

PART 4701—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE FEDERAL ELECTION COMMISSION

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AUTHORITY: 2 U.S.C. 437c(a)(3); 5 U.S.C. 7301; 5 U.S.C. app. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR p. 215 (1989 Comp.), as modified by E.O. 12731, 55 FR 42547, 3 CFR p. 306 (1990 Comp.); 5 CFR 2635.105 and 2635.803.

SOURCE: 76 FR 70329, Nov. 14, 2011, unless otherwise noted.

§ 4701.101 Scope.

(a) In accordance with 5 CFR 2635.105, the regulations in this part set forth standards of conduct that apply to members and other employees of the Federal Election Commission (“Commission”).

(b) In addition, members and other employees of the Commission are subject to the following regulations:

(1) 5 CFR part 735 (Employee Responsibilities and Conduct);

(2) 5 CFR part 2634 (Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture);

(3) 5 CFR part 2635 (Standards of Ethical Conduct for Employees of the Executive Branch); and

(4) 11 CFR part 7 (Standards of Conduct for Members and Employees of the Federal Election Commission).

§ 4701.102 Prior approval for certain outside employment.

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

(1) *Active participant* has the meaning set forth in 5 CFR 2635.502(b)(1)(v).

(2) *Employee* has the meaning set forth in 5 CFR 2635.102(h).

(3) Definition of *outside employment.* For purposes of this section, *outside employment* means any form of non-Federal employment, business relationship or activity involving the provision of personal services, whether or not for compensation. It includes, but is not limited to, services as an officer, director, agent, advisor, attorney, consultant, contractor, general partner, trustee, teacher, speaker, writer, or any

other services provided by an individual. It includes writing when done under an arrangement with another person for production or publication of the written product. The definition does not include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service or civic organization, unless:

(i) The activity provides compensation other than reimbursement of expenses;

(ii) The activities of the non-Federal organization are devoted substantially to matters relating to the employee's official duties as defined in 5 CFR 2635.807(a)(2)(i)(B) through (E) and the employee will serve as officer or director of the non-Federal organization; or

(iii) The activities will involve the provision of consultative or professional services. Consultative services means the provision of personal services, including the rendering of advice or consultation, which requires advanced knowledge in a field of science or learning customarily acquired by a course of specialized instruction and study in an institution of higher education, hospital, or similar facility. Professional services means the provision of personal services, including the rendering of advice or consultation, which involves application of the skills of a profession as defined in 5 CFR 2636.305(b)(1) or involves a fiduciary relationship as defined in 5 CFR 2636.305(b)(2).

(4) *Related to the employee's official duties* means that the outside employment meets one or more of the tests described in 5 CFR 2635.807(a)(2)(i)(B) through (E). Outside employment related to the employee's official duties includes:

(i) Outside employment that an employee has been invited to participate in because of his or her official position rather than his or her expertise in the subject matter;

(ii) Outside employment in which an employee has been asked to participate by a person that has interests that may be substantially affected by the performance or nonperformance of the employee's official duties;

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(iii) Outside employment that conveys information derived from non-public information gained during the course of government employment; and

(iv) Outside employment that deals in significant part with any matter to which the employee is or has been officially assigned in the last year, or any ongoing or announced Commission policy, program, or operation.

(b) *Prior approval requirement.* An employee of the Commission, including a member of a Commissioner's staff, but not a member of the Commission or a special Government employee, shall obtain written approval from the Designated Agency Ethics Official before engaging in outside employment where the services provided:

(1) Are related to the employee's official duties; or

(2) Involve the application of the same specialized skills or the same educational background as used in the

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performance of the employee's official duties.

(c) *Submission of requests for approval.*

(1) The request for approval shall be sent through all of the employee's supervisors and shall state the name of the person, group, or organization for whom the outside employment is to be performed; the type of outside employment to be performed; and the proposed hours of, and approximate dates of, the outside employment.

(2) Upon a significant change in the nature or scope of the outside employment or in the employee's official position, the employee shall submit a revised request for approval.

(d) *Standard for approval.* Approval shall be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.