

**§ 870.1009 Responsibilities of the U.S. Department of State.**

(a) The U.S. Department of State functions as the "employing office" for individuals insured under this subpart.  
 (b) The U.S. Department of State must determine the eligibility of individuals under Pub. L. 101-513 (104 Stat. 2035) for insurance under this subpart. This includes determining whether an individual is barred from insurance under chapter 87 of title 5 U.S.C. because of other life insurance as provided in section 599C of Pub. L. 101-513 (104 Stat. 2035).

**Subpart K—Living Benefits**

**§ 870.1101 Eligibility for a Living Benefit.**

(a) Effective July 25, 1995, an insured individual who is certified by his/her doctor as terminally ill, as defined in § 870.101, may elect to receive a lump-sum payment of Basic insurance.  
 (b) Optional insurance is not available for payment as a Living Benefit.  
 (c)(1) The effective date of a Living Benefit election is the date on which the Living Benefit payment is cashed or deposited. Once an election becomes effective, it can't be revoked. No further election of Living Benefits can be made.  
 (2) If the insured individual dies before cashing or depositing the Living Benefit payment, the payment must be returned to OFEGLI.  
 (d) If the insured individual has assigned his/her insurance, he/she cannot elect a Living Benefit; nor can an assignee elect a Living Benefit on behalf of an insured individual.  
 (e) If an individual has elected a Living Benefit, he/she may assign his/her remaining insurance.

**§ 870.1102 Amount of a Living Benefit.**

(a)(1) An employee may elect to receive either:  
 (i) A full Living Benefit, which is all of his/her Basic insurance, or  
 (ii) A partial Living Benefit, which is a portion of his/her Basic insurance, in a multiple of \$1,000.  
 (2) An annuitant or compensator may only elect to receive a full Living Benefit.  
 (b) The amount of Basic insurance elected as a Living Benefit will be reduced by an actuarial amount representing the amount of interest lost to the Fund because of the early payment of benefits.  
 (c)(1) If an individual elects a full Living Benefit, the post-election BIA will be 0. If an employee elects a partial Living Benefit, the post-election BIA will be the BIA reduced in proportion to the amount of Basic insurance elected as a Living Benefit, as prescribed by Pub. L. 103-409 (108 Stat. 4231).

(2) The post-election BIA cannot change after the effective date of a Living Benefit election.  
 (d)(1) If an employee elects a full Living Benefit, Basic accidental death and dismemberment coverage terminates as of the effective date of the election.  
 (2) If an employee elects a partial Living Benefit, Basic accidental death and dismemberment coverage is reduced to equal the post-election BIA.

**§ 870.1103 Election procedures.**

(a) The insured individual must request information on Living Benefits and an application form directly from OFEGLI.  
 (b)(1) Only the insured individual can apply for a Living Benefit; no one can apply on his/her behalf.  
 (2) The insured individual must complete the first part of the application and have his/her physician complete the second part. The completed application must be submitted directly to OFEGLI.  
 (c)(1) OFEGLI reviews the application, obtains certification from the insured's employing office regarding the amount of insurance and the absence of an assignment, and determines whether the individual meets the requirements to elect a Living Benefit.  
 (2) If OFEGLI needs additional information, it will contact the insured or the insured's physician.  
 (3) Under certain circumstances, OFEGLI may require a medical examination before making a decision. In these cases, OFEGLI is financially responsible for the cost of the medical examination.  
 (d)(1) If the application is approved, OFEGLI sends the insured a check for the Living Benefit payment and an explanation of benefits.  
 (i) Until the check has been cashed or deposited, the individual may change his/her mind about electing a Living Benefit; if this happens, the individual must mark the check "void" and return it to OFEGLI.  
 (ii) Once the insured individual has cashed or deposited the payment, the Living Benefit election becomes effective and cannot be revoked; OFEGLI then sends explanations of benefits to the insured's employing office, so it can make the necessary changes in withholdings and deductions.  
 (2) If the application is not approved, OFEGLI will notify the insured individual and the employing office. The decision is not subject to administrative review; however, the individual can submit additional

medical information or reapply at a later date if future circumstances warrant.

