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DEPARTMENT OF LABOR

Office of the Secretary

5 CFR Chapter XLII

29 CFR Part 0

RINs 1290–AA15, 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Department of Labor

AGENCY: Office of the Secretary, DOL.

ACTION: Interim rule with request for comments.

SUMMARY: The Department of Labor, with the concurrence of the Office of Government Ethics (OGE), is issuing an interim rule for employees of the Department that supplements the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE. The interim rule designates certain components of the Department as separate agencies for the purposes of provisions in the executive branch-wide Standards regarding gifts from outside sources, the receipt of compensation for teaching, speaking or writing, and fundraising in a personal capacity; restricts the outside employment and the holding of certain financial interests by employees of the Mine Safety and Health Administration and by their spouses and minor children; and requires employees in the Department's Office of the Inspector General to obtain prior approval for outside employment. The interim rule also repeals existing Departmental regulations governing outside employment and financial interests of agency employees, except for a regulatory waivers provision, and inserts in their place a cross-reference to the executive branch-wide Standards and financial disclosure regulations, and this interim rule.

DATES: This interim rule is effective November 6, 1996. Comments are invited and are due by January 6, 1997.

ADDRESSES: Send comments to Robert Shapiro, Department of Labor, Room N–2428, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: David Apol, Office of the Solicitor, Department of Labor, telephone 202–219–8065, FAX 202–219–6896.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Government Ethics published a final rule entitled ''Standards of Ethical Conduct for Employees of the Executive Branch'' (Standards). See 57 FR 35006–35067, as corrected at 57 FR 48557, 57 FR 52583, and 60 FR 51667, with additional grace period extensions at 59 FR 4779–4780, 60 FR 6390–6391, 60 FR 66857–66858, and 61 FR 40950–40952. The Standards, codified at 5 CFR part 2635 and effective February 3, 1993, establish uniform standards of ethical conduct that apply to all executive branch personnel.

On June 23, 1994, the Department issued a final rule which removed all of the provisions of its Ethics and Conduct Regulations at 29 CFR Part 0 that had been superseded by 5 CFR part 2635 or by OGE's executive branch financial disclosure regulations at 5 CFR part 2634. See 59 FR 32611. The Department preserved those provisions of its Ethics and Conduct Regulations containing regulatory waivers issued under 18 U.S.C. 208(b)(2), restricting the acquisition or holding of certain financial interests, and requiring prior approval of outside employment or activities. These provisions were permitted to continue in effect until superseded, as provided respectively in 5 CFR 2635.402(d)(1) and the notes following 5 CFR 2635.403(a) and 2635.803, as extended by 59 FR 4779–4780, 60 FR 6390–6391, and 60 FR 66857–66858.

5 CFR 2635.105 authorizes executive branch agencies, with the concurrence of OGE, to publish agency-specific supplemental regulations necessary to implement their ethics programs. The Department, with OGE's concurrence, has determined that the following supplemental regulations, to be codified in part 5201 of new chapter XLII of 5 CFR, are necessary to the successful implementation of the Department's ethics program. The Department is simultaneously repealing those provisions of the residual subpart C of its old Ethics and Conduct Regulations at 29 CFR part 0, which are superseded upon issuance of the Department's supplemental regulations, and is adding a single section that provides cross-references to 5 CFR parts 2634 and 2635, as well as to the Department's new supplemental regulations.

II. Analysis of the Regulations

Section 5201.101 General

Section 5201.101 explains that the regulations contained in the interim rule apply to employees of the Department of Labor and are supplemental to the executive branch-wide Standards.

Section 5201.102 Designation of Separate Agency Components

Section 5201.102 designates several of the Department's components as separate agencies for the purposes of certain ethics provisions. The Department has determined that those components exercise district and separate functions. The separate agency designations will affect the substantive ethics rules within the Department of Labor involving the acceptance of gifts, the receipt of compensation for teaching, speaking and writing, and the restrictions on fundraising for nonprofit organizations in a personal capacity.

Section 2635.202(a) of the Standards prohibits an employee from soliciting or accepting a gift from a ''prohibited source'' unless permitted under one of the exceptions in the Standards. The separate agency designations will affect, first, the definition of ''prohibited source.'' The Standards of Ethical Conduct define a ''prohibited source'' by the relationship of the source to both the responsibilities of the employee and those of his or her employing agency. For the purpose of identifying an employee's agency, 5 CFR 2635.203(a) authorizes an executive department, by supplemental regulation, to designate as a separate agency any component that exercises a distinct and separate function. The agency designations contained in § 5201.102 are made pursuant to 5 CFR 2635.203(a).

