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POSTAL SERVICE

5 CFR Part 7001

Supplemental Standards of Ethical Conduct for Employees of the United States Postal Service

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The United States Postal Service (Postal Service), with the concurrence of the United States Office of Government Ethics (OGE), amends the Supplemental Standards of Ethical Conduct for Employees of the United States Postal Service by updating and refining outside employment and activity provisions (including prior approval requirements and prohibitions), by adding new requirements applicable to Postal Service Office of Inspector General (OIG) employees, Postal Service Governors, the Postmaster General, and the Deputy Postmaster General, and by making limited technical and ministerial changes. In response to the proposed rule, the Postal Service received two sets of comments, which it addresses here.

DATES: This rule is effective as of September 7, 2023.

FOR FURTHER INFORMATION CONTACT: Jessica Brewster-Johnson, Senior Ethics Counsel, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–1101, 202–268–6936.

SUPPLEMENTARY INFORMATION:

Background

In March 2022, the Postal Service proposed to amend the Supplemental Standards of Ethical Conduct for Employees of the United States Postal Service (Supplemental Standards), which are codified in 5 CFR part 7001. 87 FR 12888 (March 8, 2022). The proposed rule provided a 60 day comment period, which ended on May 9, 2022. The Postal Service received two timely and responsive comments in reply, which were submitted by one trade association and one private organization. The Postal Service now responds.

Summary of Commenter A's Comments and Postal Service Responses

Commenter A, a private organization, contributed seven (7) suggested changes to the proposed rule. The Postal Service reviews and responds to each responsive comment in turn.

I. Expansion of § 7001.104—Competitors and Publicly-Traded Lessors

Commenter A ''strongly supports the Postal Service's efforts to establish firm prohibitions that bar the Board of Governors, their spouses, and their minor children from directly or indirectly acquiring or holding financial interests in postal competitors . . . [or] investments in publicly-traded companies that lease real estate to the Postal Service.'' However, Commenter A recommended that the Postal Service broaden the prohibitions proposed at 5 CFR 7001.104(a)(1)(i) and (ii) (on acquiring or holding, directly or indirectly, ''any financial interest in a person engaged in the delivery outside the mails of any type of mailable matter, except daily newspapers'' or ''any financial interest in a publicly-traded entity engaged primarily in the business of leasing real property to the Postal Service'') to apply also to the Postmaster General and the Deputy Postmaster General.

The Postal Service notes that the holdings of the Postmaster General and Deputy Postmaster General are carefully vetted, with recusals in place when necessary, for the purpose of ensuring that neither individual participates in any particular matter in a manner that violates any ethics statute or regulation or even in a manner that raises the mere appearance of a violation of these statutes and regulations. Nevertheless, for the reasons stated below, the Postal Service has determined that it is appropriate to extend the prohibitions proposed at 5 CFR 7001.104 to the Postmaster General and the Deputy Postmaster General, in addition to the Governors. Accordingly, the Postal Service has updated the language of § 7001.104 to require that the Postmaster General and the Deputy Postmaster General, in addition to the Governors, abstain from holding financial interests in Postal Service competitors or publicly-traded companies that lease real estate to the Postal Service.

The nine Governors, the Postmaster General, and the Deputy Postmaster General—who together constitute a complete Board of Governors—should all be subject to the same restrictions on holdings of postal competitors and publicly-traded lessors because they together constitute the highest echelons of the Postal Service. *See* 39 U.S.C. 202(a), (c), (d). Prohibiting all members of the Board from holding these assets will assuage any appearance concerns that any member of the Board has any divided loyalties when engaged in Board activities. The Governors alone vote on pricing decisions, which was why they alone were included in the proposed rule. The comments are well taken, however, that the Postmaster General and Deputy Postmaster General, with the Governors, constitute a full Board and that, therefore, if any Board member, regardless of their involvement with pricing decisions, were to hold stock in competitors or publicly-traded lessors, this still may lead to the appearance that a Board member has divided loyalties when he or she makes broadly applicable decisions with wide-ranging consequences, including consequences that may affect competitors or publicly-traded entities who purchase postal real estate and sell it back to the Postal Service at a profit. This expansion to include the Postmaster General and Deputy Postmaster General will support the public's ability to trust that the full Board will continue to make choices that are for the sole benefit of the Postal Service and that those decisions are made without even the appearance of divided loyalties. Therefore, the full Board—the Governors, Postmaster General, and Deputy Postmaster General—will henceforth be subject to the holding prohibitions of § 7001.104.

II. Expansion of § 7001.104—Contractors and Subcontractors

Commenter A recommends that the Postal Service broaden the proposed restrictions of 5 CFR 7001.104 to ''prohibit the Postmaster General, the Deputy Postmaster General and the . . . Governors from holding any financial interest, directly or indirectly, in a Postal Service contractor or subcontractor.'' The Postal Service has considered this suggestion but concluded that such a restriction is both overly broad and unnecessary to address actual conflicts of interest or any significant appearance concerns.

