



**EVALUATION OF OUTSIDE WORK ISSUES
FOR
DEPARTMENT OF LABOR EMPLOYEES**

OFFICE OF THE SOLICITOR

**Report No. 2E-08-001-0001
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ACRONYMS

ALJ	Administrative Law Judges
DOL	Department of Labor
MSHA	Mine Safety and Health Administration
OGE	Office of Government Ethics
OIG	Office of Inspector General
SOL	Solicitor of Labor

EXECUTIVE SUMMARY

We conducted this evaluation to determine if there is a need for the Department of Labor (DOL) to broaden the existing “*supplemental standards of ethical conduct for employees of the Department of Labor*” (Title 5, Part 5201), which address outside work issues.

The Office of Government Ethics (OGE) provides leadership in the executive branch to prevent and resolve conflicts of interest on the part of Government employees. Each government agency is required to assign a Designated Agency Ethics Official. In DOL this responsibility is assigned to the Solicitor of Labor. In assisting the Solicitor of Labor in this area, the Division of Legislation and Legal Counsel has overall responsibility for administering the Department’s ethics program.

On February 3, 1993, new regulations pertaining to ethics and conduct became effective as part of an effort to establish a uniform ethics code for all government employees regardless of agency. Executive branch agencies were permitted to issue agency-specific supplemental regulations necessary to implement their ethics programs. On November 6, 1996, DOL, with OGE concurrence, issued an interim rule with request for comments, setting forth “*Supplemental Standards of Ethical Conduct for Employees of the Department of Labor.*” This interim rule addressed a variety of ethics provisions, including a restriction on 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. It also required employees in DOL’s Office of the Inspector General to obtain prior approval for outside employment.

RESULTS OF EVALUATION

Our evaluation identified areas where improvements, if implemented, will reduce the potential for actual and perceived conflicts of interests to arise. Furthermore, the Solicitor’s Office will more effectively oversee the Department’s ethics program.

FINDING 1 -There are inconsistencies in DOL regarding when and how employees seek approval for work outside the agency.

In DOL there is no central repository for information pertaining to outside work. While employees who are required to file financial disclosure reports provide information pertaining to outside financial interests as part of their filing, this information is only reviewed within each agency. Also, there are positions that fall outside the requirement to file financial disclosure reports that are sensitive enough to warrant approval before outside work occurs.

There is a greater risk for an appearance of a conflict of interest without a mechanism in place to verify if a conflict exists. An employee may have a presumption that involvement in outside work is acceptable until it actually becomes a problem for the employee. We view the need for such regulations as a safety measure against the appearance of a conflict of interest for certain types of positions within DOL.

We believe that universal prior approval would be unnecessarily burdensome and intrusive, particularly in those instances in which the employee's outside employment poses little danger to the interests of DOL. However, employees who file financial disclosure reports hold either high-level positions or positions that have a direct effect on the interests of outside organizations. Therefore, prior approval of outside employment for these employees is warranted. Also, there are other DOL employees in positions which are typically sensitive to possible conflict of interest questions, and should be subject to prior approval for outside work. For example, DOL attorneys, all levels of procurement and contract specialists, and certain types of investigators should be covered under supplemental regulations in order to avoid conflict of interest questions.

FINDING 2 - The list of DOL Ethics Agency Contacts is Not Current.

During our evaluation we were provided a list of DOL Ethics Contacts, dated June 2000. The list contains names of employees who are either no longer with DOL, or who no longer serve as an ethics contact. We believe the list should be updated immediately and that all DOL employees should be notified in writing of the identification of their agency ethics contact.

RECOMMENDATIONS

1. The Solicitor's Office should submit a proposal to the Office of Government Ethics to amend DOL's existing supplemental regulations pertaining to outside work issues. The amendment should broaden the requirement for approval of outside work to cover employees who are financial filers, and other specified groups of employees. It should also ensure coverage of those groups currently covered in existing, informal DOL agency guidelines, such as those in the Occupational Safety and Health Administration's directive on outside work, SOL's guidelines for pro bono work, and the Administrative Law Judges' policy guidelines.
2. The Solicitor's Office should update its list of agency Ethics Contacts, and ensure its distribution to all employees.

SOL RESPONSE AND OIG CONCLUSIONS

The agency's response to the OIG's official draft report generally agrees with the recommendations made. Recommendation two has been resolved and will be closed pending OIG's receipt of appropriate documentation. Recommendation one remains unresolved, pending receipt of SOL's results of their internal review, and a time line for submitting a proposal to the Office of Government Ethics for additional supplemental standards covering the issue of outside work for DOL employees

The agency's complete response is found in the Appendix.

BACKGROUND

On February 3, 1993, new regulations pertaining to ethics and conduct became effective as part of an effort to establish a uniform ethics code for all government employees regardless of agency. The regulations were issued by the Office of Government Ethics, an agency within the executive branch that was established by the Ethics in Government Act of 1978.

The Office of Government Ethics (OGE) provides leadership in the executive branch to prevent conflicts of interest on the part of Government employees, and to resolve conflicts of interest that occur. In partnership with executive branch agencies and departments, OGE fosters high ethical standards for employees and strengthens the public's confidence that the Government's business is conducted with impartiality and integrity.

Each government agency is required to assign a Designated Agency Ethics Official. In the Department of Labor (DOL) this responsibility is assigned to the Solicitor of Labor. The Division of Legislation and Legal Counsel has overall responsibility for administering the ethics program.

In conjunction with OGE's issuance of new ethics and conduct regulations in 1993, DOL formally repealed most of its old rules on June 23, 1994. As permitted by OGE, DOL temporarily retained the old rules restricting outside employment and financial interests. The "grace period" for the old rules expired on November 1, 1996.

Executive branch agencies were permitted to issue agency-specific supplemental regulations necessary to implement their ethics programs. On November 6, 1996, DOL, with OGE concurrence, issued an interim rule with request for comments, setting forth *Supplemental Standards of Ethical Conduct for Employees of the Department of Labor*. This interim rule addressed a variety of ethics provisions, including a restriction on 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. It also required employees in the Office of the Inspector General to obtain prior approval for outside employment. These supplemental standards were codified at 5 CFR § 5201.

The interim rule also repealed 29 CFR 0.735-13, one of the remaining provisions of DOL's Ethics and Conduct Regulations. This provision required prior approval of outside employment or activities. Pursuant to the OGE Standards, this provision was superseded upon issuance of the interim rule. The final rule was effective on January 31, 2000. It adopted and made final the interim regulations.

