

PART 5200 [RESERVED]

PART 5201—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF LABOR

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SOURCE: 61 FR 57284, Nov. 6, 1996, unless otherwise noted.

§ 5201.101 General.

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

§ 5201.102 Designation of separate agency components.

(a) *Separate agency components of the Department of Labor.* Pursuant to 5 CFR 2635.203(a), each of the ten components of the Department listed below is designated as an agency separate from each of the other nine listed components and, for employees of that component, as an agency distinct from the remainder of the Department. However, the components listed below are not deemed to be separate agencies for purposes of applying any provision of 5 CFR part 2635 or this part to employees of the remainder of the Department:

- (1) Benefits Review Board;
- (2) Employees Compensation Appeals Board;
- (3) Mine Safety and Health Administration (MSHA);
- (4) Veterans' Employment and Training Service;
- (5) Occupational Safety and Health Administration (OSHA);

(6) Employee Benefits Security Administration (EBSA);

(7) Bureau of International Labor Affairs;

(8) Bureau of Labor Statistics;

(9) Employment and Training Administration (ETA); and

(10) Employment Standards Administration (ESA).

(b) *Separate agency subcomponents of ESA.* Pursuant to 5 CFR 2635.203(a), each of the four subcomponents of the Employment Standards Administration (ESA) listed in this paragraph is designated as an agency separate from each of the other three listed components and, for employees of that subcomponent, as an agency distinct from the remainder of ESA. However, the components listed in this paragraph are not deemed to be separate agencies for purposes of applying any provision of 5 CFR part 2635 or this part to employees of the remainder of ESA:

- (1) Wage and Hour Division;
- (2) Office of Federal Contract Compliance Programs;
- (3) Office of Workers Compensation Programs; and
- (4) Office of Labor-Management Standards.

(c) *Definitions*—(1) *Remainder of the Department* means employees in the Office of the Secretary and any other employee of the Department not in one of the 10 components designated as separate agencies in paragraph (a) of this section.

(2) *Remainder of ESA* means employees in the Office of the Assistant Secretary for Employment Standards and any other ESA employee not in one of the four subcomponents designated as separate agencies in paragraph (b) of this section.

(d) *Applicability of separate agency designations.* The designations in paragraphs (a) and (b) of this section identify an employee's "agency" for purposes of:

- (1) Determining when a person is a prohibited source within the meaning of 5 CFR 2635.203(d) for purposes of applying the regulations at subpart B of 5 CFR part 2635 governing gifts from outside sources;

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(2) Determining whether teaching, speaking or writing relates to the employee's official duties within the meaning of 5 CFR 2635.807(a)(2)(i); and

(3) Determining when a person is a prohibited source for purposes of applying the regulations at 5 CFR 2635.808(c) governing fundraising in a personal capacity.

Example 1: An employee of the Mine Safety and Health Administration attends a Saturday football game together with an employee of the Office of the Solicitor. By coincidence, they are seated next to a contract consultant to the Employment and Training Administration. They talk about the game and describe their jobs and personal interests to their new seat-mate. The consultant states that he and his wife will not be able to attend next week's game and would like to give their very expensive tickets to people who will really enjoy them. The MSHA employee may accept the ticket. MSHA is designated as a separate agency under § 5201.102, and the ETA contractor is not a prohibited source of gifts for MSHA employees. The contractor is not regulated by and has no business dealings with MSHA. The Solicitor's Office employee may not accept the gift. The ETA contractor is a prohibited source for Solicitor's Office employees because the Solicitor's Office is a part of the "Remainder of the Department of Labor." Any source which is prohibited for any component of the Department of Labor is a prohibited source for employees in the "Remainder."

[61 FR 57284, Nov. 6, 1996, as amended at 68 FR 16398, Apr. 3, 2003]

§ 5201.103 Fundraising activities.

Notwithstanding 5 CFR 2635.808(c)(1)(i), an employee of any separate agency component listed in this section may, in a personal capacity, personally solicit funds from a person who is a prohibited source if person is a prohibited source for employees of the component only under 5 CFR 2635.203(d)(3) because the person conducts activities regulated by the component:

- (a) The Wage and Hour Division;
- (b) The Office of Federal Contract Compliance Programs;
- (c) The Remainder of the Employment Standards Administration, as defined in § 5201.102(c);
- (d) Occupational Safety and Health Administration;
- (e) Employee Benefits Security Administration;

(f) Veterans' Employment and Training Service; and

(g) The Remainder of the Department of Labor, as defined in § 5201.102(c).

Example 1: A training official in the Mine Safety and Health Administration is president of the local branch of her college alumni association. The association is seeking used computers from local businesses to upgrade the college's language lab. The employee may not seek a contribution from the vice president of a mining company which is regulated by MSHA. Even though the mining company is not currently under investigation, it is a prohibited source for the employment because it is subject to MSHA regulation and MSHA is not one of the agency components designated as separate for the purpose of fundraising in a personal capacity.

Example 2: A typist in the Employee Benefits Security Administration raises money for a local homeless shelter during his off-duty hours. He may seek a contribution from a firm that is regulated by EBSA under the Employee Retirement Income Security Act but may not seek contributions from one that he knows is currently under investigation for a violation of the Act. While firms regulated by an agency would ordinarily be prohibited sources for purposes of an employee's fundraising in a personal capacity, § 5201.103 provides that employees of EBSA and the other separate agency components listed in that section may seek charitable contributions from an entity that is a prohibited source only because its activities are subject to regulation by that separate agency component. On the other hand, the employee may not engage in fundraising from a person who he knows is a prohibited source for any other reason, such as an ongoing enforcement action.