First, all Postal Service employees—including the Postmaster General and the Deputy Postmaster General—must recuse themselves from ''participating personally and substantially in an official capacity in any particular matter in which, to [their] knowledge, [they] or any person whose interests are imputed to [them] . . . has a financial interest, if the particular matter will have a direct and predictable effect on that interest.'' 18 U.S.C. 208(a)(''section 208''). In other words, no Postal Service employee—including those in leadership—may work personally and substantially on any particular matter that could have a direct and predictable effect on his or her financial interests (or the financial interests of those whose interests are imputed to him or her—*i.e.,* the employee's spouse, minor child, and others as defined by the statute). All Postal Service employees must continue to comply with this criminal statute prohibiting conflicts of interest and with the impartiality and misuse provisions of the Standards of Ethics Conduct for Employees of the Executive Branch, when considering what actions they may take at work for the Postal Service. It is not necessary to prohibit financial interests in Postal Service contractors or subcontractors beyond those entities with whom the employee will actually work in his or her postal capacity. To do so would be overly broad and would not serve to prevent actual conflicts of interest.

Financial interests in postal contractors and subcontractors also do not raise appearance concerns in the same way as financial interests in competitors and publicly traded lessors, which are covered by § 7001.104. While there are only a handful of postal competitors and only one publicly traded lessor to the Postal Service, there are thousands of postal contractors and subcontractors. Therefore, the primary concern addressed by proposed § 7001.104—that there is an appearance concern for the Governors, the Postmaster General or the Deputy Postmaster General to hold a financial interest in one of a handful of Postal Service competitors or in the one publicly traded lessor of the Postal Service, because of the highly visible nature of these entities—is not present with regard to the over 11,000 contractors and the multitude of subcontractors, many of whom are not publicly traded entities, or with regard to those entities with whom the Postal Service enters into local buy contracts. For example, if a Governor were to hold a financial interest in a small private company that has one contract with the Postal Service, so long as that Governor does not work on postal matters affecting that company, there is no conflicts concern and the level of appearance concerns is greatly reduced as compared to if that Governor owned a financial holding in one of the Postal Service's competitors or the sole publicly-traded lessor, whose visibility is pronounced. In other words, holding a financial interest in one of thousands of postal contractors or subcontractor presents negligible, if any, appearance issues.

The Governors, Postmaster General, and Deputy Postmaster General already must track, for conflicts of interest purposes, whether they hold financial interests in any entity that they may affect as part of their postal duties, and it would be overly burdensome, impractical, and unnecessary for them to have to track the entire universe of postal contractors and subcontractors for the purposes of avoiding minimal appearance concerns. For these reasons, the Postal Service declines to broaden 5 CFR 7001.104(a)(1) to include a broad blanket prohibition on holding financial interests in any of the wide universe of contractors and subcontractors.

III. Expansion of § 7001.104(a)(1)(ii) to Privately Held Lessors

Third, Commenter A recommends that 5 CFR 7001.104(a)(1)(ii) ''should not only prohibit holdings in publicly-traded entities engaged primarily in the business of leasing real property to the Postal Service, but also prohibit holdings in privately-held entities engaged primarily in the business of leasing real property to the Postal Service.'' The Postal Service declines this expansion of the entities covered by § 7001.104(a)(1)(ii), as such a prohibition is not necessary to prevent either an actual or apparent conflict of interest.

The Postal Service contracts with numerous privately-owned lessors (including many sole proprietors). These private lessors change frequently, are often relatively small, and are too numerous for covered individuals to effectively track (though of course the individuals must continue to track those outside entities who could be financially impacted as they perform their postal duties for conflicts analyses). This is in contrast to publicly-traded lessors, of which there is only one. Commenter A's suggestion is overbroad because it would require covered individuals to abstain from holding a financial interest in a private entity even if there is no overlap with the financial interests of that entity and his or her official postal duties. If a covered employee holds a financial interest in a private entity, he or she would already be prohibited from working on a matter affecting that entity under applicable conflicts rules. That will continue to be the case—though the Postal Service notes that an actual conflict is unlikely because the Board of Governors rarely would be called to address leasing matters.

What the Postal Service intends to address with 5 CFR 7001.104(a)(1)(ii), by prohibiting the covered individuals from holding a financial interest in the Postal Service's sole publicly traded lessor, is even the appearance of a conflict. The appearance of holding a financial interest in that sole, massive lessor is far greater than the potential appearance of a conflict when holding a financial interest in an entity that few know exists, such as for example a small, private, lessor that may potentially be a sole proprietorship, or have operations in just one small town. By contrast, the public lessor's sole business is to buy postal properties and sell those properties back to the Postal Service at a profit. If a covered individual were to hold a financial interest in that publicly traded lessor, there could be the appearance that the covered individual has divided loyalties—in other words, there could be the appearance of a conflict, even if there was not an actual conflict because the conflicts rule served its purpose to prevent one. The appearance of a conflict is what § 7001.104(a)(1)(ii) is designed to prevent. Holding a financial interest in a private lessor simply does not raise the same level of appearance concerns or questions regarding divided loyalties, and thus the Postal Service declines to include such lessors in the coverage of § 7001.104.