In addition to its effect on the gift-acceptance rules, the designation of separate agencies will affect the definition of ''agency'' for the purposes

of the rules governing compensation for outside teaching, speaking, and writing. Section 2635.807 of the Standards restricts an employee's acceptance of compensation for outside teaching, speaking, and writing that relates to the employee's official duties, including teaching, speaking, or writing the subject of which deals in significant part with any ongoing or announced policy, program, or operation of the employee's agency. See 5 CFR 2635.807(a)(2)(I)(E)(*2*). Under 5 CFR 2635.807(a)(2)(I)(E)(*3*), more restrictive rules apply to certain noncareer employees. The separate agency designations contained in § 5201.102 mean that the compensation restrictions in 5 CFR 2635.807 apply when the subject of an employee's speech, appearance, or article deals in significant part with any ongoing or announced policy program, or operation of his or her own designated agency component rather than to the Department as a whole.

Finally, § 5201.102 further supplements the Standards to change the way the restrictions on fundraising in a personal capacity apply within the Department. Section 2635.808(c) of the Standards restricts employees' fundraising in a personal capacity with respect to persons who are ''prohibited sources''. Section 5201.102 provides that the separate agency designations used to determine when a person is a ''prohibited source'' for purposes of the Standards governing direct and indirect gifts to employees from outside sources will also be used to determine when a person is a prohibited source for the purpose of the Standard at 5 CFR 2635.808(c) governing fundraising in a personal capacity.

The definition of ''prohibited source'' for employees outside the designated agency components will not be affected by the designations. Any source which is prohibited from any Department component will be treated as a prohibited source for any employee who is not in one of the designated agency components.

Because of the very distinct and diverse functions of the Employment Standards Administration (ESA), each designated component within ESA is treated as a separate agency for the purposes of determining ''prohibited sources'' and the other specified provisions of the Standards. For the remaining ESA employees, a source is prohibited if it is a prohibited source for any component of ESA.

Section 5201.103 Fundraising Activities

Section 5201.103 of the interim rule supplements the executive branch-wide Standard at 5 CFR 2635.808(c) regarding fundraising in a personal capacity. That standard bars employees from engaging in such fundraising from those persons known by the employee to be ''prohibited sources,'' as defined in 5 CFR 2635.203(d). In § 5201.102 of this interim rule, the Department has designated certain of its components as separate agencies for the purposes of identifying prohibited sources.

The employees of certain of these designated agencies have very large numbers of prohibited sources because their components exercise very broad regulatory responsibilities. These agency components are: the Occupational Safety and Health Administration, which regulates safety and health in most of the nation's workplaces; the Veterans' Employment and Training Service, which is responsible, among its other functions, for regulating the nation's employers to assure that they comply with their obligations under the veterans reemployment statutes; the Pension and Welfare Benefits Administration, which regulates private pension and welfare benefit plans under the Employee Retirement Income Security Act; the Wage and Hour Division of the ESA, which is responsible, among its other functions, for assuring that non-exempt private and public sector employees are paid the Federal minimum wage; and the Office of Federal Contract Compliance Programs in the ESA, which assures that the very broad and diverse category of employers performing work under Federal contracts and those who perform federally assisted construction work meet Federal affirmative action requirements. Officials in the ''Remainder of ESA'' participate in regulatory activities under both the Wage and Hour and Contract Compliance Programs, as well as certain workers' compensation programs. Officials in the ''Remainder of the Department of Labor'' also exercise broad regulatory responsibilities, as they participate in all of the Department's regulatory efforts.

The Department has determined that, in light of the very broad regulatory responsibilities of these components, barring personal fundraising from every category of prohibited source listed in 5 CFR 2635.203(d) is not necessary to avoid the appearance of using public office for private gain. Accordingly, in order that the personal fundraising activities of employees in these components not be unduly restricted, § 5201.103 provides that it shall be permissible for employees in these designated separate agency components to solicit funds or other support from a person who is a prohibited source for them only under 5 CFR 2635.203(d)(3), because the person is regulated by the component. Employees of these separate agency components will not be allowed to solicit contributions from a person known to be a ''prohibited source'' for the other reasons listed in 5 CFR 2635.203(d). Thus, they cannot engage in charitable fundraising from any person (including an organization, a majority of whose members are such persons) seeking official action by the employee's agency component; doing business or seeking to do business with the employee's agency component; or having interests that may be substantially affected by the performance or nonperformance of the employee's official duties.

