Commission may designate volunteer activities as “generally approved,” or preapproved by the DAEO, in order to facilitate the participation of the Commission’s professional and nonprofessional staff (whether involving legal or non-legal services). Non-representational pro bono legal services designated as “generally approved” require employees to notify the DAEO, the General Counsel (GC), and the employee’s supervisor (if different from the GC) prior to the employee’s participation; however, no additional prior approval is required. Representational pro bono legal services designated as “generally approved” still require prior case-specific written approval by the DAEO pursuant to this section, and notification of the GC and the employee’s supervisor (if different from the GC). Non-legal professional volunteer activities designated as “generally approved” require employees to notify their supervisor and the DAEO. However, no additional prior written approval is required.

(2) To provide professional services or advice to a program or activity not designated as “generally approved,” the employee must notify his or her supervisor and submit a written request and justification in advance to the DAEO. In addition, in order to provide pro bono legal services the employee must notify the GC (if the GC is not the employee’s supervisor). If providing representational pro bono legal services, the employee must also obtain written case-specific prior approval from the DAEO pursuant to this section. All requests for approval submitted to the DAEO must reflect that the required notifications were made by the employee. All DAEO approvals must be in writing.

[FR Doc. E8-13170 Filed 6-12-08; 8:45 am]
BILLING CODE 6335-01-M

FEDERAL RESERVE SYSTEM**12 CFR Part 202**

[Regulation B; Docket No. R-1295]

Equal Credit Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final Rule; technical amendment.

SUMMARY: The Board is publishing amendments to Regulation B (Equal Credit Opportunity Act) to update the address where questions should be