**PART 871—[REMOVED]**

2. Part 871 is removed.

**PART 872—[REMOVED]**

3. Part 872 is removed.

**PART 873—[REMOVED]**

4. Part 873 is removed.

**PART 874—[REMOVED]**

5. Part 874 is removed.

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**OFFICE OF GOVERNMENT ETHICS**

**5 CFR Parts 2634 and 2635**

**RINs 3209-AA00 and 3209-AA04**

**Removal of Superseded References to the Former Honorarium Ban, Revisions to Conform With Procurement Integrity Changes and Conflict-of-Interest Exemptions, and Other Updates**

**AGENCY:** Office of Government Ethics (OGE).

**ACTION:** Final rule; technical amendments.

**SUMMARY:** The Office of Government Ethics is removing superseded references to the former statutory honorarium bar from the executive branch regulations on standards of ethical conduct and financial disclosure. In addition, revisions to the standards of conduct regulation are being made to reflect statutory changes on procurement integrity and a new regulation on conflict-of-interest exemptions. Finally, OGE is removing outdated references in the standards of conduct regulation to certain grandfathered agency regulations, and making other minor updates to references and text.

**EFFECTIVE DATE:** September 17, 1997.

**ADDRESSES:** Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917, Attn.: Mr. G. Sid Smith. A copy of the OGE Memorandum noted in the **SUPPLEMENTARY INFORMATION** section below may be obtained from OGE's World Wide Web Site on the Internet at <http://www.usoge.gov>, from OGE's ethics bulletin board TEBBS ("The Ethics Bulletin Board System") at 202-208-8030, or by contacting Mr. Smith at OGE.

**FOR FURTHER INFORMATION CONTACT:** G. Sid Smith, Associate General Counsel,

Office of Government Ethics, telephone: 202-208-8000; TDD: 202-208-8025; FAX: 202-208-8037.

**SUPPLEMENTARY INFORMATION:** In *National Treasury Employees Union v. United States*, 513 U.S. 454 (1995), the U.S. Supreme Court overturned, as to most executive branch employees, the honorarium bar at 5 U.S.C. app., section 501(b) which had been enacted as part of the Ethics Reform Act of 1989. Subsequently, the Department of Justice determined that because of the scope of the Supreme Court decision, the ban on honoraria was inoperative as to all Government employees. See OGE Memorandum of February 28, 1996, to Designated Agency Ethics Officials, General Counsels and Inspectors General (#DO-96-012). This rulemaking removes the regulatory provisions which refer to the now-overturned honorarium bar in OGE's executive branchwide financial disclosure and standards of ethical conduct regulations as codified at 5 CFR parts 2634 and 2635. In a separate rulemaking document to be issued later, OGE will remove the primary (and now inoperative) executive branchwide regulatory provisions which implemented the old honorarium bar, along with various related provisions, in subpart B of 5 CFR part 2636.

The Office of Government Ethics is, in this current rulemaking document, also updating or eliminating superseded citations and related text in the OGE executive branchwide standards of ethical conduct regulation which refer to procurement integrity provisions revised by the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), and to the old Code of Ethics for Government Service (Pub. L. 96-303) which was repealed by Pub. L. 104-179. Additionally, OGE is adding to the authority citation for the standards of conduct regulation a reference to 5 U.S.C. 7301, which provides that the President may prescribe regulations for the conduct of employees in the executive branch.

This rulemaking updates or adds certain other references in the standards of ethical conduct regulation, reflecting revisions to regulations of the Office of Personnel Management and the General Services Administration. Additionally, it includes several citations and related text changes to account for the new OGE final regulation at 5 CFR part 2640, which implemented 18 U.S.C. 208 (official actions affecting a personal financial interest) by providing general interpretation, executive branchwide exemptions which have replaced any agency regulatory exemptions, and

assistance for agencies in granting individual waivers. Finally, OGE is removing outdated notes and related appendixes which refer to certain agency regulations that were temporarily "grandfathered" when OGE first issued the executive branchwide standards of conduct in 1992 (with subsequent grandfathering extensions through November 1, 1996).