IV. Waivers

Fourth, Commenter A is concerned that the Designated Agency Ethics Official (DAEO) will not be required to consult with the Office of Government Ethics (OGE) before issuing waivers of prohibited financial interests pursuant to § 7001.104(d), which provides that the Postal Service's DAEO may, for good cause shown, grant a waiver ''of any prohibited financial interest described in paragraph (a) or (c)(2) or (3) of this section.''

Although the Postal Service is required to—and does—consult with OGE when practicable prior to issuing waivers under section 208 (under 5 CFR 2640.303), the Postal Service need not consult externally with OGE when it grants a waiver pursuant to its own Supplemental Standards, which are agency-specific rules that go above and beyond those rules already required by OGE. The Postal Service is best positioned to determine whether a waiver under its own Supplemental Standards is appropriate (unlike with section 208 waivers, for which OGE is the subject matter expert). That the Postal Service is empowered to approve waivers under its own Supplemental Standards is consistent with others agencies' abilities to make similar decisions under their own supplemental ethics regulations.

V. Section 7001.104(a)(2) Scope

Fifth, Commenter A makes recommendations regarding how the Postal Service should apply certain of the prohibited holding provisions in § 7001.104(a). As discussed above, § 7001.104(a)(1) sets forth the financial interests that are restricted for the Governors (and, as expanded in this final rule, to the Postmaster General and Deputy Postmaster General); § 7001.104(a)(2) builds upon that restriction by noting that such individuals similarly should not ''actively control the acquisition of or the holding of any financial interest described in paragraph (a)(1)(i) or (ii) of this section on behalf of any entity whose financial interests are imputed . . . under 18 U.S.C. 208.'' The provision goes on to explain that the Postal Service does not deem an individual to ''actively control'' the financial interests of an entity for purposes of this provision if he or she merely directs the investment strategy, hires the entity's financial manager who selects the investments, or designates another employee to select the investments. Commenter A seems to suggest that the Postmaster General and Deputy Postmaster General—to whom the final rule applies restrictions of § 7001.104(a)(1), as suggested by Commenter A—should have a different standard than the Governors for evaluating when they ''do[ ] not actively control the financial interests of an entity'' relating to the § 7001.104(a)(2) restriction. Specifically, Commenter A suggests that the standards for determining whether the Postmaster General and Deputy Postmaster General ''actively control'' the financial interests of an entity ''should be consistent with 5 CFR 2640.202(e).''

The Postal Service disagrees that the concept of ''active[ ] control'' in this restriction should be different for the Postmaster General and Deputy Postmaster General than for the Governors. As updated consistent with the discussions in this preamble, § 7001.104(a) will place requirements on Governors, the Postmaster General, and the Deputy Postmaster General to address appearance concerns. These requirements are above and beyond—and in addition to—the requirements that all Federal employees are subject to, under section 208 and the Standards of Ethical Conduct for Employees of the Executive Branch. Section 208 will continue to control when any real conflicts of interest are present. Therefore, the restrictions, which mirror the exemption to section 208 found in 5 CFR 2640.202(e), will apply to the Postmaster General and Deputy Postmaster General should an actual conflict arise.

Conversely, § 7001.104(a) is meant to address appearance concerns, as stated above. A reasonable person with the knowledge that a Governor, the Postmaster General or the Deputy Postmaster General actively controls the holdings of entity would have reason to question the loyalty of that individual when the entity invests in a competitor or the publicly held lessor. The same cannot be said when the entity invests in a competitor or the publicly held lessor, but the Governor, Postmaster General or Deputy Postmaster General does not actively control the acquisition of or holding of those financial interests, as described in § 7001.014(a)(2). As such, the standard that Commenter A suggests should be applied to PG and DPG is simply not necessary because we do not believe that there are any appearance concerns if the Postmaster General or the Deputy Postmaster is merely directing the investment strategy of the entity and hiring the entity's financial manager, who in turn selects the entity's investment, or designating another employee of the entity to select the entity's investments. Because the Postal Service is focused on the appearance of a conflict as opposed to an actual conflict, the Postal Service will apply § 7001.104(a)(2) in the same manner to the Postmaster General and the Deputy Postmaster General as it does to the Governors.

VI. Postmaster General Vetting Process

Sixth, Commenter A asks that the ethics review process for the position of Postmaster General be ''strengthened and enhanced''—specifically through an accelerated process similar to that used for Presidential appointees subject to Senate confirmation (''PAS'' nominees), which would require a new Postmaster General to enter into a written ethics agreement with the DAEO within 30 days of taking office and adhere to a 90-day time limit for divestiture.