Section 5201.104 Additional Rules for Office of the Inspector General Employees

The Standards, at 5 CFR 2635.803, specifically recognize that individual agencies may find it necessary or desirable to supplement the executive branch-wide regulations with a requirement for their employees to obtain approval before engaging in outside employment or activities. The Department's Office of the Inspector General (OIG) has long imposed requirements for advance approval of its employees' outside business or professional activities. Because of the wide range of OIG responsibilities and the sensitivity of its mission, the Department has determined, in accordance with 5 CFR 2635.803, that it is necessary to the administration of the ethics program to continue to require OIG employees to get prior approval for outside employment.

Section 5201.104(a)(1) of this interim rule continues, with minor substantive modification, the OIG's past requirement for prior approval of outside employment. Section 5201.104(a)(2) specifies the content of approval requests. Section 5201.104(a)(3) specifies the standards to be used in evaluating approval requests. Section 5201.104(a)(4) provides a definition of ''employment'' to be used in the application of § 5201.104.

Section 5201.105 Additional Rules for Mine Safety and Health Administration Employees

5 CFR 2635.403(a) authorizes agencies, by supplemental regulation, to

prohibit or restrict the acquisition or holding of a financial interest or a class of financial interests by agency employees, based on a determination that the acquisition or holding of such interests would cause reasonable persons to question the impartiality and objectivity with which agency programs are administered. Where it is necessary to the efficiency of the service, such prohibitions or restrictions may be extended to employees' spouses and minor children.

Section 5201.105(a) of the interim rule generally bars employees of the Department's Mine Safety and Health Administration (MSHA), and their spouses and minor children, from having outside employment with any company or other person engaged in mining activities regulated by the MSHA under the Federal Mine Safety and Health Act of 1977 (Mine Safety and Health Act), 30 U.S.C. 801 et seq., and from holding other financial interests in such companies or other persons. The MSHA has restricted the holding of mining interests by its employees since the mine safety and health programs were transferred from the Department of the Interior to the Department of Labor by the Federal Mine Safety and Health Amendments Act of 1977, Pub. L. 95–164. Section 301(c)(2) of that Act, codified at 30 U.S.C. 961(c)(2), provided that existing rules of the Department of the Interior regarding the transferred mine safety and health program were to continue in effect until modified, terminated, superseded, set aside, revoked, or repealed by the Secretary of Labor, the Federal Mine Safety and Health Review Commission or other authorized officials, by any court of competent jurisdiction, or by operation of law. Prior to the transfer, the Department of the Interior's regulations in 1976 (43 CFR 20.735–13) broadly prohibited employees of the Mining Enforcement and Safety Administration (MESA) from holding mining interests and engaging in certain forms of outside employment. The substantive restrictions have not been changed since the transfer and are in effect until this interim rule takes effect, in accordance with 59 FR 32611.

These regulations prohibited MESA (and later MSHA) employees from having any direct or indirect interests in any mine or the products of any mine under investigation. They also prohibited certain private employment in relation to mines or mineral property. The Department has determined that in light of the sensitive mission of the MSHA involving the application of safety and health standards to the entities that it regulates, restrictions on outside employment and on employee ownership of financial interests in mining entities are necessary in order to maintain public confidence in the impartiality and objectivity with which the MSHA executes its various functions and to avoid widespread disqualification of employees from their duties which could result in MSHA having difficulty carrying out its mission. With respect to the spouses and minor children of these MSHA employees, the Department has made an additional determination that there is a direct and appropriate nexus between the restrictions on the holding of certain employment and financial interests as applied to spouses and minor children, and the ability of MSHA employees to carry out their official duties and the ability of MSHA to fulfill its mission.

The prohibitions in § 5201.105(a) apply to employment or other financial interests in a company not primarily engaged in mining activities, if it conducts some mining activities regulated by the MSHA under the Mine Safety and Health Act. Consistent with the definition of ''person'' in the Standards at 5 CFR 2635.102(k), § 5201.105(a) specifies that a non-mining company which owns 50 percent or more of the voting securities of another company or other person engaged in covered mining activities is itself treated as a company engaged in such mining activities. This prevents the employee from avoiding these restrictions by having an interest in a company that conducts its mining operations through a separate corporation. On the other hand, this section supplements the definition of ''person'' in the Standards at 5 CFR 2635.102(k), by allowing employees to hold interests in a non-mining corporation that is controlled by a mining corporation. The Department has determined that the provisions of the conflict of interest laws and the Standards are sufficient to protect the public interest in such a case.

