

§ 9401.104

(e) *DAEO responsibilities.* The DAEO may issue instructions or internal directives governing the submission of requests for approval of outside employment and designating appropriate officials to act on such requests. The instructions or internal directives may exempt categories of employment from the prior approval requirement of this section based on a determination that employment within those categories generally would be approved and is not likely to involve prohibited conduct or create an appearance of lack of impartiality.

§ 9401.104 Additional rules concerning outside employment for covered employees.

(a) *Prohibited outside employment with an entity supervised by the Bureau.* A covered employee shall not engage in compensated outside employment for an entity supervised by the Bureau or for an officer, director, or employee of such entity. For purposes of this section, “employment” has the same meaning as set forth in § 9401.103(b).

(b) *Use of professional licenses related to real estate.* A covered employee who holds a license related to real estate, mortgage brokerage, property appraisals, or real property insurance is prohibited from using such license for the production of income. The DAEO, in consultation with senior management in the Division in which the employee works, may grant a limited waiver to this prohibition based on a written finding that the specific transaction which requires use of the license will not create an appearance of loss of impartiality or use of public office for private gain.

(c) *Definition of covered employee.* For purposes of this section, “covered employee” means:

(1) An employee in the Division of Supervision, Enforcement, and Fair Lending;

(2) An employee serving in an attorney position;

(3) An employee in the Office of Research, serving as a section chief at Bureau pay band 71 or above or as a senior economist in the Compliance Analytics and Policy Section;

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(4) An employee serving in the Office of Consumer Response in an investigations position;

(5) An employee required to file a Public Financial Disclosure Report (OGE Form 278e) under 5 CFR part 2634; or

(6) Any other Bureau employee specified in a Bureau order or directive whose duties and responsibilities, as determined by the DAEO, require application of the prohibition on outside employment contained in this section to ensure public confidence that the Bureau’s programs are conducted impartially and objectively.

[82 FR 35885, Aug. 2, 2017]

§ 9401.105 Additional rules concerning outside employment for Bureau attorneys.

(a) *Prohibited outside practice of law.* In addition to the prior approval requirements under § 9401.103 and the outside employment restrictions under § 9401.104, an employee serving in an attorney position shall not engage in the practice of law outside the employee’s official Bureau duties that might require the attorney to:

(1) Take a position that is or appears to be in conflict with the interests of the Bureau; or

(2) Interpret any statute, regulation, or rule administered or issued by the Bureau.

(b) *Exemption for self representation.* Nothing in this section prevents a Bureau attorney from acting as an agent or attorney for or otherwise representing himself or herself in the outside practice of law, except:

(1) In those matters in which the attorney has participated personally and substantially as a Government employee; or

(2) In those matters which are the subject of the attorney’s official responsibility.

[77 FR 25019, Apr. 27, 2012, as amended at 82 FR 35885, Aug. 2, 2017]

§ 9401.106 Prohibited financial interests.

(a) *Prohibited interests.* Except as permitted by this section, an employee or an employee’s spouse or minor child shall not own or control a security in:

(1) An entity supervised by the Bureau; or

(2) A collective investment fund that has a stated policy of concentrating its investments in the financial services or banking industry. A collective investment fund includes, without limitation, mutual funds, unit investment trusts (UITs), exchange traded funds (ETFs), real estate investment trusts (REITs), and limited partnerships.

(b) *Exceptions.* Interests prohibited in paragraph (a) of this section do not include the ownership or control of a security in:

(1) *Collective investment funds.* A publicly traded or publicly available collective investment fund if:

(i) The fund does not have a stated policy of concentrating its investments in the financial services or banking industry; and

(ii) Neither the employee nor the employee's spouse or minor child exercises or has the ability to exercise control over or selection of the financial interests held by the fund.