There are certain general principles, as well as specific standards, that are expected of Executive branch employees. Furthermore, employees must strive to avoid any action that would create the appearance that they are violating the law or ethical standards.

PURPOSE AND METHODOLOGY

PURPOSE

The purpose of this evaluation was to determine if there is a need to broaden the existing supplemental standards of ethical conduct for employees of DOL in the area of outside work issues. To make a determination on this issue we sought to answer the following questions: (1) are there inconsistencies in the Department regarding approval of outside work; (2) should employees in specified positions in DOL be required to seek prior approval for outside work; and, (3) how are employees trained on the subject of outside work issues?

METHODOLOGY

We obtained information pertaining to:

- DOL's ethics program from the Department's Acting Ethics Counsel, from the Department's website, and from DOL agency ethics contacts;
- OGE's responsibilities from their legal counsel and from their website;
- Ethics programs of other government agencies from the OGE website, and from the specific agency websites.

We interviewed representatives from the OGE, the DOL Solicitor's Office, DOL agency ethics contacts¹, and other government agency representatives charged with the responsibility of administering their ethics programs.

¹We were provided a list of DOL ethics contacts dated June 2000. We interviewed ten National Office agency ethics agency contacts.

FINDINGS AND RECOMMENDATIONS

Finding 1

There are inconsistencies in DOL regarding when and how employees seek approval for work outside the agency.

Regulations and Supplemental Standards Pertaining to Outside Work of Government Employees

Standards applicable to outside work are contained in the “Standards of Ethical Conduct for Employees of the Executive Branch”, issued by the Office of Government Ethics². This regulation states the following: “*When required by agency supplemental regulation issued after February 3, 1993, an employee shall obtain prior approval before engaging in outside employment or activities. Where it is determined to be necessary or desirable for the purpose of administering its ethics program, an agency shall, by supplemental regulation, require employees or any category of employees to obtain prior approval before engaging in specific types of outside activities, including outside employment.*”

In essence, each federal agency determines what reporting requirements to impose on employees who seek outside employment. Under the government-wide standards of conduct issued by OGE, it is up to employees to make sure they are not engaging in conflicts of interest. OGE does not impose any requirements for prior approval of outside work.

DOL has *Supplemental Standards of Ethical Conduct for Employees of DOL*³. These standards include additional rules for two DOL agencies: (1) the Office of the Inspector General (OIG)—requires written approval of the Inspector General or the Inspector General’s designee before an employee engages in any outside employment; (2) the Mine Safety and Health Administration (MSHA)—prohibits employees and their spouses and minor children 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, 30 U.S.C. 801 *et seq.*

²5 C.F.R. Part 2635, § 2635.803, (1/1/99 Edition), as amended at 64 FR 2421-2422 (1/14/99) and 64 FR 13063-13064 (3/17/99)

³Final Rule 5 C.F.R., Part 5201, 20 C.F.R., Part O

In addition to the OGE Regulations and DOL supplemental standards, we reviewed the ethics standards for other executive branch agencies to determine how they addressed the issue of outside work. During interviews with representatives of the Solicitor's Office, we were informed that most other government agencies do not have supplemental regulations on the issue of outside work for their employees. However, in our review of the 14 executive branch agencies we found that 10 of 14 agencies do have supplemental regulations that address outside work issues, and one agency is in the process of developing such regulations (the State Department). Reference Exhibit 1 for information on these supplemental regulations.

The degree of employee coverage varies among government agencies that have the supplemental regulations. Some require prior approval for all employees (other than a special Government employee⁴) who file either a public or confidential financial disclosure report or an alternative form of reporting approved by OGE. Other agencies have additional approval requirements for specified job titles (e.g. attorneys, consultants, etc.) or for employees within specified agencies. DOL is the only agency with supplemental regulations for only one of its agencies—the Office of Inspector General. As we noted above, additional standards for MSHA employees are included in DOL's supplemental standards on ethics. However, there is no specific provision that requires prior approval from the Department before MSHA employees engage in outside employment.

In an interview with OGE we learned that supplemental regulations pertaining to outside work issues were established by many government agencies to meet the specialized needs of the agencies. Each agency found a way to carve out exceptions applicable to their environment and address them in the regulations. Normally, approval for outside work is a fairly centralized process. Financial filers may be covered in terms of outside work and conflict of interest issues, but without a process in place that specifically addresses the need for prior approval, both the employee and DOL leave themselves vulnerable to potentially embarrassing situations in this area.

Information pertaining to outside financial interests is part of the reporting requirement for those employees who file financial disclosure reports. However, there is no way to ensure DOL's consistency in how these issues are handled because each agency reviews their own financial disclosure forms. We found no central repository for reviewing this information. While most agency ethics contacts may contact SOL when a problem arises, there is no requirement that they do so. The lack of an open mechanism that is used throughout DOL to verify outside work issues leaves DOL vulnerable to the appearance of conflict of interest issues.

⁴Special Government employee means those executive branch officers or employees specified in 18 U.S.C. 202(a). A special Government employee is retained, designated, appointed, or employed to perform temporary duties either on a full-time or intermittent basis, with or without compensation, for a period not to exceed 130 days during any consecutive 365-day period.

SOL explained the decision-making process used for determining whether supplemental regulations on outside work were needed for DOL. Following OGE's issuance of new ethics and conduct regulations, and after the expiration of DOL's prior regulations on outside work issues in 1996, SOL surveyed agencies regarding their interest in regulations to cover outside work issues. SOL reported that OIG was the only office that responded affirmatively. Therefore, OIG is the only agency in DOL with such supplemental regulations.

We believe that allowing agency heads to express their views on ethics-related policies and procedures is a good practice for DOL. However, SOL should continue to ensure that such input is only a part of the process for making a final determination on regulatory issues pertaining to ethics, with the Division of Legislation and Legal Counsel as the guiding authority. This approach will leave DOL less vulnerable to actual and perceived conflict of interest issues.

Awareness of Ethics Requirements for DOL Employees

The OGE regulations set forth the basic code of conduct and are a starting point for resolving many ethics-related questions for DOL employees (except those in OIG, who have supplemental regulations that apply to them).