The Postal Service notes that the vetting process for potential future Postmasters General is outside of the scope of this rulemaking. Regarding the substance of the commenter's suggestion, the Postal Service has every confidence in its current protocols for reviewing the financial interests of incoming Postmasters General, but does note that it is currently considering an enhanced framework under which prospective Postmasters General would be reviewed.

VII. Office of Government Ethics Website

Last, Commenter A asks that the Postmaster General's ethics agreements, and any amendments thereto, be subject to review and approval by the Director of OGE and made publicly available on OGE's website, along with the Postmaster General's public financial disclosure reports and any waivers issued pursuant to 18 U.S.C. 208(b)(1) or by supplemental regulation.

First, with regard generally to what materials are publicly available on OGE's website, the Postal Service notes that it is not empowered to make that determination. OGE solely determines what materials it includes or excludes on its own website, pursuant to applicable law.

Second, as to the Postmaster General's public financial disclosure reports, they are already publicly available on OGE's website. While PAS officials' ethics agreements are available on OGE's website, the Postmaster General is not a PAS government official. As such, the Postal Service is not required to have OGE involved in developing an ethics agreement for the Postmaster General, as OGE is involved for PAS officials. Moreover, even if the Postmaster General were a PAS official, the Postal Service is not in the position to choose or determine what is posted on OGE's website and the question of whether the Postmaster General should be a PAS official, with all the requirements those positions entail, is far afield and outside of the scope of the Postal Service's authority and this rulemaking. Finally, no other PAS government official's waivers issued pursuant to 18 U.S.C. 208(b)(1) are published on OGE website and the Postal Service declines to treat the Postmaster General differently by requesting that his or her waivers be posted to OGE website or, in the case of waivers issued pursuant to Supplemental Standards, posted on the Postal Service's website. Notwithstanding the foregoing, the Postal Service notes that any waiver issued pursuant to section 208 to the Postmaster General is available upon request to the public under that statute and 5 CFR 2640.304(a).

Summary of Commenter B's Comments and Postal Service Responses

Commenter B is a trade association. Commenter B's correspondence overall expressed optimism. In particular, Commenter B articulated the hope that the Postal Service's proposed changes to 5 CFR 7001.102 would positively affect the labor shortage currently faced by highway contract route (''HCR'') suppliers. Commenter B described the HCR driver shortage as part of a larger problem faced by the greater surface transportation industry that uniquely challenges HCR suppliers. Commenter B identified multiple factors causing the available labor pool to shrink, including matters both outside of the scope of this rulemaking and factors within the scope of this rulemaking, addressed here.

As stated above, Commenter B broadly supported the proposed change to 5 CFR 7001.102, which would permit a Postal Service employee to seek concurrent supplemental employment with HCR contractors if the employee obtained permission from the Ethics Office. Commenter B acknowledged that removing the outright prohibition on concurrent employment with the Postal Service and HCR suppliers and instituting a ''case-by-case'' analysis would permit HCR suppliers to hire some Postal Service employees—those whom the Ethics Office clears for part-time positions—as opposed to the prior situation, in which HCR suppliers were prohibited outright from hiring Postal Service employees. Commenter B hopes that this change would result in a larger pool of applicants for open HCR driver positions. If finalized, this Commenter opined, ''the proposed rule would create a more flexible, dynamic workforce benefitting the transportation of mail throughout the nation.''

Nevertheless, Commenter B was apprehensive about whether the proposed approval process would result in delays. Specifically, it expressed concerns about potential delays caused by (1) the requirement that a Postal Service employee obtain a statement from the employee's supervisor for the Ethics Office to consider and (2) the requirement that the Ethics Office review the Postal Service employee's request and his or her manager's statement. Essentially, Commenter B opined that these two requirements would cause undue delay between when the employee decides to apply for an open supplier position and when he or she is able to obtain clearance from the Ethics Office to apply. Commenter B is concerned that these requirements, which would take time, could jeopardize the Postal Service employee's opportunity for employment with an HCR contractor because the HCR application process moves swiftly.

The Postal Service respectfully disagrees with Commenter B's characterization of the review requirements as delays, which connotes that the time taken to review is unnecessary. Rather, the Postal Service posits that the time needed to complete these requirements will be relatively short and that the perceived negatives of the approval process are outweighed by its benefits. Specifically, both requirements are essential for the Ethics Office to determine whether a Postal Service employee would run afoul of the criminal conflict of interest statute or other Federal ethics rules if he or she were hired by an HCR supplier. As to a timeframe for review, the Ethics Office will endeavor to review these requests within its already established practice of reviewing all ethics advice matters as quickly as possible and in a timely manner.