(2) *Diversified employee benefit plans.* A pension or other retirement fund, trust, or plan established or maintained by an employer or an employee organization, or both, to provide its participants with medical, disability, death, unemployment, or vacation benefits, training programs, day care centers, scholarship funds, prepaid legal services, deferred income, or retirement income (employee plan), provided:

(i) The employee plan does not have a stated policy of concentrating its investments in any industry, business, single country other than the United States, or bonds of a single State within the United States;

(ii) The investments of the employee plan are administered by an independent trustee;

(iii) The employee plan's trustee has a written policy of varying the plan investments;

(iv) Neither the employee nor the employee's spouse or minor child participates in the selection of the employee plan's investments or designates specific plan investments (except for directing that contributions be divided among several different categories of investments, such as stocks, bonds, or

mutual funds, which are available to plan participants); and

(v) The employee plan is not a profit-sharing or stock bonus plan.

(3) *Federal retirement and thrift savings plans.* Funds administered by the Thrift Plan for Employees of the Federal Reserve System, the Retirement Plan for Employees of the Federal Reserve System, the Thrift Savings Plan, or a Federal government agency.

(4) *State pension plans.* A pension plan established or maintained by a State government or any political subdivision of a State government for its employees.

(c) *Reporting and divestiture of prohibited interests—*(1) *New employees.* Within 30 calendar days from the start of employment with the Bureau, an employee must notify the DAEO in writing of a financial interest prohibited under paragraph (a) of this section that the employee or the employee's spouse or minor child acquired prior to the start of the employee's employment with the Bureau. The employee or the employee's spouse or minor child shall divest prohibited securities within 90 days after the start of the employee's employment at the Bureau.

(2) *Newly prohibited interest.* Within 30 days after the Bureau updates and internally publishes a new list of entities supervised by the Bureau, an employee who owns or controls, or whose spouse or minor child owns or controls, a security in an entity newly added to that list must notify the DAEO in writing. The employee or the employee's spouse or minor child shall divest prohibited securities within 90 days after internal publication of the new list.

(3) *Interests acquired without specific intent.* If an employee or an employee's spouse or minor child acquires a financial interest prohibited under paragraph (a) of this section as a result of marriage, inheritance, or otherwise without specific intent to acquire, the employee must notify the DAEO in writing within 30 days of the acquisition. The employee or the employee's spouse or minor child shall divest prohibited securities within 90 days of the acquisition.

(d) *Disqualification and divestiture—*(1) *Securities in entities supervised by the*

Bureau. If an employee or an employee's spouse or minor child owns or controls a security in an entity that is prohibited under paragraph (a)(1) of this section, the employee shall immediately disqualify himself or herself from participating in all particular matters affecting that entity, unless and until the security is divested or the employee is granted a waiver pursuant to paragraph (e) of this section and the waiver includes an authorization allowing the employee to participate in such matters.

(2) *Securities in collective investment funds.* If an employee or an employee's spouse or minor child owns or controls a security in a collective investment fund that is prohibited under paragraph (a)(2) of this section, the employee shall immediately disqualify himself or herself from participating in all particular matters affecting one or more holdings of the collective investment fund if the affected holding is invested in the financial services or banking industry, unless and until the collective investment fund is divested or the employee is granted a waiver pursuant to paragraph (e) of this section and the waiver includes an authorization allowing the employee to participate in such matters.

(e) *Waivers.* Upon request by the employee, the DAEO in the DAEO's sole discretion has the authority to grant an individual waiver under this paragraph. The DAEO's authority to grant an individual waiver under this paragraph may not be delegated to any person except the Alternate DAEO. The DAEO, in consultation with senior management in the Division in which the employee works, may issue a written waiver permitting the employee or the employee's spouse or minor child to own or control a particular security that otherwise would be prohibited by this section, after considering all relevant factors. Relevant factors include, without limitation, whether:

(1) Mitigating circumstances exist due to the way the employee or the employee's spouse or minor child acquired ownership or control of the security. Mitigating circumstances may include without limitation:

(i) The employee or the employee's spouse or minor child acquired the se-

curity through inheritance, merger, acquisition, or other change in corporate structure, or otherwise without specific intent on the part of the employee or the employee's spouse or minor child; or

(ii) The employee's spouse received the security as part of a compensation package in connection with employment or prior to marriage to the employee;

(2) The employee makes a prompt and complete written disclosure of the security to the DAEO;

(3) The disqualification of the employee from participating in particular matters pursuant to paragraph (d) of this section, as specified in the written waiver, would not unduly interfere with the full performance of the employee's duties; and

(4) The granting of the waiver would not unduly undermine the public's confidence in the impartiality and objectivity with which:

(i) The employee performs the employee's official Bureau duties; and

(ii) The Division in which the employee works executes its programs and functions.