There are several ways for DOL employees to ensure awareness of their responsibilities in the area of ethics:

- (1) Employees are encouraged to review the government-wide ethics regulations at an early point in their tenure and to attend ethics training when it is required. Most employees receive ethics training shortly after their arrival on duty at DOL.
- (2) Those employees who are required to file a public financial disclosure report⁵ are required to receive a "live" briefing on an annual basis. Employees required to file a confidential financial disclosure report⁶ are required to attend a "live" ethics briefing every three years. DOL also

⁵All Presidential appointees, all career and non-career Senior Executive Service employees, all career and non-career employees paid above the GS-15 rate, and most Schedule C employees are required to file public financial disclosure reports (SF-278's) within thirty days of entering a covered position. Reports must also be filed annually on May 15 and within thirty days of terminating employment. An employee who fails to file any of these reports in a timely fashion is subject to a \$200 late filing fee. These financial disclosure reports are available for inspection when a written request is made by any individual or organization.

⁶Each agency within the Department has designated certain positions at or below the GS-15 level for coverage under a corresponding system of confidential financial disclosure reports (OGE-450's) for career employees and certain "special government employees." Employees in these positions must file a confidential report within 30 days of their employment and by October 31 each year thereafter.

provides written ethics materials to confidential financial disclosure filers during the years that "live" attendance is not required.

- (3) Ethics training may also be provided upon the request of an office.
- (4) Employees are strongly encouraged to ask questions pertaining to ethics-related matters. They are cautioned that "preventive medicine" is the best course of action to avoid embarrassment. Advice can be obtained from agency ethics contacts or from the Office of the Solicitor Ethics Counselor.
- (5) SOL has posted information on its website pertaining to DOL's ethics requirements.

OGE Restrictions on Outside Employment

Government employees are prohibited from taking official action affecting the financial interests of any organization or individual with whom they are seeking or negotiating employment or with whom they have any arrangement concerning prospective employment.

An employee, regardless of level, cannot accept compensation from any source other than the Government for teaching, speaking, or writing that relates to the employee's official duties. There is an exception for teaching requiring repeated appearances as part of the regularly established curriculum at a college, secondary or elementary school. Presidential appointees may not receive any outside income.

Interviews with DOL Ethics Contacts

Half of the interviewees stated it would be beneficial to the agency to have certain types of positions covered for preapproval of outside work in order to avoid an appearance of a conflict of interest. It was stated that such regulations would be a safeguard for both the employees and DOL.

Less than half of the interviewees stated they maintain records pertaining to questions and requests for approval on outside work issues. One interviewee said it depends on the nature of the request, that sometimes documentation is maintained and sometimes it is not.

The ethics contact for the Office of Safety and Health Administration (OSHA) informed us that they have their own agency guidelines pertaining to outside work in OSHA Directive Per 3.3–Outside Employment– Teaching, Lecturing and Writing, dated 10/30/78. While the directive addresses the parameters for OSHA employees accepting teaching, lecturing or writing positions, it also specifically states in section 4 - Action, that *“any OSHA employee who is engaged in or is planning to engage in outside employment, business or professional activity must request clearance for such activity*

in writing from his Regional Administrator (if field) or from the appropriate Office Director in Washington, D.C. The request must (a) identify the employee by name, title, grade and location, (b) contain a statement of the employment or activity planned, (c) state the amount of time to be devoted to the employment or activity, and (d) include a statement to the effect that the employee is fully informed of and understands the requirements of all laws, orders, regulations, and standards applicable to the activities for which clearance is being requested.” While there is no evidence that this agency directive has been canceled or superseded, we believe the policy is not adhered to on a consistent basis.

Both the Bureau of Labor Statistics and the Pension and Welfare Administration ethics contacts stated they have a process in place for approving outside work requests, but there is no policy or procedural information in writing on the subject.

Conclusion

The appearance of conflict of interest issues continues to be a concern among government agencies. Without supplemental regulations addressing the issue of outside work interests, an employee has a presumption that involvement in outside work is acceptable until it actually becomes a problem for the employee. We view the need for such regulations as a safety measure against the appearance of a conflict of interest for certain types of positions within DOL.

We believe that universal prior approval would be unnecessarily burdensome and intrusive, particularly in those instances in which the employee’s outside employment poses little danger to the interests of DOL. However, employees who file financial disclosure reports hold either high-level positions or positions that have a direct effect on the interests of outside organizations. Therefore, prior approval of outside employment for these employees is warranted. Also, there are other DOL employees in positions which are typically sensitive to possible conflict of interest questions, and should be subject to prior approval for outside work. For example, DOL attorneys, all levels of procurement and contract specialists, and certain types of investigators should be covered under supplemental regulations in order to avoid conflict of interest questions.

Recommendation 1

SOL should submit a proposal to the Office of Government Ethics to amend the Department of Labor’s existing supplemental regulations pertaining to outside work issues. The amendment should broaden the requirement for approval of outside work to cover employees who are financial filers, and other specified groups of employees. It should also ensure coverage of those groups currently covered in existing, informal DOL agency guidelines, such as those in OSHA’s directive on outside work, SOL’s guidelines for pro bono work, and the ALJ’s policy guidelines.

SOL's Planned Actions in Response to Recommendation Number One:

"...the Office of the Solicitor will undertake, in the next 90 days, to again survey the Department's component agencies and talk with the appropriate officials in order to determine whether the requirement for approval of outside work should be broadened...We will report the results of our review to the OIG after its conclusion.....we are considering implementing, in the near future, computer-based ethics training modules and enclosing summaries of the ethics rules in all future public and confidential financial disclosure form packets.....In addition, we could also consider expanding mandatory training in the next calendar to encompass all Department employees GS-11 and above, including all filers, whether public or confidential, and those employees who, although they may not be designated as filers, nevertheless have duties that may warrant heightening their awareness of the conflict of interest laws and ethics regulations."

OIG's Conclusion on Recommendation Number One:

We consider this recommendation unresolved. We agree with SOL's plans to: (a) survey the Department's component agencies in order to obtain additional input regarding which positions should be covered under supplemental standards; (b) consider computer-based ethics training modules; and (c) to consider the expansion of mandatory ethics training. However, these actions will not necessarily mitigate the appearance of conflict of interest issues which are of concern. Until supplemental regulations addressing the issue of outside work interests are finalized, an employee may continue to presume that involvement in outside work is acceptable until it actually becomes a problem for the employee. We view the need for such regulations as a safety measure against the appearance of a conflict of interest for certain types of positions within DOL.

To resolve this recommendation, please provide this office with the results of your internal review, and a time line for submitting a proposal to the Office of Government Ethics for additional supplemental standards covering the issue of outside work for DOL employees, by January 31, 2001.

Finding 2

The list of DOL Ethics Contacts is not current.

