

PART 6201—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXPORT-IMPORT BANK OF THE UNITED STATES

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AUTHORITY: 5 U.S.C. 7301; 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; 5 CFR 2635.105, 2635.403(a), 2635.803.

SOURCE: 60 FR 17626, Apr. 7, 1995, unless otherwise noted.

§ 6201.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Export-Import Bank of the United States (Bank) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. In addition to the standards in 5 CFR part 2635 and this part, employees of the Bank are subject to the executive branch financial disclosure regulations contained in 5 CFR part 2634.

§ 6201.102 Prohibited financial interests.

(a) *Prohibition.* Except as provided in paragraph (f) of this section, no covered employee or covered family member shall own securities issued by an exporter or lending institution appearing on the List of Designated Entities under paragraph (b) of this section.

(b) *List of Designated Entities*—(1) *Compilation of list of designated entities.* Once each fiscal year, the designated agency ethics official (DAEO) shall compile a List of Designated Entities based upon the following criteria:

(i) All exporters that, during the preceding two fiscal years, exported an aggregate dollar volume of goods and services supported by the Bank in excess of four hundred million dollars (\$400,000,000);

(ii) All exporters that, during the preceding two fiscal years, had seven (7) or more aggregate export transactions supported by the Bank;

(iii) All lending institutions that, during the preceding two fiscal years, financed an aggregate dollar volume of export transactions supported by the Bank in excess of one hundred fifty million dollars (\$150,000,000); and

(iv) All lending institutions that, during the preceding two fiscal years, financed twenty (20) or more aggregate export transactions supported by the Bank.

(2) *Distribution of list of designated entities.* The DAEO shall distribute the List of Designated Entities to all covered employees promptly after it is compiled, and shall ensure that each new covered employee receives a copy of the current List of Designated Entities promptly after becoming a covered employee.

(c) *Definitions.* For purposes of this section:

(1) *Covered employee* means an employee of the Bank, other than a special Government employee, who is required to file a public or a confidential financial disclosure report (Form SF 278 or SF 450) under 5 CFR part 2634.

(2) *Covered family member* means the spouse or minor child of a covered employee.

(3) *Securities* means all financial interests evidenced by debt or equity instruments. The term includes, without limitation, bonds, debentures, notes, securitized assets and commercial paper, as well as all types of preferred and common stock. The term encompasses both present and contingent ownership interests, including any beneficial or legal interest derived from a trust. It extends to any right to acquire or dispose of any long or short position in such securities and includes, without limitation, interests convertible into such securities, as well as options, rights, warrants, puts, calls, and straddles with respect thereto. It does not include:

(i) An investment in a publicly traded or publicly available mutual fund or other collective investment fund or in a widely held pension or similar fund, provided that the fund does not invest more than ten percent (10%) of the value of its portfolio in securities of

any one entity on the List of Designated Entities and the covered employee or covered family member neither exercises control over nor has the ability to exercise control over the financial interests held in the fund; or

(ii) Certificates of deposit, checking accounts, savings accounts and other deposit accounts.

(4) *Support by the Bank* means:

(i) Direct loans made by the Bank;

(ii) Guarantees by the Bank of loans from lending institutions; or

(iii) Insurance policies issued by the Bank under any of its insurance programs.

(d) *Restrictions arising from third party relationships.* If a covered employee has knowledge that any of the entities described in paragraphs (d)(1) through (d)(6) of this section own any security that a covered employee or covered family member would be prohibited from owning by paragraph (a) of this section, the covered employee shall promptly report such interests to the DAEO. The DAEO may require the covered employee to terminate the third party relationship, undertake an appropriate disqualification, or take other appropriate action necessary, under the particular circumstances, to avoid a statutory violation or a violation of part 2635 of this title or of this part, including an appearance of misuse of position or loss of impartiality. This paragraph applies to any:

(1) Partnership in which the covered employee or covered family member is a general partner;

(2) Partnership in which the covered employee and/or covered family member(s) in the aggregate holds more than a ten percent limited partnership interest;

(3) Closely held corporation in which the covered employee and/or covered family member(s) in the aggregate holds more than a ten percent (10%) equity interest;

(4) Trust in which the covered employee or covered family member has a legal or beneficial interest;

(5) Investment club or similar informal investment arrangement between the covered employee or covered family member and others; or

(6) Other entity if the covered employee and/or covered family mem-

ber(s) in the aggregate holds more than a ten percent (10%) equity interest.

(e) *Period to Divest.* Unless a waiver is granted pursuant to paragraph (f) of this section, a covered employee or covered family member who owns securities of a designated entity as of the date that the initial List of Designated Entities is circulated to covered employees, the date that a revised List of Designated Entities is circulated to covered employees, or the first day that an individual becomes a covered employee, shall divest the securities within six (6) months of such date. The DAEO may, in certain cases of unusual hardship, grant a written extension of up to an additional six (6) months within which a covered employee or covered family member must divest securities of a designated entity. Notwithstanding the grant of an extension, a covered employee remains subject to the disqualification requirements of 5 CFR 2635.402 and 2635.502. A covered employee or covered family member who must divest securities pursuant to this section should refer to section 1043 of the Internal Revenue Code and to the regulations of subpart J of 5 CFR part 2634 under which the covered employee or covered family member may be eligible to defer the recognition of taxable gain on the sale or other divestiture.

(f) *Waivers.* The DAEO may grant a written waiver from the securities prohibition contained in this section based on a determination that the waiver is not inconsistent with 5 CFR part 2635 or otherwise prohibited by law and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of misuse of position or loss of impartiality, or otherwise to ensure confidence in the impartiality and objectivity with which Bank programs are administered. A waiver under this paragraph may be accompanied by appropriate conditions, such as requiring execution of a written statement of disqualification. Notwithstanding the grant of any waiver, a covered employee remains subject to the disqualification requirements of 5 CFR 2635.402 and 2635.502.

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(g) *Agency determinations of substantial conflict.* Nothing in this section prevents the Bank from prohibiting or restricting an individual Bank employee from acquiring or holding a financial interest or a class of financial interests based upon the Bank's determination of substantial conflict pursuant to 5 CFR 2635.403(b).

§ 6201.103 Prior approval for outside employment.

(a) *Prior approval requirement.* Before engaging in any outside employment, whether or not for compensation, an employee, other than a special Government employee, must obtain the written approval of the employee's immediate supervisor and the DAEO. Requests for approval shall be forwarded through normal supervisory channels to the DAEO and shall include the name of the person, group, or organization for whom the work is to be performed; the type of work to be performed; and the proposed hours of work and approximate dates of employment.

(b) *Standard for approval.* Approval shall be granted only upon a determination that the outside employment is not expected to involve conduct pro-

hibited by statute or Federal regulation (including 5 CFR part 2635). In the case of an employee who wishes to practice a profession involving a fiduciary relationship, as defined in 5 CFR 2636.305(b), approval will be granted only for each individual matter in the course of practicing such profession.

(c) *Definition of employment.* For purposes of this section, "employment" means any form of non-Federal employment or business relationship involving the provision of personal services by the employee. It includes but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee or teacher. It also includes writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of a non-profit charitable, religious, professional, social, fraternal, educational, recreational, public service or civic organization, unless such activities involve the provision of professional services or advice or are for compensation other than reimbursement of expenses.