

PART 8300 [RESERVED]

PART 8301—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF AGRICULTURE

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AUTHORITY: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159 (April 12, 1989); 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547 (October 17, 1990); 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403, 2635.502 and 2635.803.

SOURCE: 65 FR 58638, Oct. 2, 2000, unless otherwise noted.

§ 8301.101 General.

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

(b) In addition to 5 CFR part 2635 and this part, employees also are required to comply with the executive branch financial disclosure regulations at 5 CFR part 2634, the regulations on responsibilities and conduct contained in 5 CFR part 735, and Department guidance and procedures established pursuant to paragraph (c) of this section.

(c) With the concurrence of the Designated Agency Ethics Official (DAEO), agencies and components of the Department may, in accordance with 5 CFR 2635.105(c), issue explanatory guidance for their employees and establish procedures necessary to implement this part and part 2635 of this title. The Deputy Ethics Official for each agency or component shall retain copies of all such guidance issued by that agency or component.

§ 8301.102 Prior approval for outside employment.

(a) *Prior approval requirement.* An employee, other than a special Government employee, who is required to file either a public or confidential financial disclosure report (SF 278 or OGE Form 450), or an alternative form of reporting approved by the Office of Government Ethics, shall, before engaging in outside employment, obtain written approval in accordance with the procedures set forth in paragraph (c) of this section.

(b) *Definition of employment.* For purposes of this section, “employment” means any form of non-Federal employment or business relationship or activity involving the provision of personal services by the employee for direct, indirect, or deferred compensation other than reimbursement of actual and necessary expenses. It also includes, irrespective of compensation, the following outside activities.

(1) Providing personal services as a consultant or professional, including service as an expert witness or as an attorney; and

(2) Providing personal services to a for-profit entity as an officer, director, employee, agent, attorney, consultant, contractor, general partner, or trustee, which involves decision making or policymaking for the non-Federal entity, or the provision of advice or counsel.

(c) *Submission of requests for approval.* An employee seeking to engage in employment for which advance approval is required shall submit a written request for approval to the employee’s supervisor a reasonable time before the employee proposes to begin the employment. Upon a significant change in the nature of the outside employment or in the employee’s official position, the employee shall submit a revised request for approval. The supervisor will forward written requests for approval to the agency designee, through normal supervisory channels. All requests for prior approval shall include the following information:

(1) The employee’s name, organizational location, occupational title, grade, and salary;

(2) The nature of the proposed outside employment, including a full description of the specific duties or services to be performed;

(3) A description of the employee's official duties that relate in any way to the proposed employment;

(4) The name and address of the person or organization for whom or with which the employee is to be employed, including the location where the services will be performed;

(5) The method or basis of any compensation (e.g., fee, per diem, honorarium, royalties, stock options, travel and expenses, or other);

(6) A statement as to whether the compensation is derived from a USDA grant, contract, cooperative agreement, or other source of USDA funding;

(7) For employment involving the provision of consultative or professional services, a statement indicating whether the client, employer, or other person on whose behalf the services are performed is receiving, or intends to seek, a USDA grant, contract, cooperative agreement, or other funding relationship; and

(8) For employment involving teaching, speaking, writing or editing, the proposed text of any disclaimer required by 5 CFR 2635.807(b).

(d) *Standard for approval.* Approval shall be granted by the agency designee unless it is determined that the outside employment is expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

(e) *Responsibilities of the component agencies.* (1) The agency designee for each separate agency or component of USDA may issue an instruction or manual issuance exempting categories of employment from a requirement of prior written approval based on a determination that employment within those categories would generally be approved and is not likely to involve conduct prohibited by Federal statutes or regulations, including 5 CFR part 2635 and this part.