Section 5201.105(b) includes two exceptions to the prohibition of 5201.105(a). The exceptions are intended to permit ownership of interests of a character that are less likely to raise questions regarding the objective and impartial performance of an employee's official duties or the possible misuse of their positions.

The interim rule contains an exception at § 5201.105(b)(1) permitting covered persons to hold interests in publicly traded or publicly available investment funds, unless the fund holds more than 30 percent of its investments in the prohibited holdings.

The exception at § 5201.105(b)(2) permits the holding of pension interest. Disqualifications due to conflicts of interest from pension interest are rare; moreover, when there is a disqualifying conflict of interest due to a pension interest, nonparticipation in a particular matter affecting the interest will sufficiently address the conflict issue. It is expected that such disqualifications will be infrequent and, therefore, will not disturb the Department's ability to carry out its mission.

Finally, requiring divestiture of pension interests could adversely affect MSHA's ability to carry out its statutory responsibilities. The Federal Mine Safety and Health Act requires that those hired to perform various MSHA functions must be qualified by practical experience or education. For this reason, it is likely that both current employees and applicants will have a prior work history in the mining industry and may have interests in the pension plans of their former employers. Many of these interests are difficult to divest. Requiring divestiture, even in the absence of a conflict of interest, would discourage the hiring and retention of persons possessing the qualifications that the Mine Safety and Health Act requires.

Under § 5201.105(c), the Assistant Secretary of Labor for Mine Safety and Health, or the Assistant Secretary's designee, may grant a waiver covering an outside employment or other financial interest when the Assistant Secretary or the designee determines 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. The Assistant Secretary or the designee shall grant a waiver from prohibitions in this section regarding spouses and minor children unless the Assistant Secretary or the designee determines that having the covered relationship or interest is likely to be inconsistent with 5 CFR part 2635 or is otherwise prohibited by law.

Section § 5201.105(d) provides that existing waivers, issued under the Department's old regulations and procedures implementing the mining interest prohibition applicable to MSHA employees, remain in effect but may be withdrawn subject to the standards applicable to the withdrawal of waivers under paragraph (c).

III. Repeal of Department of Labor Standards of Conduct

On June 23, 1994, The Department of Labor, at 59 FR 36210–36211, removed and reserved subparts A, B, D, and E and portions of subpart C of 29 CFR part 0, Ethics and Conduct Department of Labor Employees. The Department retained in subpart C § 0.735–12(d) (now being redesignated as § 0.735–2), which contains a regulatory waiver issued under the prior version of 18 U.S.C. 208(b)(2) (1988) and which has remained in effect pending OGE's issuance of superseding executive branch-wide regulatory waivers. It also amended and retained in subpart C grandfathered § 0.735–13, regarding prohibited financial interests and clearance of outside activities. The interim rule repeals § 0.735.13, which is superseded upon issuance of this interim rule.

The interim rule adds a new provision to ensure that employees are on notice of the ethical standards and other ethics provisions to which they are subject. The provision cross-references 5 CFR parts 2634, 2635, and 5201. It is included along with the regulatory waiver provision in a revised subpart A.

The provisions dealing with post employment conflicts of interest which are now in subpart F are transferred to the currently reserved subpart B. These provisions establish administrative procedures to sanction former Department of Labor employees who have violated 18 U.S.C. 207. While the authority to impose the administrative sanctions was repealed prospectively by the Ethics Reform Act of 1989, the procedures continue to apply to persons whose government service terminated while they were still in effect. For this reason the administrative sanction provisions are being retained for the present.

To simplify the structure of part 0, the remaining vacant or currently reserved subparts are being deleted.

IV. Matters of Regulatory Procedure

Administrative Procedure Act

As Secretary of Labor, I have found good cause pursuant to 5 U.S.C. 553 (a)(2), (b), and (d)(3) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 60-day delay in effectiveness as to these interim rules and repeals. The reason for this determination is that it is important to a smooth transition from the Department of Labor's prior ethics rules to the new executive branch-wide Standards that these rulemaking actions become effective as soon as possible. Furthermore, this rulemaking is related to the Department's organization, procedure and practice. Nonetheless, this is an interim rulemaking, with provision for a 60 day public comment period. The Department will review all comments received during the comment period and will consider any modifications that appear appropriate in adopting these rules as final, with the concurrence of the Office of Government Ethics.

