

SUMMARY: The National Endowment for the Humanities, with the concurrence of the Office of Government Ethics (OGE), is issuing regulations for officers and employees of the NEH that supplement the Standards of Ethics Conduct for Employees of the Executive Branch issued by OGE. The supplemental regulations require NEH 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 Heather Gottry, Assistant General Counsel, National Endowment for the Humanities, Room 529, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Heather Gottry, Assistant General Counsel, National Endowment for the Humanities, Room 529, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. Telephone (202) 606-8322. Individuals who use a telecommunications device for the deaf (TDD) may contact the NEH's TDD terminal at (202) 606-8282 Voice/T.T or (866) 372-2930.

SUPPLEMENTARY INFORMATION:

I. 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 part 2635.105 authorizes executive branch agencies to publish agency-specific supplemental regulations necessary to implement their respective ethics programs. With OGE's concurrence, the NEH has determined that the following supplemental regulations contained in a new chapter LVI, consisting of part 6601, of 5 CFR as set forth in this interim rule, are necessary to implement the NEH's ethics program successfully, in light of the NEH's unique programs and operations.

The Foundation's old standard of conduct regulations at 45 CFR were applicable to employees of both the NEH and the National Endowment for the Arts (NEA) 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superseded by the executive branchwide Standards at 5 CFR part 2635, and by OGE's executive branchwide financial disclosure regulations at 5 CFR part 2634.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 to the NEH's and the NEA'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 6601.101 General

Section 6601.101 explains that the regulations contained in this interim rule will apply to NEH employees and are supplemental to the executive branchwide standards. Employees of the NEH 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 6601.102 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 NEH employees to obtain advance approval for certain outside employment. That NEH advance approval requirement remained in effect until February 3, 1995 by operation of the prior note following 5 CFR part 2635.803 of the Standards and prior appendix A to 5 CFR part 2635 (see the January 1, 1997 edition of 5 CFR and 59 FR 4779-4780 (February 2, 1994)). The NEH 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 may pose the most potential for employees to violate applicable conflicts laws and regulations.

Therefore, § 6601.102(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 NEH will apply the definition of that term found in the Standards at 5 CFR part 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 the NEH; doing business or seeking to do business with the NEH; conducting activities regulated by the NEH; or having interests that may be substantially affected by the performance or nonperformance of the employee's official duties. Section 6601.102(a) also requires written requests for approval to be submitted to the employee's immediate supervisor and his or her Designated Agency Ethics Official and specifies the information to be included in the employee's request. Section 6601.102(b) states the standard to be used in approving or denying requests for approval of outside employment. The basis for denial, if any, must be found in applicable statutes or Federal regulations, including the executive branchwide Standards.

Section 6601.102(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 Deputy General Counsel of the NEH, 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, the opportunity for advance public comment, and the 30-day delay in effectiveness as to this interim rule. The reason for this determination is that this rulemaking is related to the NEH's organization, procedure and practice. Nonetheless, this is an interim rulemaking with provision for a 30-day public comment period. The NEH will review all comments received during the comment