(2) Department components may specify internal procedures governing the submission of prior approval requests, including but not limited to: timely submission requirements; determination deadlines; appeals or reviews;

and requirements for updating requests. Internal procedures also should designate appropriate officials to act on such requests. The instructions or manual issuances may include examples of outside employment that are permissible or impermissible consistent with 5 CFR part 2635 and this part. With respect to employment involving teaching, speaking or writing, the instructions or manual issuances may specify pre-clearance procedures and/or require disclaimers indicating that the views expressed do not necessarily represent the views of the agency, USDA or the United States.

(3) The officials within the respective USDA agencies or components responsible for the administrative aspects of these regulations and the maintenance of records shall make provisions for the filing and retention of requests for approval of outside employment and copies of the notification of approval or disapproval.

§ 8301.103 Additional rules for employees of the Farm Service Agency.

(a) *Application.* This section applies only to Farm Service Agency (FSA) personnel who are Federal employees within the meaning of 5 U.S.C. 2105. This section does not apply to FSA community committee members, county committee members, and county office personnel, who are either elected to their positions or are employees of community or county committees established under 16 U.S.C. 590h. For rules applicable to FSA community committee members, county committee members, and county office personnel, see 7 CFR part 7.

(b) *Definition of FSA program participant.* For purposes of this section, the phrase "FSA program participant," includes any person who is, or is an applicant to become, an FSA borrower, FSA grantee, or recipient of any other form of FSA financial assistance available under any farm credit, payment or other program administered by FSA.

(c) *Prohibited real estate purchases.* (1) No FSA employee, or spouse or minor child of an FSA employee, may directly or indirectly purchase real estate held in the FSA inventory, for sale under forfeiture to FSA, or from an FSA program participant.

(2) *Waiver.* A request for an exception to the prohibition found in paragraph (c)(1) of this section may be submitted jointly by the FSA program participant and FSA employee (whether on his or her own behalf, or on behalf the employee's spouse or minor child), to the FSA State Executive Director. The FSA State Executive Director may grant a written waiver from this prohibition based on a determination made with the advice and clearance of the DAEO and the FSA headquarters ethics advisor that the waiver is not inconsistent with part 2635 of this title nor 7 U.S.C. 1986 nor 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 otherwise to ensure confidence in the impartiality and objectivity with which agency programs are administered. A waiver under this paragraph may impose appropriate conditions, such as requiring execution of a written disqualification.

(d) *Prohibited transactions with FSA program participants.* (1) Except as provided in paragraph (d)(2) of this section, no FSA employee or spouse or minor child of an FSA employee may directly or indirectly: sell real property to; lease real property to or from; sell to, lease to or from, or purchase personal property from; or employ for compensation a person whom the FSA employee knows or reasonably should know is an FSA program participant directly affected by decisions of the particular FSA office in which the FSA employee serves.

(2) *Exceptions.* Paragraph (d)(1) of this section does not apply to:

(i) A sale, lease, or purchase of personal property, if it involves:

(A) Goods available to the general public at posted prices that are customary and usual within the community; or

(B) Property obtained pursuant to public auction; or

(ii) Transactions listed in (d)(1) of this section determined in advance by the appropriate FSA State Executive Director, after consulting with the FSA Headquarters ethics advisor, to be consistent with part 2635 of this title and otherwise not prohibited by law.

(e) *Additional prior approval requirements for outside employment.* Any FSA employee not otherwise required to obtain approval for outside employment under § 8301.102 shall obtain written approval in accordance with the procedures and standards set forth in paragraphs (c) and (d) of § 8301.102 before engaging in outside employment, as that term is defined by paragraph (b) of § 8301.102, with or for a person:

(1) Whom the FSA employee knows, or reasonably should know, is an FSA program participant; and

(2) Who is directly affected by decisions made by the particular FSA office in which the FSA employee serves.

[65 FR 58633, Oct. 2, 2000, as amended at 67 FR 58319, Sept. 16, 2002]

§ 8301.104 Additional rules for employees of the Food Safety and Inspection Service.