SOL provided us a list of agency Ethics Contacts dated June 2000. These individuals serve as liaisons between the SOL Ethics Counselor and their individual agencies. Three of the thirteen ethics contacts from the Headquarter's Office who we attempted to interview were no longer with their agencies: one had left government service in 1998, and two had transferred to other agencies. In one agency no one knew what we were talking about when we asked to speak with the ethics contact.

Recommendation 2

The Solicitor's Office should update its list of agency Ethics Contacts, and ensure its distribution to all employees.

SOL's Planned Actions in Response to Recommendation Number Two:

"In light of this finding, on September 11, 2000, we sent out an e-mail notice concerning the September 22nd agency ethics contacts meeting in which we have requested updated information from the agency ethics contacts. We are planning to use this information gained to update the list of agency ethics contacts and will distribute this list by e-mail to appropriate component agency officials as part of a continued effort ensure this information is kept current....."

OIG's Conclusion on Recommendation Number Two:

We consider this recommendation to be resolved and will be closed pending our receipt of a current list of agency ethics contacts.

Contributors to this report:

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EXHIBIT 1

**SUMMARY OF EXECUTIVE BRANCH
REQUIREMENTS FOR OUTSIDE WORK**

Summary of Executive Branch Requirements for Outside Work

Office of Government Ethics Regulations

5 CFR Part 2635	<p>Sec. 2635.803 Prior approval for outside employment and activities. When required by agency supplemental regulation issued after February 3, 1993, an employee shall obtain prior approval before engaging in outside employment or activities. Where it is determined to be necessary or desirable for the purpose of administering its ethics program, an agency supplemental regulation, require employees or any category of employees to obtain prior approval before engaging in specific types of outside activities, including outside employment.</p> <p>Sec. 2635.802 Conflicting outside employment and activities An employee shall not engage in outside employment or any other outside activity that conflicts with his official duties. If an outside activity conflicts with an employee's official duties:</p> <p>(a) If it is prohibited by statute or by an agency supplemental regulation; or</p> <p>(b) If, under the standards set forth in Secs. 2635.402 and 2635.502, it would require the employee's disqualification from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his position would be materially impaired. Employees are cautioned that even though an outside activity may not be prohibited by this section, it may violate other principles or standards set forth in this part or require the employee to disqualify himself from participation in certain particular matters under either subpart E of this part. (Language taken from the Standards of Ethical Conduct for Employees of the Executive Branch, dated 9/30/99)</p>
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Agency Supplemental Regulations

DEPARTMENT	Supplemental Regulation Number & Status	Regulation Covers Outside Employment	Prior Approval Required	Employee Limitations	Comments
Agriculture	5 C.F.R. Part 8301 (interim)	Y	Y ¹	Y ²	<p>¹ Prior approval for employees* who file either a public or confidential financial disclosure report or an alternative form of reporting approved by OGE.</p> <p>² Employees* prohibited from participation in teaching, speaking, writing, or editing that, irrespective of compensation, either relates to the employee's official duties or is undertaken pursuant to an invitation extended by any person who is a prohibited source to any employee of USDA.</p>
Commerce					No Supplemental Regulations
Defense	5 C.F.R. Part 3601 (interim)	Y	Y ¹	Y ²	<p>¹ An employee, other than a special Government employee*, who is required to file a financial disclosure report (SF 450 or SF 278) shall obtain written approval from the agency designee before engaging in a business activity or compensated outside employment with a prohibited source, unless general approval has been given.</p> <p>² Approval shall be granted unless a determination is made that the business activity or compensated outside employment is expected to involve conduct prohibited by statute or regulation.</p> <p><u>Business activity.</u> Any business, contractual or other financial relationship not involving the provision of personal services by the DoD employee. It does not include a routine commercial transaction or the purchase of an asset or interest, such as common stock, that is available to the general public;</p> <p><u>Employment.</u> Any form of non-Federal employment or business relationship involving the provision of personal services by the DoD employee. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner or trustee.</p>

* The following definitions were extracted from (5 CFR2635 Section 2635.102, dated 9/30/99):

Employee is defined as any officer or employee of an agency, including a special Government employee.

Special Government employee means those executive branch officers or employees specified in 18 U.S.C.202 (a). A special Government employee is retained, designated, appointed, or employed to perform temporary duties either on a full-time or intermittent basis, with or without compensation, for a period not to exceed 130 days during any consecutive 365-day period.

Summary of Executive Branch Requirements for Outside Work

DEPARTMENT	Supplemental Regulation Number & Status	Regulation Covers Outside Employment	Prior Approval Required	Employee Limitations	Comments
Education	5 C.F.R. Part 6301 (interim)	Y	Y ¹	Y ²	<p>¹ An employee, other than a special Government employee*, must obtain written approval prior to engaging--with or without compensation--in the following outside activities:</p> <p>(1) Except as provided in paragraph (b)(1) of this section, providing services, other than clerical services or service as a fact witness, on behalf of any other person in connection with a particular matter:</p> <p>(i) In which the United States is a party;</p> <p>(ii) In which the United States has a direct and substantial interest; or</p> <p>(iii) If the provision of services involves the preparation of materials for submission to, or representation before, a Federal court or executive branch agency.</p> <p>(2) Except as provided in paragraph (b)(2) of this section:</p> <p>(i) Serving as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, employee, advisory committee member, or active participant for a prohibited source; or</p> <p>(ii) Engaging in teaching, speaking, consulting, or writing that relates to the employee's official duties.</p> <p>(b) Unless the services are to be provided for compensation, including reimbursement for transportation, lodging&meals:</p> <p>(1) Prior approval is not required to provide services as an agent or attorney for, or otherwise to represent, another</p> <p>Department of Education employee who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings; or</p> <p>(i) To participate in the activities of a: (A) Social, fraternal, civic, or political entity; (B) Religious entity that is not a prohibited source; or (C) Parent-Teacher Association or similar parent organization at the employee's child's school or day care center, other than as a member of a board of directors or other governing body of the school or center, or the educational agency of which it is a part; or</p> <p>(ii) To provide direct instructional, social, or medical services to students or other individuals.</p> <p>(c) An employee who is required by paragraph (a) of this section to obtain prior written approval shall submit a written request for approval in accordance with Department procedures.</p> <p>² Not approved if outside activity is expected to involve conduct prohibited by statute or Federal regulations, including 5 CFR part 2635.</p>

* The following definitions were extracted from (5 CFR2635 Section 2635.102, dated 9/30/99):

Employee is defined as any officer or employee of an agency, including a special Government employee.

