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NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

5 CFR Chapter LXVII

RIN 3137-AA15

Supplemental Standards of Ethical Conduct for Employees of the Institute of Museum and Library Services

AGENCY: Institute of Museum and Library Services (IMLS).

ACTION: Interim final rule, with request for comments.

SUMMARY: The Institute of Museum and Library Services, with the concurrence of the Office of Government Ethics (OGE), is issuing regulations for officers and employees of IMLS that supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE. The supplemental regulations require IMLS employees to obtain prior written approval to engage in certain outside employment or related activities.

EFFECTIVE DATE: These regulations take effect on April 14, 2003. Comments are invited and must be received on or before May 14, 2003.

ADDRESSES: Send comments by mail to Nancy E. Weiss, General Counsel, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Suite 802, Washington, DC 20506, or by e-mail to regulations@imls.gov.

FOR FURTHER INFORMATION CONTACT: Nancy E. Weiss, General Counsel, Institute of Museum and Library Services, Suite 802, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. Telephone (202) 606-5414; e-mail nweiss@imls.gov. Individuals who use a telecommunications device for the deaf (TDD) may contact IMLS' TDD terminal at (202) 606-8636.

SUPPLEMENTARY INFORMATION:

1. Background

On August 7, 1992, OGE published in the **Federal Register** new Standards of Ethical Conduct for Employees of the Executive branch (the "Standards") (57 FR 35006-35067). The Standards, as corrected and amended, are codified at 5 CFR part 2635 and generally became effective February 3, 1993. Those regulations established uniform standards of ethical conduct that apply to all executive branch personnel.

With the concurrence of OGE, 5 CFR 2635.150 authorizes executive branch agencies to publish agency-specific supplemental regulations necessary to implement their respective ethics programs. With OGE's concurrence, IMLS has determined that the following supplemental regulations contained in a new chapter LXVII, consisting of part 7701, of 5 CFR as set forth in this interim rule are necessary to implement IMLS's ethics program successfully, in light of IMLS' programs and operations.

II. Analysis of the Regulations

Section 7701.101 General

Section 7701.101 explains that the regulations contained in this interim rule will apply to all IMLS employees and are supplemental to the executive branchwide standards. Employees of IMLS are also subject to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635, the executive branch financial disclosure and financial interests regulations at 5 CFR parts 2634 and 2640, and the executive branch employees responsibilities and conduct regulations at 5 CFR part 735.

Section 7701.102 Prior-Approval for Outside Employment

Under 5 CFR 2635.803, an agency that determines if is necessary or desirable for the purpose of administering its ethics program may, by supplemental regulation with OGE's concurrence and co-signature, require its employees to obtain written approval before engaging in outside employment. IMLS has determined that it is necessary to the administration of its ethics program to institute the requirement that employment that may pose the most potential for employees to violate applicable conflict laws and regulations.

Therefore, subsection 7701.102(a) requires prior approval of outside

employment when the outside employment involves a prohibited source. In identifying a "prohibited source" for purposes of this prior approval requirement, IMLS will apply the definition of that term found in the Standards at 5 CFR 2635.203(d). Thus, an employee would have to obtain approval before engaging in outside employment with any person (including an organization more than half of whose members are persons) seeking official action by IMLS; doing business or seeking to do business with IMLS; conducting activities regulated by IMLS; or having interests that may be substantially affected by the performance or nonperformance of the employee's official duties. Section 7701.102(a) also requires written requests for approval to be submitted to the employee's immediate supervisor and his or her Designated Agency Ethics Officials and specifies the information to be included in the employee's request. Section 7701.102(b) states the standard to be used in approving or denying requests for approval of outside employment. The basis of denial, if any, must be found in applicable statutes or Federal regulations, including the executive branchwide Standards and this part.

Section 7701.102(c) defines outside employment as including any form of compensated or uncompensated non-Federal employment or business relationship involving the provision of personal services by the employee. It includes writing done under arrangement with another person for production or publication of the written product.

III. Matters of Regulatory Procedure

Waiver of Proposed Rulemaking

As Director of IMLS, I have found good cause pursuant to 5 U.S.C. 553(b) and (d)(3) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to this interim rule. The reason for this determination is that this rulemaking is related to IMLS' organization, procedure and practice. Nonetheless, this is an interim rulemaking with provision for a 30-day public comment period. IMLS will review all comments received during the comment period and will consider any modifications that appear appropriate in adopting these rules as