Any employee of the Food Safety and Inspection Service not otherwise required to obtain approval for outside employment under § 8301.102, shall, before engaging in any form of outside employment, obtain written approval in accordance with the procedures and standards set forth in paragraphs (c) and (d) of § 8301.102

§ 8301.105 Additional rules for attorneys in the Office of the General Counsel.

(a) *Additional rules for attorneys in the Office of the General Counsel regarding the outside practice of law.* Any attorney serving within the Office of the General Counsel shall obtain written approval, in accordance with the procedures set forth in § 8301.102(c) and the standard for approval set forth in paragraph (b) of this section, before engaging in the outside practice of law, whether compensated or not. For purposes of this section the "outside practice of law" means those activities requiring professional licensure by a state bar as an attorney and include, but are not limited to, providing legal advice to a client, drafting legal documents, and representing clients in legal negotiations or litigation.

(b) *Standard for approval.* Approval shall be granted by the agency designee unless it is determined that the outside practice of law is expected to involve

conduct prohibited by statute or Federal regulation, including 5 CFR part 2635, or paragraph (c) of this section.

(c)(1) *Prohibited outside practice of law applicable to attorneys in the Office of the General Counsel.* An employee who serves as an attorney within the Office of the General Counsel shall not engage in any outside practice of law that might require the attorney to:

(i) Assert a legal position that is or appears to be in conflict with the interests of the Department of Agriculture, the client to which the attorney owes a professional responsibility; or

(ii) Interpret any statute, regulation, or rule administered or issued by the Department of Agriculture, or where a supervisory attorney determines that the outside practice of law would conflict with the employee's official duties or create the appearance of a loss of the attorney's impartiality, as prohibited by 5 CFR 2635.802; or

(iii) Act as an agent or attorney in any matter in which the U.S. government is a party or has a direct and substantial interest, as prohibited by 18 U.S.C. 205.

(2) *Exceptions.* Nothing in paragraph (c)(1) of this section prevents an attorney in the Office of the General Counsel from:

(i) Acting, with or without compensation, as an agent or attorney for, or otherwise representing, the employee's parents, spouse, child, or any other person for whom, or for any estate for which, the employee is serving as guardian, executor, administrator, trustee, or other personal fiduciary to the extent permitted by 18 U.S.C. 203(d) and 205(e), or from providing advice or counsel to such persons or estates; or

(ii) Acting, without compensation, as an agent or attorney for, or otherwise representing, any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings, in connection with those proceedings, or from providing uncompensated advice and counsel to such person to the extent permitted by 18 U.S.C. 205; or

(iii) Acting, without compensation, as an agent or attorney for, or otherwise representing any cooperative, voluntary, professional, recreational, or similar organization or group not es-

tablished or operated for profit, if a majority of the organization's or group's members are current employees of the United States or the District of Columbia, or their spouses or dependent children. As limited by 18 U.S.C. 205(d), this exception is not permitted for any representation with respect to a matter which involves prosecuting a claim against the United States under 18 U.S.C. 205(a)(1) or 18 U.S.C. 205(b)(1), or involves a judicial or administrative proceeding where the organization or group is a party, or involves a grant, contract, or other agreement providing for the disbursement of Federal funds to the organization or group; or

(iv) Giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

(3) *Specific approval procedures for paragraph (c)(2) of this section.*

(i) The exceptions to 18 U.S.C. 203 and 205 described in paragraph (c)(2)(i) of this section do not apply unless the employee obtained the prior approval of the Government official responsible for the appointment of the employee to a Federal position.

(ii) The exceptions to 18 U.S.C. 205 described in paragraphs (c)(2)(ii) and (c)(2)(iii) of this section do not apply unless the employee has obtained the prior approval of a supervisory official who has authority to determine whether the employee's proposed representation is consistent with the faithful performance of the employee's duties.

(d) *Pro Bono activity.* Subject to compliance with paragraph (c) of this section, attorneys within the Office of the General Counsel are permitted to provide outside *pro bono* legal services (without compensation other than reimbursement of expenses) to organizations or individuals through a non-profit organization, without obtaining prior written approval in accordance with the procedures set forth in § 8301.102(c).