#### **Matters of Regulatory Procedure**

##### *Administrative Procedure Act*

Pursuant to 5 U.S.C. 553(b) and (d), as Director of the Office of Government Ethics, I find good cause exists for waiving the general notice of proposed rulemaking and 30-day delay in effectiveness as to these revisions. The notice and delayed effective date are being waived because these technical amendments to certain OGE regulations concern matters of agency organization, practice and procedure. Furthermore, it is in the public interest that the obsolete provisions be removed, the other out-of-date citations be updated, and the few other passages be clarified as soon as possible.

##### **Executive Order 12866**

In promulgating these technical amendments to its regulations, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These amendments have also been reviewed by the Office of Management and Budget under that Executive order.

##### *Regulatory Flexibility Act*

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rulemaking will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal executive branch agencies and their employees.

##### *Paperwork Reduction Act*

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this technical amendments rulemaking does not contain any information collection requirements that require the approval of the Office of Management and Budget.

#### **List of Subjects**

##### *5 CFR Part 2634*

Administrative practice and procedure, Certificates of divestiture, Conflict of interests, Financial disclosure, Government employees,

Penalties, Privacy, Reporting and record keeping requirements, Trusts and trustees.

##### *5 CFR Part 2635*

Conflict of interests, Executive branch standards of ethical conduct, Government employees.

Approved: July 18, 1997.

**Stephen D. Potts,**

*Director, Office of Government Ethics.*

For the reasons set forth in the preamble, the Office of Government Ethics is amending parts 2634 and 2635 of chapter XVI of 5 CFR as follows:

#### **PART 2634—[AMENDED]**

1. The authority citation for part 2634 continues to read as follows:

**Authority:** 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; 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.

##### **§ 2634.105 [Amended]**

2. Section 2634.105 is amended by removing the last sentence of paragraph (i).

#### **PART 2635—[AMENDED]**

3. The authority citation for part 2635 is revised to read as follows:

**Authority:** 5 U.S.C. 7301, 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); 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.

##### **§ 2635.202 [Amended]**

4. Section 2635.202 is amended by adding the word "and" following the closing semicolon in paragraph (c)(4)(i), by removing the word "and" at the end of paragraph (c)(4)(ii) and adding in its place the word "or", and by removing paragraph (c)(4)(iii).

##### **§ 2635.204 [Amended]**

5. Section 2635.204 is amended by removing Example 5 following paragraph (a), and by removing at the end of paragraph (l)(1) the terms "§§ 410.701 through 410.706 of this title" and adding in their place the terms "part 410 of this title".

6. Section 2635.401 is amended by adding a sentence at the end of the section, to read as follows:

##### **§ 2635.401 Overview.**

\* \* \* See also part 2640 of this chapter, for additional guidance amplifying § 2635.402.

7. Section 2635.402 is amended by adding the words "or determine that an exemption applies" before the comma after the word "waiver" in the second

sentence of the note following paragraph (a), by adding the words "or exemption" following the word "waiver" in the first sentence of the introductory text of paragraph (c), by adding the words "or exemptions from" between the words "of" and "disqualification" in the heading of paragraph (d), by adding the word "exemption" following the word "regulatory" in the introductory text of paragraph (d), by adding the sentence "See also subpart C of part 2640 of this chapter, for additional guidance." at the end of paragraph (d)(2)(ii), by adding the sentence "See also subpart C of part 2640 of this chapter, for additional guidance." at the end of paragraph (d)(3)(ii), and by revising paragraph (d)(1) to read as follows:

**§ 2635.402 Disqualifying financial interests.**

\* \* \* \* \*

(d) \* \* \*

(1) *Regulatory exemptions.* Under 18 U.S.C. 208(b)(2), regulatory exemptions of general applicability have been issued by the Office of Government Ethics, based on its determination that particular interests are too remote or too inconsequential to affect the integrity of the services of employees to whom those exemptions apply. See the regulations in subpart B of part 2640 of this chapter, which supersede any preexisting agency regulatory exemptions.

\* \* \* \* \*

**§ 2635.403 [Amended]**

8. Section 2635.403 is amended by adding the words "issued after February 3, 1993" before the comma after the words "supplemental agency regulation" in the first sentence of paragraph (a), and by removing the note following paragraph (a).