(f) *Covered third party entities.* Immediately after becoming aware that a covered third party entity owns or controls a security that an employee would be prohibited from owning or controlling under paragraph (a) of this section, the employee shall report the interest in writing to the DAEO. The DAEO may require the employee to terminate the relationship with the covered third party entity, disqualify himself or herself from certain particular matters, or take other action as necessary to avoid a statutory violation, a violation of the OGE Standards, or the CFPB Ethics Regulations, including an appearance of misuse of position or loss of impartiality. For purposes of this paragraph, "covered third party entity" includes:

(1) A partnership in which the employee or the employee's spouse or minor child is a general partner;

(2) A partnership or closely held corporation in which the employee or the employee's spouse or minor child individually or jointly holds more than a 10 percent equity interest;

(3) A trust in which the employee or the employee's spouse or minor child has a vested legal or beneficial interest;

(4) An investment club or similar informal investment arrangement between the employee or the employee's spouse or minor child, and others;

(5) A qualified profit sharing, retirement, or similar plan in which the employee or the employee's spouse or minor child has an interest; or

(6) An entity in which the employee or the employee's spouse or minor child individually or jointly holds more than a 25 percent equity interest.

[82 FR 35885, Aug. 2, 2017]

§ 9401.107 Prohibition on acceptance of credit or indebtedness on preferential terms from an entity supervised by the Bureau.

An employee or the employee's spouse or minor child may not accept credit from, become indebted to, or enter into a financial relationship with an entity supervised by the Bureau, unless the credit, indebtedness, or other financial relationship:

(a) Is offered on terms and conditions no more favorable than those offered to the general public; and

(b) Is not otherwise prohibited by law or inconsistent with the OGE Standards or the CFPB Ethics Regulations.

[82 FR 35886, Aug. 2, 2017]

§ 9401.108 Restrictions on seeking, obtaining, or renegotiating credit or indebtedness from an entity that is a party or represents a party to a matter to which an employee is assigned or may be assigned.

(a) *General rules regarding seeking, obtaining, or renegotiating credit or indebtedness*—(1) *Prohibition*. While an employee is assigned to participate in a particular matter involving specific parties, the employee or the employee's spouse or minor child shall not seek, obtain, or renegotiate credit or indebtedness with an entity that is a party or represents a party to the matter. This prohibition also applies to a particular matter involving specific parties pending at the Bureau in which the employee is not currently participating but of which the employee is

aware and believes it is likely that the employee will participate.

(2) *Cooling off period*. The prohibition in paragraph (a)(1) of this section continues for two years after the employee's participation in the particular matter has ended.

(b) *Rules regarding credit or indebtedness secured by principal residence*. Notwithstanding paragraph (a) of this section, an employee or an employee's spouse or minor child may seek, obtain, or renegotiate credit or indebtedness secured by residential real property with an entity, subject to the following conditions:

(1) The residential real property is or will be the principal residence of the employee or the employee's spouse or minor child;

(2) A minimum of three months have passed since the end of the employee's participation in each particular matter involving specific parties in which that entity was a party or represented a party;

(3) The employee is disqualified from participating in particular matters involving specific parties in which that entity is a party or represents a party while the employee or the employee's spouse or minor child is seeking, obtaining, or renegotiating the credit or indebtedness;

(4) The employee or the employee's spouse or minor child seeking, obtaining, or negotiating the credit or indebtedness must satisfy all financial requirements generally applicable to all applicants for the same type of credit or indebtedness for residential real property; and

(5) The credit or indebtedness is obtained on terms and conditions no more favorable than those offered to the general public.

(c) *Specific rules for employee's spouse and minor child*. The prohibitions in paragraphs (a) and (b) of this section do not apply when the employee's spouse or minor child is seeking, obtaining, or renegotiating credit or indebtedness and:

(1) The credit or indebtedness is supported only by the income or independent means of the spouse or minor child;

(2) The credit or indebtedness is obtained on terms and conditions no