

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 251

RIN 3206-AH72

Agency Relationships With Organizations Representing Federal Employees and Other Organizations

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations governing agency relations with managerial, supervisory, professional, and other organizations that are not labor organizations. These regulations would reflect a provision of the Federal Employee Representation Improvement Act of 1996.

DATES: Comments due by June 23, 1997.

ADDRESSES: Send written comments to Lorraine Lewis, General Counsel, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or deliver to OPM, Room 3451, 1900 E St. NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wade Plunkett (202) 606-1700.

SUPPLEMENTARY INFORMATION: OPM published in the *Federal Register* on June 26, 1996, at 61 FR 32913-32917, final regulations on agency relationships with organizations representing Federal employees and other organizations. Section 251.101(f) of the final regulations cautions Federal employees against violating the restrictions imposed by 18 U.S.C. § 205 which, in pertinent part, restricts Federal employees from acting, other than in the proper discharge of their official duties, as agents or attorneys for any person or organization other than a labor organization, before any Federal agency or other Federal entity in connection with any matter in which the United States is a party or has a direct and substantial interest. Section 251.101(f) of the regulation accordingly advises

agency officials and employees to consult with their designated agency ethics official for guidance regarding any conflicts of interest that may arise. 5 CFR 251.101(f).

Subsequent to the effective date of the final rule, Congress modified the 18 U.S.C. § 205 restrictions to permit employee representation of organizations under certain circumstances. The Federal Employee Representation Improvement Act of 1996; Public Law 104-177, 110 Stat. 1563, August 6, 1996. As amended, Section 205(d)(1)(B) allows a Federal officer or employee, if not inconsistent with the performance of his or her duties, to represent without compensation a non-profit cooperative, voluntary, professional, recreational or similar organization if a majority of the organization's or group's members are Government officers or employees or their spouses or dependent children.

Subsection (d)(2) of amended Section 205, sets forth the circumstances in which a Federal employee may not act as agent or attorney representing an employee organization. There are three situations in which an employee is prohibited from representing the views of the organization or group. The first situation prevents employee representation when the subject of the representation is a claim against the United States. 18 U.S.C. § 205(d)(2)(A). The second situation prohibits the prescribed action during a judicial or administrative proceeding where the organization or group is a party. 18 U.S.C. § 205(d)(2)(B). The third situation expressly disallows Federal employees from requesting grants, contracts or Federal funds on behalf of an employee organization. 18 U.S.C. § 205(d)(2)(C). Accordingly, paragraph (f) of the Part 251 regulation is being revised to reflect the new law.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will only affect Federal Government employees and non-labor organizations representing such employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 251

Government employees.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM proposes to amend 5 CFR part 251 as follows:

PART 251—AGENCY RELATIONSHIPS WITH ORGANIZATIONS REPRESENTING FEDERAL EMPLOYEES AND OTHER ORGANIZATIONS

1. The authority citation for part 251 continues to read as follows:

Authority: 5 U.S.C. § 1104; 5 U.S.C. Chap 7; 5 U.S.C. § 7135; 5 U.S.C. 7301; E.O. 11491.

2. In § 251.101, paragraph (f) is revised to read as follows:

§ 251.101 Introduction.

* * * * *

(f) Federal employees, including management officials and supervisors, may communicate with any Federal agency, officer, or other Federal entity on the employee's own behalf. However, Federal employees should be aware that 18 U.S.C. 205, in pertinent part, restricts Federal employees from acting, other than in the proper discharge of their official duties, as agents or attorneys for any person or organization other than a labor organization, before any Federal agency or other Federal entity in connection with any matter in which the United States is a party or has a direct and substantial interest. An exception to the prohibition found in 18 U.S.C. 205 permits Federal employees to represent certain nonprofit organizations before the Government except in connection with specified matters. Agency officials and employees are therefore advised to consult with their designated agency ethics officials for guidance regarding any conflicts of interest that may arise.

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