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NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

5 CFR Part 6501

RINs 3136-AA20, 3209-AA15

Supplemental Standards of Ethical Conduct for Employees of the National Endowment for the Arts

AGENCY: National Endowment for the Arts (NEA).

ACTION: Interim final rule, with request for comments.

SUMMARY: The National Endowment for the Arts, with the concurrence of the Office of Government Ethics (OGE), is issuing regulations for officers and employees of the NEA that supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE. The supplemental regulations require NEA employees, other than special Government employees, to obtain prior written approval to engage in certain outside employment or related activities.

DATES: These regulations take effect on September 5, 2003. Comments are invited and must be received on or before October 6, 2003.

ADDRESSES: Send comments to Karen Elias, Deputy General Counsel, National Endowment for the Arts, Room 518, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Karen Elias, Deputy General Counsel, National Endowment for the Arts, Room 518, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. Telephone (202) 682-5418. Individuals who use a telecommunications device for the deaf (TDD) may contact the NEA's TDD terminal at (202) 682-5496 Voice/T.T.

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 2635.105 authorizes executive branch agencies to publish agency-specific supplemental regulations necessary to implement their respective ethics programs. With OGE's concurrence, the NEA has determined that the following supplemental regulations contained in a new chapter LV, consisting of part 6501, of 5 CFR as set forth in this interim rule are necessary to implement the NEA's ethics program successfully, in light of the NEA's unique programs and operations.

The Foundation's old standards of conduct regulations at 45 CFR part 1105 were applicable to employees of both the NEA and the National Endowment for the Humanities (NEH) until they were superseded by the executive branchwide Standards at 5 CFR part 2635, and by OGE's executive branchwide financial disclosure regulations at 5 CFR part 2634. In a separate rulemaking document being published in the **Federal Register** today, the Foundation's superseded old conduct regulations and certain redundant provisions thereof are being removed and 45 CFR part 1105 is being revised to contain a cross-reference section referring to the NEA's and the NEH's new supplemental regulations (also being published in the **Federal Register** today), to 5 CFR parts 2634 and 2635, to 5 CFR part 2640, OGE's executive branch financial interest regulations, and to the executive branchwide employee responsibilities and conduct regulations issued by the Office of Personnel Management, as codified at 5 CFR part 735.

II. Analysis of the Regulations

Section 6501.101 General

Section 6501.101 explains that the regulations contained in this interim

rule will apply to NEA employees and are supplemental to the executive branchwide standards. Employees of the NEA 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 6501.102 Prior Approval for Outside Employment

Under 5 CFR 2635.803, an agency that determines it is necessary or desirable for the purposes 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. The Foundation's superseded regulation at 45 CFR part 1105 required NEA employees to obtain advance approval for certain outside employment (that advance approval requirement remained in effect until February 3, 1994 by operation of the prior note following 5 CFR 2635.803 of the Standards (see the January 1, 1997 edition of 5 CFR)). The NEA has determined that it is necessary to the administration of its ethics program to reinstitute the requirement that employees, other than special Government employees, obtain prior approval before engaging in certain types of outside employment that pose the most potential for employees to engage in conduct that might violate applicable conflicts laws and regulations.

Therefore, § 6501.102(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, the NEA will apply the definition of that term found in the Standards at 5 CFR 2635.203(d). Thus, an employee will 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 the NEA; doing business or seeking to do business with the NEA; conducting activities regulated by the NEA; or having interests that may be substantially affected by the performance or