The Postal Service is cognizant of, and wishes to be attentive to, the needs of the supplier community and the time-sensitive nature of the application process, and understands that the requirement to obtain a statement from the employee's manager and approval from the Ethics Office will lengthen the time that it takes an employee to apply for a position with a supplier. However, the Ethics Office requires the information contained in the statement from the employee's manager, and time to review that information, in order to make a determination about whether the employee's application would be consistent with the ethics rules and statutes. And, as stated above, the Ethics Office will continue to respond as quickly as possible to all requests for review under this new provision.

In changing the rule from an outright prohibition on supplemental employment with an HCR to a case-by-case analysis via an approval process, the Postal Service will permit some Postal Service employees, as appropriate, to apply for concurrent employment with HCR suppliers—thus helping to alleviate the HCR driver shortage—while assisting Postal Service employees with remaining in compliance with the ethics rules and regulations.

As a final point, Commenter B raised a question regarding 5 CFR 7001.102, about which the Postal Service would like to offer clarification. Commenter B expressed concern that an employee who is a prospective applicant with an HCR may have to submit unnecessarily duplicative applications to the Ethics Office if he or she wished to work for more than one HCR supplier. In other words, it appears that Commenter B saw the proposed rule as requiring a Postal Service employee to submit one request per supplier. However, this is not the intention of the proposed rule. Postal Service employees seeking clearance to work for more than one HCR supplier may submit a single request to the Ethics Office and may obtain a single statement from their managers in support of that request.

Conclusion

The Postal Service did not receive any other comments other than those discussed above. For the reasons detailed in the preamble of the previously-issued Notice of Proposed Rulemaking, the Postal Service is, with the concurrence of the Office of Government Ethics, issuing the rule in final with only one change, to expand the coverage of 5 CFR 7001.104(a) to apply to the Postmaster General and the Deputy Postmaster General.

List of Subjects in 5 CFR Part 7001

Conflict of interests, Ethical standards, Executive branch standards of conduct, Government employees.

For the reasons set forth in the preamble, the United States Postal Service, with the concurrence of the United States Office of Government Ethics, amends 5 CFR part 7001 as follows:

PART 7001—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE UNITED STATES POSTAL SERVICE

■ 1. The authority citation for part 7001 continues to read as follows:

Authority: 5 U.S.C. 7301; 5 U.S.C. Chapter 131; 39 U.S.C. 401; 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, 2635.802, and 2635.803.

■ 2. Revise § 7001.102 to read as follows:

§ 7001.102 Restrictions on outside employment and business activities.

(a) *Prohibited outside employment and business activities.* No Postal Service employee shall:

(1) Engage in outside employment or business activities that involve providing consultation, advice, or any subcontracting service, with respect to the operations, programs, or procedures of the Postal Service, to any person who

has a contract with the Postal Service or who the employee has reason to believe will compete for such a contract;

(2) Except as permitted by paragraph (b)(2) of this section, engage in outside employment or business activities with, for, or as a person engaged in:

(i) The operation of a commercial mail receiving agency registered with the Postal Service; or

(ii) The delivery outside the mails of any type of mailable matter, except daily newspapers.

Example 1 to paragraph (a)(2)(ii): United Parcel Service (UPS), Federal Express (FedEx), Amazon, or DHL offers a part-time job to a Postal Service employee. Because UPS, FedEx, Amazon and DHL are persons engaged in the delivery outside the mails of mailable matter (as defined in paragraph (c)(2) of this section) that is not daily newspapers, the employee may not engage in employment with UPS, FedEx, Amazon, or DHL in any location in any capacity while continuing employment with the Postal Service in any location in any capacity. If the employee chooses to work for UPS, FedEx, Amazon, or DHL, the employee must end his or her postal employment before commencing work for that company.

(3) Engage in any fundraising (as defined in 5 CFR 2635.808(a)(1)), for-profit business activity, or sales activity, including the solicitation of business or the receipt of orders, for oneself or any other person, while on duty or in uniform, at any postal facility, or using any postal equipment. This paragraph does not prohibit an employee from engaging in fundraising at a postal facility as permitted in connection with the Combined Federal Campaign (CFC) under 5 CFR part 950.

Example 2 to paragraph (a)(3): An employee volunteers at a local animal shelter (a non-profit organization) which is having its annual fundraising drive. The employee may not solicit funds or sell items to raise funds for the animal shelter while on duty, in uniform, at any postal facility, or using any postal equipment.

Example 3 to paragraph (a)(3): Outside of his postal employment, an employee operates a for-profit dog-walking business. The employee may not engage in activities relating to the operation of his business while on duty, in uniform, at any postal facility, or using any postal equipment.

Example 4 to paragraph (a)(3): Outside of her postal employment, an employee has a job as a sales associate for a cosmetics company. The employee may not solicit sales or receive orders for the cosmetic company from any person while on duty, in uniform, at any postal facility, or using any postal equipment.