9. The note following paragraph (b) of section 2635.501 is amended by adding the words "or exemption" before the comma after the word "waiver" in the fourth sentence, by removing the word "respectively" in the fourth sentence, and by adding a new sentence at the end of that note, to read as follows:

**§ 2635.501 Overview.**

\* \* \* \* \*

(b) \* \* \*

**Note:** \* \* \* Similarly, where the employee meets all prerequisites for the application of one of the exemptions set forth in subpart B of part 2640 of this chapter, that also constitutes a determination that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of agency programs and operations.

10. Section 2635.602 is amended by revising the last sentence of the note following the introductory text and the last sentence of paragraph (a)(2) to read as follows:

**§ 2635.602 Applicability and related considerations.**

\* \* \* \* \*

**Note:** \* \* \* An employee may, however, be subject to other statutes which impose requirements on employment contacts or discussions, such as 41 U.S.C. 423(c), applicable to agency officials involved in certain procurement matters.

(a) \* \* \*

(2) \* \* \* Employees are cautioned that they may be subject to additional statutory prohibitions on post-employment acceptance of compensation from contractors, such as 41 U.S.C. 423(d).

\* \* \* \* \*

11. Section 2635.605 is amended by adding at the end of paragraph (a) two sentences to read as follows:

**§ 2635.605 Waiver or authorization permitting participation while seeking employment.**

(a) \* \* \* See also subpart C of part 2640 of this chapter. For certain employees, a regulatory exemption under the authority of 18 U.S.C. 208(b)(2) may also apply (see subpart B of part 2640 of this chapter).

\* \* \* \* \*

**§ 2635.606 [Amended]**

12. Section 2635.606 is amended by adding the phrase ", or by a regulatory exemption under the authority of 18 U.S.C. 208 (b)(2)" between the terms "(b)(3)" and the period at the end of the first sentence of paragraph (a), by adding the phrase "and exemptions" between the words "waivers" and "are" in the second sentence of paragraph (a), and by adding a new sentence "See also subparts B and C of part 2640 of this chapter." at the end of paragraph (a).

**§ 2635.704 [Amended]**

13. Section 2635.704 is amended by removing the citation term "201-21.601" in Example 1 following paragraph (b)(2) and adding in place thereof the citation term "101-35.201", and by removing the terms "chapter 252 of the Federal Personnel Manual" in Example 3 following paragraph (b)(2) and adding in their place the terms "Office of Personnel Management regulations at part 251 of this title".

**§ 2635.801 [Amended]**

14. Section 2635.801 is amended by adding the word "and" after the closing semicolon in paragraph (d)(7), by

removing paragraph (d)(8), and by redesignating paragraph (d)(9) as paragraph (d)(8).

**§ 2635.803 [Amended]**

15. Section 2635.803 is amended by adding the words "issued after February 3, 1993" before the comma after the word "regulation" in the first sentence, and by removing the note at the end of the section.

**§ 2635.805 [Amended]**

16. Section 2635.805 is amended by removing the phrase "result in compensation for an appearance in violation of § 2636.201 of this chapter or" in the introductory text of paragraph (c).

**§ 2635.807 [Amended]**

17. Section 2635.807 is amended by removing paragraph (a)(1)(i), by redesignating paragraphs (a)(1)(ii) and (a)(1)(iii) as paragraphs (a)(1)(i) and (a)(1)(ii), respectively, by removing Example 1 following newly designated paragraph (a)(1)(ii), and by removing the last sentence of Example 1 following paragraph (a)(3)(ii).

18. Section 2635.902 is amended by removing and reserving paragraphs (l) and (n), and by revising paragraphs (f), (h) and (bb) to read as follows:

**§ 2635.902 Related statutes.**

\* \* \* \* \*

(f) The prohibition on certain former agency officials' acceptance of compensation from a contractor (41 U.S.C. 423(d)).

\* \* \* \* \*

(h) The actions required of certain agency officials when they contact, or are contacted by, offerors or bidders regarding non-Federal employment (41 U.S.C. 423(c)).

\* \* \* \* \*

(l) [Reserved]

\* \* \* \* \*

(n) [Reserved]

\* \* \* \* \*

(bb) The prohibitions on disclosing and obtaining certain procurement information (41 U.S.C. 423(a) and (b)).

\* \* \* \* \*

**Appendixes A, B, C, and D [Removed]**

19. Appendixes A, B, C and D to part 2635 are removed.