Special Government employee means those executive branch officers or employees specified in 18 U.S.C.202 (a). A special Government employee is retained, designated, appointed, or employed to perform temporary duties either on a full-time or intermittent basis, with or without compensation, for a period not to exceed 130 days during any consecutive 365-day period.

Summary of Executive Branch Requirements for Outside Work

DEPARTMENT	Supplemental Regulation Number & Status	Regulation Covers Outside Employment	Prior Approval Required	Employee Limitations	Comments
Energy	5 C.F.R. Part 3301 (interim)	Y	Y ¹	Y ²	<p>¹ An employee, other than a special Government employee*, must obtain written approval of his immediate supervisor and the Counselor whether or not for compensation.</p> <p>² Not approved if involves conduct prohibited by statute or Federal regulation.</p>
Health & Human Services	5 C.F.R. Part 5501 (final)	Y	Y ¹	Y ²	<p>¹ Written prior approval, with or without compensation:</p> <ol style="list-style-type: none"> 1) Providing consultant or professional services, including services as an expert witness, 2) Engaging in teaching, speaking, writing, or editing that: <ol style="list-style-type: none"> i) relates to the employee's* official duties or ii) would be undertaken as a result of an invitation to engage in the activity that was extended to the employee by a person who is a prohibited source; <ol style="list-style-type: none"> A) providing services to a non-Federal entity as an officer, director or board member, or as a member of a group, such as a planning commission advisory council, editorial board, or scientific or technical advisory board or panel, which requires the provision of advise, counsel, or consultation unless the service is provided without compensation other than reimbursement or expenses to a political, religious, social, fraternal, or recreational organization and the position held. 3) Food and Drug Administration or Office of the Chief Counsel additional approval requirement: <ol style="list-style-type: none"> i) whether or not for compensation or any self-employed business activity: <ol style="list-style-type: none"> A) unless position held requires the provision of professional services or is performed for compensation other than the reimbursement of expenses in activities of: political, religious, social, fraternal, or recreational organization. <p>² Not applicable to special Government employees who:</p> <ol style="list-style-type: none"> 1) Assist in preparing grant applications or grant proposals; consultative or professional services, for compensation, to or on behalf any other person to prepare or assist in the preparation of, any grant application, contract proposal, program report, or other document intended for submission to HHS; 2) Employed in any HHS-funded activity funded by an HHS grant, contract, cooperative agreement, cooperative research and development agreement or other funding mechanism authorized by statute; 3) Employees of Food and Drug Administration (FDA) and the Office of the Chief Counsel, who are required to file a public or confidential financial disclosure report shall not:

* The following definitions were extracted from (5 CFR2635 Section 2635.102, dated 9/30/99):

Employee is defined as any officer or employee of an agency, including a special Government employee.

Special Government employee means those executive branch officers or employees specified in 18 U.S.C.202 (a). A special Government employee is retained, designated, appointed, or employed to perform temporary duties either on a full-time or intermittent basis, with or without compensation, for a period not to exceed 130 days during any consecutive 365-day period.

Summary of Executive Branch Requirements for Outside Work

DEPARTMENT	Supplemental Regulation Number & Status	Regulation Covers Outside Employment	Prior Approval Required	Employee Limitations	Comments
Health & Human Services (continued)					<p>i) Engage in any self-employed business activity for which the sale or promotion of FDA-regulated products is expected to constitute ten percent or more of annual gross sales or revenues; or</p> <p>ii) Engage in employment, as defined in 5 CFR 2635.603(a) whether or not for compensation, with a significantly regulated organization, as defined in Sec. 5501.101(c)(2) unless the employment meets either of the following exceptions:</p> <p style="padding-left: 20px;"><u>a</u> Employment consists of the practice of medicine, dentistry, veterinary medicine, pharmacy, nursing, or similar practices, provided that the employment does not involve substantial unrelated non-professional duties, such as personnel management, contracting and purchasing responsibilities (other than normal “out-of-stock” requisitioning) and does not involve employment by a medical product manufacturer in the conduct of biomedical research; or</p> <p style="padding-left: 20px;"><u>b</u> the employment is limited to clerical or similar services (such as cashier or janitorial services) in retail stores, such as supermarkets, drug stores, or department stores.</p> <p>4) Practice of law applicable to attorneys in the Office of the General Counsel</p> <p style="padding-left: 20px;">i) Assert a legal position that is or appears to be in conflict with the interests of the Department of HHS, the client to which the attorney owes a professional responsibility; or</p> <p style="padding-left: 20px;">ii) Interpret any statute, regulation, or rule administered or issued by the Department.</p> <p>Nothing in this section prevents an employee from: acting, with or without compensation, as an agent or attorney for, or otherwise representing, the employee’s parents, spouse, child or any 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 and 205, or from providing advice or counsel to such persons or estate; or 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 to the extent permitted by 18 U.S.C. 205, or from providing uncompensated advice or counsel to such person; or giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.</p>

* The following definitions were extracted from (5 CFR2635 Section 2635.102, dated 9/30/99):

Employee is defined as any officer or employee of an agency, including a special Government employee.

Special Government employee means those executive branch officers or employees specified in 18 U.S.C.202 (a). A special Government employee is retained, designated, appointed, or employed to perform temporary duties either on a full-time or intermittent basis, with or without compensation, for a period not to exceed 130 days during any consecutive 365-day period.

Summary of Executive Branch Requirements for Outside Work

DEPARTMENT	Supplemental Regulation Number & Status	Regulation Covers Outside Employment	Prior Approval Required	Employee Limitations	Comments
Housing & Urban Development	5 CFR Part 7501	Y	Y ¹	Y ²	<p>¹ Employees, except special Government employees*, shall obtain the prior written approval of an Agency Ethics Official before accepting compensated or uncompensated employment:</p> <ul style="list-style-type: none"> (i) As an officer, director, trustee, or general partner of, or in any other position of authority with, either a for-profit or non profit organization which directly or indirectly receives assistance from the Department. (ii) With a State or local government; or (iii) In the same professional field as that of the employee's official position. <p>(2) Approval shall be granted unless the conduct is inconsistent with 5 CFR part 2635 or this part.</p> <p>(d) Voluntary services. Subject to the restrictions and requirements contained in the conflict of interest laws, 5 CFR part 2635, and this part, employees are encouraged to volunteer their personal time to nonprofit organizations.</p> <p>²Subject to the exceptions set forth in paragraph (b) of this section, HUD employees, except special Government employees*, shall not engage in:</p> <ul style="list-style-type: none"> (1) Employment involving active participation in a business dealing with or related to real estate or manufactured housing including but not limited to real estate brokerage, management and sales, architecture, engineering, mortgage lending, property insurance, appraisal services, construction, construction financing, land planning, or real estate development; (2) Employment with a person, other than a State or local government, who engages in lobbying activities concerning Department programs or who is required to report expenditures for lobbying activities or register as a lobbyist under 42 U.S.C. 3537b or similar statutes which require the registration of persons who attempt to influence the decisions of officers or employees of the Department; (3) Employment as an officer or director of a person who is a Department-approved mortgagee, a lending institution or an organization which services securities for the Department; or (4) Employment with the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Bank System or any affiliate thereof. <p>(b) Exceptions to employment prohibitions. The prohibitions set forth in paragraph (a) of this section do not apply to serving as an officer or a member of the Board of Directors of:</p>