(b) *Prior approval for outside employment and business activities*—(1) *When prior approval required.* A Postal Service employee shall obtain approval from the Postal Service's Ethics Office in accordance with paragraph (b)(3) of this section prior to:

(i) Engaging in outside employment or business activities with or for any person with whom the employee has official dealings on behalf of the Postal Service;

(ii) Engaging in outside employment or business activities with, for, or as a person who has interests that are:

(A) Substantially dependent upon, or potentially affected to a significant degree by, postal rates, fees, or classifications; or

(B) Substantially dependent upon providing goods or services to, or for use in connection with, the Postal Service; or

(iii) Engaging in outside employment or business activities with or for any Highway Contract Route (HCR) contractor.

(2) *When prior approval may be requested for prohibited outside employment and activities.* If an entity with which an employee wishes to engage in outside employment or business activities is a subsidiary of an entity that is engaged in one the activities described in paragraph (a)(2) of this section, but does not itself engage in any those activities, the employee may request approval from the Postal Service's Ethics Office to engage in such activity. The employee's request should follow the procedures of paragraph (b)(3) of this section, and will be evaluated under the standard set forth in paragraph (b)(4) of this section.

Example 5 to paragraph (b)(2): A Postal Service employee who wishes to engage in outside employment with Whole Foods Market may submit a request to engage in that activity to the Postal Service's Ethics Office. Although Whole Foods Market is a subsidiary of Amazon, it is engaged in the supermarket business, not in the delivery outside the mails of mailable matter.

(3) *Submission and contents of request for approval.* An employee who wishes to engage in outside employment or business activities for which approval is required by paragraph (b)(1) of this section shall submit a written request for approval to the Postal Service's Ethics Office. The request shall be accompanied by a statement from the employee's supervisor briefly summarizing the employee's duties and stating any workplace concerns raised by the employee's request for approval. The request for approval shall include:

(i) A brief description of the employee's official duties;

(ii) The name of the outside employer, or a statement that the employee will be engaging in employment or business activities on his or her own behalf;

(iii) The type of employment or business activities in which the outside employer, if any, is engaged;

(iv) The type of services to be performed by the employee in connection with the outside employment or business activities;

(v) A description of the employee's official dealings, if any, with the outside employer on behalf of the Postal Service; and

(vi) Any additional information requested by the Postal Service's Ethics Office that is needed to determine whether approval should be granted.

(4) *Standard for approval.* The approval required by paragraph (b)(1) of this section shall be granted only upon a determination that the outside employment or business activities will not involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635, which includes, among other provisions, the principle stated at 5 CFR 2635.101(b)(14) that employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in part 2635.

(c) *Special rules for outside employment or business activities of OIG employees*—(1) *When reporting required.* A Postal Service Office of Inspector General (OIG) employee shall report compensated and uncompensated outside employment or business activities to the OIG's Office of General Counsel, including:

(i) Any knowing sale or lease of real estate to the Postal Service or to a Postal Service employee or contractor, regardless of the frequency of such sales or leases or whether the sale or lease is at fair market value;

(ii) Any ownership or control of a publicly-accessible online or physical storefront; and

(iii) Volunteer activities, if they regularly exceed 20 hours per week or when the employee holds an officer position in the organization.

Example 6 to paragraph (c)(1)(iii): An OIG employee occasionally volunteers with a domestic violence non-profit. The employee's volunteer duties are generally limited to 5 hours per week. The employee is not an officer of the organization. One weekend the employee helps to build a new home for a family, which takes a combined 22 hours. The employee is not required to report those volunteer activities because the employee is not an officer and the employee's volunteer activities do not *regularly* exceed 20 hours per week.

Example 7 to paragraph (c)(1)(iii): An OIG employee is a Scoutmaster for his child's local scouting group. The children meet for an hour each week and go on 4-hour hikes one weekend per month. Though ''Scoutmaster'' may involve leadership, it is not an officer position within the non-profit entity and need not be reported.

(2) *When prior approval required.* A Special Agent or Criminal Investigator shall also request and obtain written approval prior to engaging in outside employment or business activities which he or she is required to report under paragraph (c)(1) of this section. A request for approval shall be submitted to the OIG's Office of General Counsel, which will be reviewed under the same standard stated in paragraph (b)(3) of this section.

(3) *Implementation guidance.* The OIG's Office of General Counsel may issue internal instructions governing the submission of requests for approval of outside employment, business activities, and volunteer activities. The instructions may exempt categories of employment, business activities, or volunteer activities from the reporting and prior approval requirements of this section based on a determination that those activities would generally be approved and are not likely to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635. The OIG's Office of General Counsel may include in these instructions examples of outside activities that are permissible or impermissible consistent with this part and 5 CFR part 2635.

(d) *Definitions.* For purposes of this section:

(1) *Outside employment or business activity* means any form of employment or business, whether or not for compensation. It includes, but is not limited to, the provision of personal services as officer, employee, agent, attorney, consultant, contractor, trustee, teacher, or speaker. It also includes, but is not limited to, engagement as principal, proprietor, general partner, holder of a franchise, operator, manager, or director. It does not include equitable ownership through the holding of publicly-traded shares of a corporation.