[85 FR 12860, Mar. 5, 2020]

§ 8301.106 Additional rules for employees of the Office of Inspector General.

Any employee of the Office of Inspector General, not otherwise required to

obtain approval for outside employment under §8301.102, shall obtain written approval, in accordance with the procedures and standards set forth in paragraphs (c) and (d) of §8301.102, before engaging in any form of outside employment that involves the following:

- (a) Law enforcement, investigation, security, firearms training, defensive tactics training, and protective services;
- (b) Auditing, accounting, bookkeeping, tax preparation, and other services involving the analysis, use, or interpretation of financial records;
- (c) The practice of law, whether compensated or not; or
- (d) Employment involving personnel, procurement, budget, computer, or equal employment opportunity services.

§8301.107 Additional rules for RD employees.

(a) *Application.* Except where otherwise noted below, this section applies to all of the Department's RD employees, other than special Government employees, as defined at 18 U.S.C. 202, including employees of the Rural Housing Service, Rural Business and Cooperative Service, and Rural Utilities Service.

(b) *Definition of RD program participant.* For purposes of this section, the phrase "RD program participant," includes any person (including any entity) who, either individually or collectively, currently has an outstanding loan, loan guaranty, or grant from RD, currently receives any other form of RD financial assistance under a credit, payment, or other program administered by RD, or has an application on file to become an RD borrower, RD grantee, or recipient of any other form of RD financial assistance available under any credit, payment or other program administered by RD. Voluntary membership by a person in a utility or public-type facility organization that is an RD program participant does not make the person an RD program participant.

(c) *Prohibited financial interests.* (1) Except as provided for in paragraph (c)(2) of this section, an RD employee, or a spouse or minor child of an RD

employee, shall not knowingly own, receive, or acquire stock, or hold any other financial interest in a for-profit entity, or affiliate of a for-profit entity, that is an RD program participant, a business that does or seeks to do business with RD, or one that sells repeatedly to RD borrowers or contractors for payment from RD loan, loan guaranty, or grant funds, if that entity or affiliate is affected by decisions of the particular RD office in which the RD employee serves. Types of entities covered by this section include, but are not limited to the following:

- (i) Entities engaged in commercial real estate sales and leasing, including brokers, sales agents, mortgage lenders, and other financial servers;
- (ii) Title and abstract companies;
- (iii) House/building construction companies and subcontractors;
- (iv) Building supply companies and lumberyards;
- (v) Insurance companies; and
- (vi) Entities involved in land development.

(2) *Exceptions.* (i) Nothing in this section prohibits an RD employee, or a spouse or minor child of an RD employee, from owning any of the interests described in paragraph (c)(1) of this section where the interest is held through investment in a publicly traded or publicly available mutual fund or other collective investment fund or in a widely held pension or similar fund provided that the fund does not invest more than 5 percent of its assets in any one entity covered under paragraph (c)(1) of this section and does not invest more than 25 percent of its assets in any combination of entities covered under paragraph (c)(1) of this section.

(ii) Nothing in this section prohibits an RD employee, or a spouse or minor child of an RD employee, from owning Patronage Capital that the employee receives simply by reason of being a member of a nonprofit entity, such as an electric, telecommunications, or water cooperative. For purposes of this section, Patronage Capital is defined as amounts received for providing a service in excess of the amounts required for operating costs and expenses.

(d) *Prohibited real estate purchases.* Except in cases where a waiver has been granted pursuant to paragraph (g) of

this section, no RD employee, or spouse or minor child of an RD employee may personally, or through the participation of another person, knowingly purchase real estate or personal property; Mortgaged or pledged to the Government through RD; held in the RD inventory; for sale under forfeiture to RD; or from an RD program participant.