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Summary of Executive Branch Requirements for Outside Work

DEPARTMENT	Supplemental Regulation Number & Status	Regulation Covers Outside Employment	Prior Approval Required	Employee Limitations	Comments
Housing & Urban Development (continued)					<p>(1) A Federal Credit Union;</p> <p>(2) A cooperative or condominium association for a housing project which is not subject to regulation by the Department or, if so regulated, in which the employee personally resides; or</p> <p>(3) An entity designated in writing by the Designated Agency Ethics Official.</p> <p>Note to Sec. 75.105: An employee assigned to serve in an official capacity as the Department's liaison representative to an outside organization is not engaged in an outside activity to which this section applies. Notwithstanding, an employee may be assigned to serve as the Department's liaison representative only as authorized by law, and as approved by the Department under applicable procedures.</p>
Interior	5 C.F.R. Part 3501 (interim)	Y	Y ¹	Y ²	<p>¹ Prior approval requirement. (i) An employee of the Department, other than an employee of the U.S. Geological Survey or a special Government employee, shall obtain written approval from his ethics counselor or other agency designee before engaging in outside employment with a prohibited source. (ii)(A) An employee of the U.S. Geological Survey (USGS), other than a special Government employee, shall obtain written approval from the USGS deputy ethics counselor before engaging in any outside employment. (B) The USGS may issue instructions exempting categories of employment from the prior approval requirement, based on a determination that the employment within those categories would generally be approved and are not likely to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and this part.</p> <p>² Prohibited outside employment and activities. Under 43 U.S.C. 31(a), employees of the U.S. Geological Survey shall execute no surveys or examinations for private parties or corporations. (2) Employees in the Bureau of Land Management may not engage in outside employment as real estate agents and realty specialists. Such employees are not required to cancel a real estate license, but may maintain the license on an inactive basis. (3) Employees in the Office of the Assistant Secretary--Indian Affairs, or in the Bureau of Indian Affairs (BIA), may not hold a position on a tribal election board or on a tribal school board which oversees BIA schools.</p> <p>Note to paragraph (a)(3): Except for membership on a tribal election board and a tribal school board which oversees BIA schools, an eligible person employed in the Office of the Assistant Secretary--Indian Affairs or in the BIA may become a candidate for office in his local tribe or may be appointed as a representative of his local tribe if prior approval is obtained from the Deputy Assistant Secretary--Indian Affairs pursuant to paragraph (b) of this section.</p>

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Summary of Executive Branch Requirements for Outside Work

DEPARTMENT	Supplemental Regulation Number & Status	Regulation Covers Outside Employment	Prior Approval Required	Employee Limitations	Comments
Justice	5 C.F.R. Part 3801 (final)	Y	Y ¹	Y ²	<p>¹ An employee* must obtain written approval before engaging in outside employment, not otherwise prohibited by paragraph (b) of this section that involves: (i) The practice of law; or (ii) A subject matter, policy, or program that is in his component's area of responsibility. Outside employment means any form of employment, business relationship or activity, involving the provision of personal services whether or not for compensation, other than in the discharge of official duties. It includes, but is not limited to, services as a lawyer, officer, director, trustee, employee, agent, consultant, contractor, or general partner. Speaking, writing and serving as a fact witness are excluded from this definition, so long as they are not combined with the provision of other services that do fall within this definition, such as the practice of law.</p> <p>² Approval shall be granted only upon a determination that the outside employment is not expected to involve conduct that is prohibited by statute or Federal regulation.</p> <p>(1) No employee may engage in outside employment that involves:</p> <ul style="list-style-type: none"> (i) The practice of law, unless it is uncompensated and in the nature of community service, or unless it is on behalf of himself, his parents, spouse, or children; (ii) Any criminal or habeas corpus matter, be it Federal, State, or local; or (iii) Litigation, investigations, grants or other matters in which the Department of Justice is or represents a party, witness, litigant, investigator or grant-maker. <p>(2) Waivers may be obtained to restrictions where application of the restrictions will cause undue personal or family hardship; unduly prohibit an employee from completing a professional obligation entered into prior to Government service; or unduly restrict the Department from securing necessary and uniquely specialized services, if a determination has been made that the activities covered by the waiver are not expected to involve conduct prohibited by statute or Federal regulation.</p>

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Summary of Executive Branch Requirements for Outside Work

DEPARTMENT	Supplemental Regulation Number & Status	Regulation Covers Outside Employment	Prior Approval Required	Employee Limitations	Comments
Labor	5 C.F.R. 5201	Y	Y ¹	Y ²	<p>¹ OIG: Before engaging in any outside employment, an OIG employee* must obtain the written approval of the Inspector General or the Inspector General's designee before engaging in any outside employment.</p> <p>(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.</p> <p>² OIG: Approval shall be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation.</p> <p>MSHA: 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.</p>
State					Supplemental Regulations are in early stages of development. They have received a number of employee inquiries on outside employment.
Transportation	5 C.F.R. Part 6001 (final)	N			

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Summary of Executive Branch Requirements for Outside Work