(2) *Commercial mail receiving agency* means a private business that acts as the mail receiving agent for specific clients. The business must be registered with the post office responsible for delivery to the commercial mail receiving agency.

(3) A *person engaged in the delivery outside the mails of any type of mailable matter* means a person who is engaged in the delivery outside the mails of any letter, card, flat, or parcel eligible to be accepted for delivery by the Postal Service.

(4) A *person having interests substantially dependent upon, or potentially affected to a significant degree by, postal rates, fees, or classifications* includes a person:

(i) Primarily engaged in the business of publishing or distributing a publication mailed at Periodicals rates of postage;

(ii) Primarily engaged in the business of sending advertising, promotional, or other material on behalf of other persons through the mails;

(iii) Engaged in a commercial business that:

(A) Primarily utilizes the mails for the solicitation or receipt of orders for, or the delivery of, goods or services; and

(B) Can be expected to earn gross revenue exceeding $10,000 from utilizing the mails during the business's current fiscal year; or

(iv) Who is, or within the past 4 years has been, a party to a proceeding before the Postal Regulatory Commission.

Example 8 to paragraph (d)(4)(iii): An employee operates a business which sells handmade wooden bowls on its website and other e-commerce websites and uses the Postal Service as its primary shipper. The employee's business can be expected to earn gross revenue of more than $10,000 from utilizing the mails during the business's current fiscal year. The employee's business is ''a person having interests substantially dependent upon, or potentially affected to a significant degree by, postal rates, fees, or classifications'' because it is a commercial business that primarily utilizes the mails for the delivery of its goods and the business can be expected to earn gross revenue exceeding $10,000 from utilizing the mails during its current fiscal year.

Example 9 to paragraph (d)(4)(iii): An employee knits scarves as a hobby, most of which she gives to family and friends, but she occasionally sells extra scarves on an e-commerce website and uses the Postal Service as her primary shipper. The employee does not expect to receive more than $10,000 from utilizing the mails during the current calendar year in which she sells the scarves. The employee is not ''a person having interests substantially dependent upon, or potentially affected to a significant degree by, postal rates, fees, or classifications'' because she is not engaged in a commercial business that can be expected to earn gross revenue from utilizing the mails exceeding $10,000 during its current fiscal year.

(5) *A person having interests substantially dependent upon providing goods or services to, or for use in connection with, the Postal Service* includes a person:

(i) Providing goods or services under contract(s) with the Postal Service that in total can be expected to provide revenue exceeding $100,000 over the term(s) of the contract(s); or

(ii) Substantially engaged in the business of preparing items for others for mailing through the Postal Service.

Example 10 to paragraph (d)(5)(ii): A mailing house that sorts and otherwise prepares for its clients large volumes of advertising, fundraising, or political mail for mailing to prospective customers, donors, or voters through the Postal Service is ''a person having interests substantially dependent upon providing goods or services to, or for use in connection with, the Postal Service'' because it is substantially engaged in the business of preparing items for others for mailing through the Postal Service.

■ 3. Add § 7001.104 to read as follows:

§ 7001.104 Prohibited financial interests of the members of the Board of Governors

(a) *General prohibitions.* (1) No member of the Board of Governors, which includes the Postmaster General, the Deputy Postmaster General, and the nine appointed Governors of the United States Postal Service, or any spouse or minor child of any member of the Board of Governors, shall acquire or hold, directly or indirectly:

(i) Any financial interest in a person engaged in the delivery outside the mails of any type of mailable matter, except daily newspapers; or

(ii) Any financial interest in a publicly-traded entity engaged primarily in the business of leasing real property to the Postal Service.

(2) No member of the Board of Governors shall actively control the acquisition of, or the holding of, any financial interest described in paragraph (a)(1)(i) or (ii) of this section, on behalf of any entity whose financial interests are imputed to them under 18 U.S.C. 208. A member of the Board of Governors actively controls the financial interests of an entity if he or she selects or dictates the entity's investments, such as stocks, bonds, commodities, or funds. A member of the Board of Governors does not actively control the financial interests of an entity if he or she merely directs the investment strategy of the entity, hires the entity's financial manager(s) who selects the

entity's investments, or designates another employee of the entity to select the entity's investments. A member of the Board of Governors may have such investment authority when serving as an officer, director, trustee, general partner, or employee of an entity.

Example 1 to paragraph (a)(2): A Governor is also the chief executive officer (CEO) of a life insurance company. The company's policy is for: the board of directors to determine the overall investment strategy for the company's excess cash, an internal team to recommend to the CEO specific financial instruments in which to invest the company's excess cash to implement the board's overall investment strategy, and the CEO to approve or disapprove of the internal team's specific investment recommendations. The Governor actively controls the financial interests of the life insurance company in her position as CEO of the company.