Example 3: An employee of the Employment and Training Administration may seek charitable contributions from a firm currently under investigation by the Occupational Safety and Health Administration (OSHA). ETA does not regulate this firm and has had no dealings or business with it of any kind. Since ETA has been designated as a separate agency under § 5201.102, ETA employees need only consider their own official duties and activities and those of ETA in determining whether a person is a prohibited source for purposes of their fundraising in a personal capacity. The fact that a person may be a prohibited source of direct and indirect gifts for OSHA employees is not relevant in this instance.

[61 FR 57284, Nov. 6, 1996, as amended at 68 FR 16398, Apr. 3, 2003]

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§ 5201.104 Additional rules for Office of the Inspector General employees.

The rules in this section apply to employees of the Office of the Inspector General (OIG) and are in addition to §§ 5201.101, 5201.102, and 5201.103.

(a) *Prior approval for outside employment.* (1) Before engaging in any outside employment, an OIG employee must obtain the written approval of the Inspector General or the Inspector General's designee.

(2) *Submission of requests for approval.*

(i) Requests for approval shall be submitted in writing to the Inspector General or the Inspector General's designee. Such requests shall include, at a minimum, the following:

(A) The employee's name and position title;

(B) The name and address of the person, group, or organization for whom the employee proposes to engage in outside employment; and

(C) A description of the proposed outside employment, including the duties and services to be performed while engaged in the outside employment, and the approximate dates of the outside employment.

(ii) Together with the employee's request for approval, the employee shall provide a certification that:

(A) The outside employment will not depend in any way on nonpublic information, as defined at 5 CFR 2635.703(b);

(B) 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; and

(C) The employee has read and is familiar with the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2635), including subpart H. ("Outside Activities"), and the Department's supplemental standards of ethical conduct set forth in this part.

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

(3) *Standard for approval.* Approval shall be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regula-

tion, including 5 CFR part 2635 and this part.

(4) *Definitions.* For purposes of this section, "employment" means any form of non-Federal employment or any business relationship involving the provision of personal services by the employee. It includes but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, or trustee.

§ 5201.105 Additional rules for Mine Safety and Health Administration employees.

The rules in this section apply to employees of the Mine Safety and Health Administration (MSHA) and are in addition to §§ 5201.101, 5201.102, and 5201.103.

(a) *Prohibited financial interests.* Employees in the MSHA and their spouses and minor children are prohibited from having any financial interests (including compensated employment) in any company or other person engaged in mining activities subject to the Federal Mine Safety and Health Act of 1977 (Mine Safety and Health Act), 30 U.S.C. 801 *et seq.* A company or other person shall be deemed to be engaged in such mining activities if it owns 50 percent or more of the voting securities of another company or other person engaged in such mining activities. A company or other person shall not be deemed to be engaged in such mining activities solely because it is controlled by a company or other person which does engage in such activities.

(b) *Exceptions.* (1) Nothing in this section prohibits an employee or the spouse or minor child of an employee from acquiring, owning or controlling an interest in a publicly traded or publicly available investment fund provided that, upon initial or subsequent investment by the employee (excluding ordinary dividend reinvestment), the fund does not have invested, or does not indicate in its prospectus the intent to invest, more than 30 percent of its assets in the securities of a company or other person engaged in mining activities subject to the Mine Safety and Health Act, and the employee, spouse, or minor child neither exercises control nor has the ability to exercise

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control over the financial interests held in the fund.

(2) Nothing in this section prohibits an employee or the spouse or minor child of an employee from having a financial interest in a pension administered by, or which invests in, a company or other person engaged in mining activities subject to the Mine Safety and Health Act.

Example: A mine inspector who was a former employee of mining company X could continue to participate in mine company X's pension plan without violating this section. However, he would have to disclose the interest on his financial disclosure report. Additionally, the inspector should not inspect or otherwise take official action on a matter affecting mine company X without checking with his ethics advisor to ensure that performance of his official duties would not violate the conflict of interest statute (18 U.S.C. 208) or any other ethics provisions.

(c) *Waiver.* (1) The Assistant Secretary of labor for Mine Safety and Health or the Assistant Secretary's designee may grant an employee a written waiver from the prohibitions contained in paragraph (a) of this section, based on a determination 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 misuse of position or loss of impartiality, or to ensure confidence in the impartiality and objectivity with which Mine Safety and Health Administration programs are administered.

(2) The Assistant Secretary or the designee shall grant a waiver from the

prohibitions in paragraph (a) of this section regarding spouses and minor children unless the Assistant Secretary or the designee determines that the covered relationship or interest is likely to be inconsistent with 5 CFR part 2635 or is otherwise prohibited by law.

(3) A waiver under this section may be accompanied by appropriate conditions, such as requiring execution of a written statement of disqualification. A waiver may be withdrawn if it is later determined that such waiver does not meet the requirements for the granting of waivers under this paragraph. Notwithstanding the grant of any waiver, a covered employee remains subject to the disqualification requirements of 5 CFR 2635.402 and 2635.502.

(4) Factors which may be considered in connection with the granting or denial of waivers include the nature and extent of the financial interest, and the official position and duties of the employee.

(d) *Pre-existing interests.* Notwithstanding paragraph (a) of this section, an employee of the Mine Safety and Health Administration, and a spouse or minor child of such an employee, may retain financial interests otherwise prohibited by paragraph (a) of this section which were approved in writing under procedures in effect before the effective date of this section, unless the approval is withdrawn, subject to the standards applicable to the withdrawal of waivers under paragraph (c) of this section.

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