DEPARTMENT	Supplemental Regulation Number & Status	Regulation Covers Outside Employment	Prior Approval Required	Employee Limitations	Comments
Treasury	5 C.F. R. Part 3101 (final)	Y	Y ¹	Y ²	<p>¹ Prior written approval by employees before engaging in any outside employment or business activities, with or without compensation, except to the extent that the employing bureau issues an instruction or manual issuance, exempting an activity or class of activities from this requirement. Each bureau, including the Departmental Offices & Office of Inspector General, shall issue instructions or manual issuances governing the submission of requests for approval of outside employment or business activities.</p> <p>² Employment or activity is not expected to involve conduct prohibited by statute.</p> <p>Note: Employees of the ATF, IRS, Legal Division, OCC, USCS and United States Secret Service are subject to additional limitations on outside employment and activities:</p> <p><u>ATF</u>: no employee of the ATF, or spouse or minor child of an ATF employee, shall have, directly or indirectly, any financial interest, including compensated employment, in the alcohol, tobacco, firearms or explosives industries.</p> <p><u>IRS</u>: (1) Performance of legal services involving Federal, State or local tax matters; (2) Appearing on behalf of any taxpayer as a representative before any Federal, State, or local government agency, in an action involving a tax matter except on written authorization of the Commissioner of Internal Revenue; (3) Engaging in accounting, or the use, analysis, and interpretation of financial records when such activity involves tax matters; (4) Engaging in bookkeeping, the recording of transactions, or the record-making phase of accounting, when such activity is directly related to a tax determination; and</p> <p>(5) Engaging in the preparation of tax returns for compensation, gift, or favor.</p> <p>NIRS Seasonal employees while in non- duty status may engage in outside employment or activities (unless noted elsewhere) obtaining prior written permission.</p> <p><u>Legal Division</u>: It is prohibited and shall constitute a conflict with the employee's official duties for an attorney employed in the Legal Division to engage in the outside practice of law that might require the attorney to: (1) Take a position that is or appears to be in conflict with the interests of the Department of the Treasury which is the client to whom the attorney owes a professional responsibility; or (2) Interpret any statute, regulation or rule administered or issued by the Department.</p>

* The following definitions were extracted from (5 CFR2635 Section 2635.102, dated 9/30/99):

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Special Government employee means those executive branch officers or employees specified in 18 U.S.C.202 (a). A special Government employee is retained, designated, appointed, or employed to perform temporary duties either on a full-time or intermittent basis, with or without compensation, for a period not to exceed 130 days during any consecutive 365-day period.

Summary of Executive Branch Requirements for Outside Work

DEPARTMENT	Supplemental Regulation Number & Status	Regulation Covers Outside Employment	Prior Approval Required	Employee Limitations	Comments
Treasury (continued)					<p><u>Office of the Comptroller of the Currency</u>: No covered OCC employee shall perform services for compensation for any bank, banking or loan association, or national bank affiliate, or for any officer, director or employee of, or for any person connected in any capacity with a bank, banking or loan association or national bank affiliate. (For purposes of prohibitions on outside employment "covered OCC employee" means: (i) An OCC bank examiner; and (ii) Any other OCC employee specified in an OCC instruction or manual issuance whose duties and responsibilities, as determined by the Comptroller of the Currency or his or her designee, require application of the prohibition on outside employment to ensure public confidence that the OCC's programs are conducted impartially and objectively)</p> <p><u>US Customs Service</u>: No employee of the USCS shall work for a customs broker, international carrier, bonded warehouse, foreign trade zone, cartman, law firm engaged in the practice of customs law or importation department of a business, nor be employed in any private capacity related to the importation or exportation of merchandise.</p> <p><u>US Secret Service</u>: reserved.</p>
Veterans Affairs					No Supplemental Regulations

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APPENDIX
Agency Response



SEP 28 2000

MEMORANDUM FOR: JOSE M. RALLS
Acting Assistant Inspector General
Office of Analysis, Complaints and Evaluation

THROUGH: HENRY L. SOLANO *HLS*
Solicitor of Labor

FROM: ROBERT A. SHAPIRO *R Shapiro*
Associate Solicitor for
Legislation and Legal Counsel

SUBJECT: Evaluation of Outside Work Issues for
DOL Employees, Report No. 2E-08-001-0001

Introduction

We have had an opportunity to review the findings and recommendations of the above referenced Office of the Inspector General (OIG) draft report. We have appreciated the cooperation and open communication with the staff of the OIG and welcome this opportunity to respond. Our substantive comments and a description of planned actions follow some preliminary remarks.

Initially, we would like to express our appreciation to the Office of Analysis, Complaints and Evaluation, OIG, for their work on this report. The purpose of the evaluation, as set forth in the OIG draft report, was to determine if there is a need to broaden the existing Department supplemental standards of ethical conduct to include a prior approval requirement for Department employees engaging in outside work. The report is credible and thorough and revisits an important issue which the Solicitor's office recognized, following promulgation of interim supplemental regulations in 1996, may need to be reexamined in light of our experience with those regulations.

Although the report is silent with respect to any significant appearance problems that have arisen in the absence of a pre-approval requirement, and we are unaware of any, we acknowledge that there is merit in the overall premise that the OIG draft report's recommendations, if implemented, could "reduce the potential for actual and perceived conflicts of interest to arise." In fact, this very concern motivated this office's efforts with respect to our survey of the Department's component agencies in 1996 in drafting supplemental regulations, which, as the OIG draft report notes, were issued in interim rule form by the Department on

November 6, 1996, with the concurrence of the Office of Government Ethics (OGE). The supplemental regulations included a prior approval requirement before an employee of the OIG could engage in any outside employment, and prohibited employees of the Mine Safety and Health Administration from having any financial interests, including compensated employment, in a company or person engaging in mining activities subject to the Federal Mine Safety and Health Act of 1977.¹ At that time, the other component agencies of the Department, together with the Office of the Solicitor, jointly reviewed this issue in the context of the work of the particular component agency and determined not to impose similar restrictions, although, as cited in the OIG draft report, the Occupational Safety and Health Administration has an internal agency guideline requiring employees to request clearance from an appropriate official prior to engaging in outside employment, business or professional activity.

Finally, with respect to the OIG draft report methodology, we were somewhat concerned by OIG's solely interviewing agency Ethics Contacts as to whether it would be beneficial to have certain types of positions covered for pre-approval of outside work in order to avoid the appearance of a conflict of interest. As we had explained in an earlier meeting with the OIG staff, the agency ethics contacts, while not seeking to in any way diminish their role, primarily act as liaisons in helping the Ethics Counselors administer both the public and confidential financial disclosure programs. They do not participate in the counseling function and do not render substantive ethics advice; they refer these matters to the Ethics Counselors. Thus, in many cases, they do not possess the requisite knowledge of or familiarity with applying the standards of conduct addressing conflicts of interest posed by outside activities or the necessary overview of their agency's functions and employee responsibilities to best make this determination.

Below, we respond to each of the OIG findings and accompanying recommendations.

Finding 1 - There are inconsistencies in DOL regarding when and how employees seek approval for work outside the agency.