Executive Order 12866, Regulatory Planning and Review

As Secretary of Labor, I have determined that this regulation is not a ''regulatory action'' under section 3 of Executive Order 12866. Because the rule is limited to agency organization, management and personnel, it falls within the exclusion set forth in section 3(d)(3) of the Executive order. In promulgating this rule, the Department has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of the Executive order.

Small Business Regulatory Fairness Act of 1996

This rule is not classified as a ''rule'' under the Small Business Regulatory Fairness Act of 1996, because it is a rule pertaining to agency organization, procedure, or practice that does not substantially affect the right of non-agency parties. See 5 U.S.C. 804(3)(C). Moreover, as Secretary of Labor, I have found for the good cause set forth above, that notice and public procedure thereon are unnecessary and contrary to the public interest. See 5 U.S.C. 808(2). Accordingly, this interim regulation will take effect on November 6, 1996.

Regulatory Flexibility Act

As Secretary of Labor, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have significant economic impact on a substantial number of small entities because it imposes ethics standards only on Federal employees and their immediate families. The Secretary of Labor has provided this certification to the Chief Counsel for Advocacy of the Small Business Administration.

Paperwork Reduction Act

As Secretary of Labor, I have determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget thereunder.

List of Subjects in 5 CFR Part 5201 and 29 CFR Part 0

Conflict of interests, Government employees.

Dated: October 31, 1996.

Robert B. Reich,

Secretary of Labor.

Approved: November 4, 1996.

Steven D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Department of Labor, with the concurrence of the Office of Government Ethics, is amending title 5 and title 29, subtitle A, of the Code of Federal Regulations as follows:

TITLE 5—[AMENDED]

1. A new chapter XLII, consisting of part 5201, is added to 5 CFR to read as follows:

CHAPTER XLII—DEPARTMENT OF LABOR

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

Sec.

Authority: 5 U.S.C. 301, 7301, 7353; 5 U.S.C. App. (Ethics in Government Act); 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, 2635.203(a), 2635.403(a), 2635.803.

§ 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) Pension and Welfare Benefits Administration (PWBA);

(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;

(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.''

§ 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) Pension and Welfare Benefits 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 Pension and Welfare Benefits 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 PWBA 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 PWBA 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.

§ 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 regulation, 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 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.

TITLE 29—[AMENDED]

Subtitle A—Office of the Secretary of Labor

PART 0—[AMENDED]

2. The authority citation for part 0 is revised to read as follows:

Authority: 5 U.S.C. 301; 5 U.S.C. App. (Ethics in Government Act of 1978); sec. 501, Pub. L. 95–521, 92 Stat. 1866–1867; 18 U.S.C.

208; 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 part 2634, part 2635.

3. Part 0 is amended by removing subparts A, B, D, and E, by removing § 0.735–13, and by redesignating subpart F as subpart B and removing its authority citation.

4. Part 0 is further amended by redesignating subpart C as subpart A and by revising its heading to read ''Subpart A—Standards of Conduct for Current Department of Labor Employees.''

5. Part 0 is further amended by redesignating § 0.735–12 as § 0.735–2 and adding § 0.735–1 to read as follows:

§ 0.735–1 Cross-references to employee ethical conduct standards and financial disclosure regulations.

Employees of the Department of Labor (Department) are subject to the executive branch-wide standards of ethical conduct at 5 CFR part 2635, the Department's regulations at 5 CFR part 5201 which supplement the executive branch-wide standards, and the executive branch financial disclosure regulations at 5 CFR part 2634.

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FEDERAL RESERVE SYSTEM

12 CFR Parts 218 and 250

[Regulation R; Docket No. R–0931]

Relations With Dealers in Securities Under Section 32, Banking Act of 1933; Miscellaneous Interpretations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is rescinding Regulation R, which the Board believes is no longer necessary. The Board also is amending its regulations to remove an interpretation of section 32 of the Glass-Steagall Act, which the Board believes is no longer necessary. This interpretation explains the position of the Board regarding the application of the prohibitions of section 32 to bank holding companies.

EFFECTIVE DATE: December 6, 1996.

