

## § 17.6

(iii) Whether he or she failed to disclose material facts in his or her possession.

(iv) Whether he or she could have determined that the payment was erroneous.

(c) *Equity and good conscience.* (1) “Equity and good conscience” as defined in equity and the commonly understood meaning thereof shall be attached to waiver determinations. In addition, the decision must be made whether the exercise of waiver of overpayment would be in opposition to the basic purpose of title VII of the Foreign Service Act (22 U.S.C. 1061, *et seq.*) and would injure the administration of such title.

(2) The following guides will also be applied, as appropriate:

(i) Waiver of overpayment may be granted when an individual by reason of receipt of the overpayment has: (a) Relinquished a valuable right; or (b) changed his or her position for the worse.

(ii) Waiver of overpayment may be granted when the individual has consistently acted in good faith regarding the overpayment.

(iii) Waiver of overpayment cannot be granted when the individual has been found to be at fault or if the overpayment has been obtained by fraud.

### § 17.6 Notice of decision and right of appeal.

If the annuitant, without good cause shown, fails or refuses to produce the requested additional information or authorization, the Department of State is entitled to make adverse inferences with respect to the matters sought to be amplified, clarified, or verified.

(a) The final administrative decision shall be reduced to writing and the Director shall send it expeditiously to the annuitant.

(b) If the decision is adverse to the annuitant, the notification of the decision shall include a written description of the annuitant’s rights of appeal to the Foreign Service Grievance Board, including time to file, where to file, and applicable procedure.

### § 17.7 Appeal.

The Foreign Service Grievance Board shall entertain any appeal under this

## 22 CFR Ch. I (4–1–01 Edition)

part in accordance with the regulations of the Board set forth in 22 CFR part 16. The Director of the Office of Finance, with such assistance as may be necessary, shall represent the Department in proceedings before the Board. The decision of the Board is final.

## PART 18—REGULATIONS CONCERNING POST EMPLOYMENT CONFLICT OF INTEREST

### Subpart A—General Provisions

Sec.

- 18.1 Scope.
- 18.2 Definitions.
- 18.3 Director General.
- 18.4 Records.

### Subpart B—Applicable Rules

- 18.5 Interpretative standards; advisory opinions.

### Subpart C—Administrative Enforcement Proceedings

- 18.6 Authority to prohibit appearances.
- 18.7 Report of violation by a former employee.
- 18.8 Institution of proceeding.
- 18.9 Contents of complaint.
- 18.10 Service of complaint and other papers.
- 18.11 Answer.
- 18.12 Motions and requests.
- 18.13 Representation.
- 18.14 Hearing examiner.
- 18.15 Hearings.
- 18.16 Evidence.
- 18.17 Depositions.
- 18.18 Proposed findings and conclusions.
- 18.19 Decision of the hearing examiner.
- 18.20 Appeal to the Board of Appellate Review.
- 18.21 Decision of the Board of Appellate Review.
- 18.22 Notice of disciplinary action.

AUTHORITY: 18 U.S.C. 207, as amended, 92 Stat. 1864.

SOURCE: 46 FR 2608, Jan. 12, 1981, unless otherwise noted.

### Subpart A—General Provisions

#### § 18.1 Scope.

This part contains rules governing disciplinary action against a former officer or employee of the Department of State, including the Foreign Service,

## Department of State

because of a violation of the post employment conflict of interest prohibitions. Such disciplinary action may include prohibition from practice before the Department of State and any component thereof as defined in this part.

### § 18.2 Definitions.

For the purpose of this part—

(a) The term *Department* means the Department of State and includes the Foreign Service.

(b) The term *Director General* means the Director General of the Foreign Service and Director of Personnel.

(c) The term *practice* means any informal or formal appearance before, or, with the intent to influence, any oral or written communication to the Department on a pending matter of business on behalf of any other person (except the United States).

### § 18.3 Director General.

The Director General shall institute and provide for the conduct of disciplinary proceedings involving former employees of the Department as authorized by 18 U.S.C. 207(j), and perform such other duties as are necessary or appropriate to carry out his/her functions under this part.

### § 18.4 Records.

The roster of all persons prohibited from practice before the Department shall be available to public inspection at the Office of Director General. Other records may be disclosed upon specific request, in accordance with appropriate disclosure regulations of the Department.

## Subpart B—Applicable Rules

### § 18.5 Interpretative standards; advisory opinions.

(a) A determination that a former officer or employee of the Department violated 18 U.S.C. 207(a), (b) or (c) will be made in conformance with the standards established in the interpretative regulations promulgated, either in interim or final form by the Office of Government Ethics and published at 5 CFR part 737.

(b) Former officers and employees of the Department wanting to know whether a proposed course of conduct

## § 18.8

would be in conformity with the Act or the interpretive regulations thereunder may contact the Assistant Legal Adviser for Management to request an advisory opinion.

## Subpart C—Administrative Enforcement Proceedings

### § 18.6 Authority to prohibit appearances.

Pursuant to 18 U.S.C 207(j), if the Director General finds, after notice and opportunity for a hearing, that a former officer or employee of the Department has violated 18 U.S.C. 207(a), (b) or (c), the Director General in his/her discretion may prohibit that person from engaging in practice before the Department for a period not to exceed five years, or may take other appropriate disciplinary action.

### § 18.7 Report of violation by a former employee.

(a) If an officer or employee of the Department has reason to believe that a former officer or employee of the Department has violated any provision of this part, or if any such officer or employee receives information to that effect, he/she shall promptly make a written report thereof, which report or a copy thereof shall be forwarded to the Director General. If any other person has information of such violations, he/she may make a report thereof to the Director General or to any officer or employee of the Department.

(b) The Director General shall coordinate proceedings under this part with the Department of Justice in cases where it initiates criminal prosecution.

### § 18.8 Institution of proceeding.

Whenever the Director General determines that there is sufficient reason to believe that any former officer or employee of the Department has violated 18 U.S.C. 207(a), (b) or (c), he/she may institute an administrative disciplinary proceeding. The proceeding may be for that person's suspension from practice before the Department or for some lesser penalty. The proceeding shall be instituted by a complaint which names the respondent and is signed by the Director General and filed in his/her office. Except in cases