Recommendation 1

SOL should submit a proposal to the Office of Government Ethics to amend the Department of Labor's existing supplemental regulations pertaining to outside work issues. The amendment should broaden the requirement for approval of outside work to cover employees who are financial filers, and other specified groups of employees. It should also ensure coverage of those groups currently covered in existing informal DOL agency guidelines, such as those in OSHA's directive on outside work, SOL's guidelines for pro bono work, and the ALJs policy guidelines.

The OIG draft report points out that: (1) there is no central repository for information

¹ See 5 C.F.R. §§ 5201.104 and 5201.105.

pertaining to outside work; (2) outside financial interest information revealed on financial disclosure reports is limited to intra-agency review; and (3) there are positions not covered by the financial disclosure requirement which may nevertheless warrant pre-approval for such outside work.

The OIG draft report acknowledges that a universal prior approval requirement would be administratively burdensome and unnecessarily intrusive. Indeed, when the Office of Government Ethics (OGE) issued the Standards of Conduct for Executive Branch Employees as a final rule on August 7, 1992, it specifically rejected the idea of an Executive Branch-wide prior approval requirement for engaging in outside employment and activities as “unnecessarily intrusive and administratively wasteful.”² OGE further explained that the absence of such an across-the-board requirement for such prior approval reflects OGE’s belief that “individual agencies are in the best position to identify and require approval for specific types of activities that pose potential ethics problems and, thus, to administer approval systems in the least intrusive manner.”³ The standards of conduct further allow for subdivision of an agency into its distinct component parts for purposes of application of the regulations. Thus, for purposes of examining the need for such a prior approval requirement, there are ten separate and distinct component “agencies” within the Department as listed in the Department supplemental ethics regulations.⁴ Taken together, it can be discerned that the Standards of Conduct, while uniform, also recognize: (1) inconsistencies of application dependent upon the mission and functions at respective Executive Branch agencies; and (2) decentralized determinations based on the locus of expertise.

The OIG draft report provides many examples of outside employment and activity prior approval regulations implemented at various other Executive Branch departments and agencies. Many of these regulations, however, tie the requirements to employment with a “prohibited source.” A “prohibited source” is defined by the ethics standards as generally any person seeking official action of, doing or seeking business before the employee’s agency, or having interests that may be affected by the performance or nonperformance of the employee’s official duties.⁵ For some Federal agencies, the universe of “prohibited sources” is well-defined and narrow. For others, such as the Department of Labor, the universe may be much broader and more difficult to identify. Of course, even within the Department of Labor, this term must necessarily be circumscribed by the parameters of the mission of a particular component agency. Clearly the most problematic “prohibited source” would be any person or entity regulated by the agency, although the term is not limited to such entities. For some of the larger component agencies of the Department, in particular the Employment Standards Administration, the Occupational Safety and Health Administration, and the Pension and Welfare Benefits Administration,

² 57 Fed. Reg. 35006, 35034.

³ 57 Fed. Reg. at 35034.

⁴ 5 C.F.R. § 5201.102.

⁵ 5 C.F.R. § 2635.203(d).

because of the nature of the laws and regulations overseen by these component agencies, the term "prohibited source," as historically interpreted, literally encompasses almost every employer, from the largest to the smallest, in the United States. This has made it difficult to craft a reasonable prior approval requirement in most instances and could potentially limit virtually any outside employment. Clearly, any prior approval requirement modeled on certain of the examples provided in the OIG draft report might necessarily result in an overly broad and intrusive requirement, a result we wish to avoid.

Planned Actions

Notwithstanding the potential difficulty in crafting such a requirement, the Office of the Solicitor will undertake, in the next 90 days, to again survey the Department's component agencies and talk with the appropriate officials in order to determine whether the requirement for approval of outside work should be broadened, in order to avoid appearances of conflicts of interest, to cover employees who are financial filers, and other specified groups of employees, in particular all levels of procurement and contract specialists, and certain types of investigators. Based on this review, we will determine whether additional supplemental regulations are appropriate and, if so, initiate the rulemaking process. We will report the results of our review to the OIG after its conclusion.

Another way to avoid problems caused by outside employment is to enhance our efforts to ensure that Department employees are aware of their responsibilities in this area and other areas of ethics. In addition to those methods listed in the report, we are considering implementing, in the near future, computer-based ethics training modules and enclosing summaries of the ethics rules in all future public and confidential financial disclosure form packets. These actions will serve to further guarantee that employees who may inadvertently miss ethics training sessions, or, who serve in regional or field offices, receive ethics training materials through a greater variety of venues. In addition, we could also consider expanding mandatory training in the next calendar year to encompass all Department employees GS-11 and above, including all filers, whether public or confidential, and those employees who, although they may not be designated as filers, nevertheless have duties that may warrant heightening their awareness of the conflict of interest laws and ethics regulations.

Finding 2 - The list of DOL Ethics Contacts is not current.

Recommendation 2

The Solicitor's Office should update its list of agency Ethics Contacts, and ensure its distribution to all employees.

Although we acknowledge the discrepancies and problems encountered by the OIG in attempting to contact the listed individual agency ethics contacts and confirm the accuracy of the list, including, in the case of one agency, the lack of knowledge of the identity of the agency ethics contact, we hope that the OIG, in all fairness, might concede that any similar contacts list might be inaccurate within a business day or less of its creation. In any event, the agency ethics

contacts perform a very import liaison role between the SOL Ethics Counselors and their individual agencies. We attempt to update and keep the list of agency ethics contacts accurate through several annual e-mail solicitations for current identity and contact information, as well as through three regularized and mandatory Department annual meetings with all the individual agency ethics contacts. These meetings serve to provide overviews to the agency ethics contacts of the Department's annual ethics training programs and information necessary to prepare for the two annual financial disclosure reporting cycles, public and confidential. In fact, a meeting for all agency ethics contacts to address issues related to the confidential financial disclosure reporting cycle was held on September 22, 2000.

Planned Actions

In light of this finding, on September 11, 2000, we sent out an e-mail notice concerning the September 22nd agency ethics contacts meeting in which we have requested updated information from the agency ethics contacts. We are planning to use the information gained to update the list of agency ethics contacts and will distribute this list by e-mail to appropriate component agency officials as part of a continued effort to ensure this information is kept current. In addition, consistent with past practice, all financial disclosure packets will identify the agency ethics contact (name and telephone number) to the employee filer.

If you have any questions concerning concerning our responses, please contact Robert A. Shapiro at (202) 219-8201.