(e) *Prohibited transactions with RD program participants.* (1) Except in cases where a transaction is subject to the exceptions set forth in paragraph (e)(2) of this section, or where a waiver has been granted pursuant to paragraph (g) of this section, no RD employee or spouse or minor child of an RD employee, may knowingly: Purchase an interest in or sell real property to; lease real property to or from; sell to, lease to or from, or purchase personal property from; seek or accept credit from RD-financed cooperative associations; or employ for compensation a person whom the RD employee or spouse or minor child of the RD employee, knows or reasonably should know is an RD program participant directly affected by decisions of the particular RD office in which the RD employee serves.

(2) *Exceptions.* Paragraph (e)(1) of this section does not apply to a sale, lease, or purchase of personal property, if it involves goods available to the general public at posted prices that are customary and usual within the community.

(f) *Prohibited outside employment.* No RD employee may provide personal consulting services for any person or entity with an application on file with, grant from, or outstanding loan or loan guaranty with RD, if the application, grant, or outstanding loan or loan guaranty could be affected directly by decisions of the particular RD office in which the RD employee serves.

(g) *Waiver—(1) Approving officials.* A written request for an exception to the prohibitions found in paragraphs (d) and (e) of this section may be submitted in advance of the transaction by the RD employee (whether on his or her own behalf, or on behalf of the employee's own spouse or minor child) to:

(i) The RD State Director, for RD State-level employees; or

(ii) The Deputy Administrator for Operations and Management, for RD State Directors and National Office employees.

(2) *Standards.* The RD State Director or Deputy Administrator for Operations and Management may grant a written waiver from this prohibition based on a determination made with the concurrence of the USDA Office of Ethics that all three of the following conditions are satisfied:

(i) The waiver is not inconsistent with part 2635 of this title, this part, or 7 U.S.C. 1986, nor 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 otherwise to ensure confidence in the impartiality and objectivity with which agency programs are administered;

(ii) The transaction:

(A) Appears free of duress or favoritism;

(B) Does not involve a contractual relationship or obligation that exceeds 365 consecutive calendar days; and

(C) Is in the best interests of the RD program participant; and

(iii) A denial of the request would likely cause significant hardship to the RD program participant.

(3) *Additional conditions.* A waiver under this paragraph may impose appropriate conditions, such as requiring execution of a written disqualification. Approval of a waiver under this paragraph does not exempt the employee from complying with other applicable programmatic requirements under 7 CFR part 3550.9.

(h) *Additional prior approval requirement for outside employment.* (1) Any RD employee wishing to engage in outside employment as defined in paragraph (b) of § 8301.102 and who is not otherwise required to obtain approval therefor under that section, shall obtain prior written approval in accordance with the procedures set forth in paragraphs (c) and (d) of § 8301.102 if the outside employment is covered under paragraph (h)(2) or paragraph (h)(3) of this section.

(2) Outside employment is subject to the prior approval requirement of this

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paragraph if it involves any of the following activities, if conducted in the area serviced by the RD office in which the employee serves:

- (i) Sale, appraisal, or assessment of real estate;
- (ii) Performance of real estate brokerage services;
- (iii) Service as a title attorney or title insurance representative;
- (iv) Real estate development, including the construction of houses or other buildings;
- (v) Service as an officer or on the board of directors of a bank or savings and loan association;
- (vi) Service as an officer, member of the board of directors or trustees, or as an employee of an RD-financed entity;
- (vii) Service as an officer, employee, or member of a governing board of a State, county, municipal, or other

local political jurisdiction having the power to tax or zone real estate;

(viii) Membership in grazing associations, un-incorporated Economic Opportunity cooperatives, rental housing groups, and closely-held labor housing organizations;

(ix) Insurance sales; or

(x) Land speculation.

(3) Outside employment is also subject to the prior approval requirements of this paragraph if it is with or for a person whom the RD employee knows, or reasonably should know, is both:

(i) An RD program participant; and

(ii) Directly affected by decisions made by the particular RD office in which the RD employee serves.

[75 FR 51372, Aug. 20, 2010]

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