FOR FURTHER INFORMATION CONTACT: Richard M. Ashton, Associate General Counsel (202/452–3750), Thomas M. Corsi, Senior Attorney (202/452–3275), or Tina Woo, Attorney (202/452–3890), Legal Division. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act)

Section 303(a) of the CDRI Act (12 U.S.C. 4803(a)) requires the Board, as well as the other federal banking agencies, to review its regulations and written policies in order to streamline and modify these regulations and policies to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. The Board has reviewed its interpretations of section 32 of the Glass-Steagall Act (12 U.S.C. 78) with this purpose in mind, and, as is explained in greater detail in the text that follows, is amending these interpretations in a way designed to meet the goals of section 303(a).

Substantive Provisions of Regulation R

Regulation R implements section 32 of the Glass-Steagall Act,[1] which prohibits officer, director and employee interlocks between member banks and firms ''primarily engaged'' in underwriting and dealing in securities. Section 32 authorizes the Board to exempt from this prohibition, under limited circumstances, certain interlocks by regulation. Currently, Regulation R merely restates the statutory language of section 32, and sets forth the only exemption adopted by the Board since passage of the Glass-Steagall Act. The Board also has codified in the CFR a series of 14 interpretations of the substantive provisions of section 32 and the regulation.[2] In July, the Board sought public comment on removing Regulation R from the CFR and removing from the CFR an interpretation that applies the restrictions of section 32 to bank holding companies.[3]

The exemption in Regulation R, adopted by the Board in 1969, permits interlocks between member banks and securities firms whose securities underwriting and dealing activities are limited to those permissible for national banks. The adoption of the express exemption was apparently based on the assumption that the literal language of the section 32 prohibition could at least arguably cover bank-eligible securities activities.

Subsequently, in approving other applications under the Bank Holding Company Act, the Board interpreted the prohibitions of section 20 of the Glass-Steagall Act as not applying on their face to securities underwriting and dealing activities authorized for member banks.[4] At that time, the Board also expressed the view that section 32 did not cover an interlock between a member bank and a firm that was not engaged in securities activities covered by section 20.[5] Accordingly, in light of the Board's more recent view of the scope of section 32, the express exemption from the provisions of section 32 for bank-eligible securities activities is no longer necessary.[6] The Board has never adopted any other exemption to the interlocks provision and historically, requests that the Board create new exemptions have been infrequent and have been uniformly denied.[7] In seeking public comment on removing Regulation R, the Board noted that the exemption in the regulation is no longer necessary, and it is not necessary to have a substantive regulation solely to restate a statutory provision.

Extension of Section 32 Prohibitions to Bank Holding Companies

The Board also sought public comment on removing a 1969 interpretation that extended the prohibitions of section 32 to a bank holding company where the principal activity of the bank holding company is the ownership and control of member banks.[8] The Board based its 1969 interpretation not so much on the literal language of section 32, but on its belief that where the ownership and control of member banks is the principal activity

[1] 12 U.S.C. 78.

[2] 12 CFR 218.101–218.114. The Board and staff have issued other interpretations of section 32 that are contained in the FRRS.

[3] *See* 61 FR 34749, July 3, 1996.

[4] Section 20 of the Glass-Steagall Act (12 U.S.C. 377) prohibits a member bank from being affiliated with a firm engaged principally in underwriting and dealing in securities.

[5] This interpretation has been upheld by the courts. *Securities Industry Association* v. *Board of Governors of the Federal Reserve System*, 839 F.2d 47, 62 (2d Cir. 1988), *cert. denied*, 486 U.S. 1059 (1988).

[6] To avoid any confusion on this matter, the Board is inserting an additional interpretation into the CFR to clarify that the prohibitions of section 32 do not apply to bank-eligible securities activities. This interpretation will be set out at 12 CFR 250.413.

[7] A footnote to Regulation R that dates to 1936 makes clear the Board's interpretation that a broker who is engaged solely in executing orders for the purchase and sale of securities on behalf of others in the open market is not engaged in the business referred to in section 32. The Board has since authorized bank holding companies to engage in this activity directly, reiterating that securities brokerage is not a proscribed activity under either sections 32 or 20 of the Glass-Steagall Act. *BankAmerica Corporation*, 69 Federal Reserve Bulletin 105 (1983). The courts upheld the Board's interpretation. *Securities Industry Assn.* v. *Board of Governors*, 468 U.S. 207 (1984). The removal of Regulation R does not affect this interpretation.

[8] 12 CFR 218.114.