Example 2 to paragraph (a)(2): A Deputy Postmaster General is also on the board of directors of an investment company. The company's policy is for: the board of directors to determine the overall investment strategy for the company's excess cash, the board of directors to choose an external investment manager to select and manage day-to-day the specific financial instruments in which the company's excess cash is invested to implement the board's overall investment strategy, and the CEO and other company management official to oversee the investment management process, including periodic review of the company's investment portfolio. This Deputy Postmaster General does not actively control the financial interests of the investment company in his position on the board of directors.

(b) *Exception.* Paragraph (a) of this section does not prohibit any member of the Board of Governors or spouse or minor child of any member of the Board of Governors from directly or indirectly acquiring or holding, or a member of the Board of Governors from actively controlling on behalf of any entity, any financial interest in any publicly-traded or publicly-available mutual fund (as defined in 5 CFR 2640.102(k)) or other collective investment fund, including a widely-held pension or other retirement fund, that includes any financial interest described in paragraph (a)(1)(i) or (ii) of this section, provided that:

(1) Neither the member of the Board of Governors nor his or her spouse exercises active control over the financial interests held by the fund; and

(2) The fund does not have a stated policy of concentrating its investments in, as applicable, persons engaged in the delivery outside the mails of mailable matter, except daily newspapers, or persons engaged primarily in the business of leasing real property to the Postal Service.

(c) *Reporting of prohibited financial interest and divestiture*—(1) *General.* Any financial interest prohibited by paragraph (a) of this section shall be divested, in the case of a Governor, within 90 calendar days of confirmation by the Senate of the Governor's nomination, and, in the case of a Postmaster General or Deputy Postmaster General, within 90 calendar days of his or her appointment, or as soon as possible thereafter if there are restrictions on divestiture.

(2) *Newly-prohibited financial interests following confirmation or appointment.* If a financial interest described in paragraph (a) of this section becomes prohibited subsequent to the Governor's confirmation or a Postmaster General or Deputy Postmaster General's appointment:

(i) The member of the Board of Governors shall report the prohibited financial interest to the Postal Service's Designated Agency Ethics Official (DAEO) within 30 calendar days of the DAEO informing the member of the Board of Governors that such financial interests have become prohibited; and

(ii) The prohibited financial interest shall be divested within 90 calendar days of the DAEO informing the member of the Board of Governors that such financial interests have become prohibited, or as soon as possible thereafter if there are restrictions on divestiture.

(3) *Prohibited financial interests acquired without specific intent following confirmation or appointment.* (i) If a member of the Board of Governors, or spouse or minor child of any member of the Board of Governors acquires a financial interest prohibited by paragraph (a)(1) of this section without specific intent to acquire it (such as through marriage, inheritance, or gift) subsequent to the Governor's confirmation or the appointment of a Postmaster General or Deputy Postmaster General:

(A) The member of the Board of Governors shall report the prohibited financial interest to the Postal Service's DAEO within 30 calendar days of its acquisition; and

(B) The prohibited financial interest shall be divested within 90 calendar days of its acquisition, or as soon as possible thereafter if there are restrictions on divestiture.

(ii) If an entity whose financial interests are actively controlled by a member of the Board of Governors acquires a financial interest described in paragraph (a)(1)(i) or (ii) of this section without specific intent to acquire it (such as through a gift) subsequent to a Governor's confirmation or the appointment of a Postmaster General or Deputy Postmaster General:

(A) The member of the Board of Governors shall report the prohibited financial interest to the Postal Service's DAEO within 30 calendar days of its acquisition; and

(B) The prohibited financial interest shall be divested within 90 calendar days of its acquisition, or as soon as possible thereafter if there are restrictions on divestiture.

(4) *Disqualification from participating in particular matters pending divestiture.* Pending any required divestiture of a prohibited financial interest provided for in this paragraph (c), a member of the Board of Governors shall disqualify himself or herself from participating in particular matters involving or affecting the prohibited financial interest. Disqualification is accomplished by not participating in the particular matter.

(d) *Waiver of prohibited financial interests.* For good cause shown by a member of the Board of Governors, the Postal Service's DAEO may grant a written waiver to the member of the Board of Governors of any prohibited financial interest described in paragraph (a) or (c)(2) or (3) of this section; provided that the DAEO finds that the waiver is not inconsistent with 5 CFR part 2635 or otherwise prohibited by law, and that under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of the member of the Board of Governors' misuse of position or loss of impartiality, or otherwise to ensure confidence in the impartiality or objectivity with which the Postal Service's programs are administered. The DAEO may impose appropriate conditions for granting of the waiver, such as requiring the member of the Board of Governors to execute a written statement of disqualification.

(e) *Definition.* For purposes of this section, a *person engaged in the delivery outside the mails of any type of mailable matter* is as defined in § 7001.102(d)(3).

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