

**FEDERAL RETIREMENT THRIFT INVESTMENT BOARD**

**5 CFR Part 1633**

**5 CFR Chapter LXXVI**

**Supplemental Standards of Ethical Conduct for Employees of the  
Federal Retirement Thrift Investment Board**

**RIN 3209-AA15**

**59 FR 50816**

**October 06, 1994**

**ACTION:** Final rule.

**SUMMARY:** The Federal Retirement Thrift Investment Board, with the concurrence of the Office of Government Ethics (OGE), is issuing regulations for employees of the Board that supplement the Standards of Ethical Conduct for Employees of the Executive Branch, as issued by OGE, with a requirement to obtain prior approval for outside employment. The Board also is repealing its remaining old conduct standards which were retained on an interim basis pending issuance of the Board's supplemental regulations and is inserting in their place a cross-reference to the new provisions.

**EFFECTIVE DATE:** These regulations are effective October 6, 1994.

**FOR FURTHER INFORMATION CONTACT:** Thomas L. Gray, Deputy Assistant General Counsel for Administration, (202) 942-1662, FAX (202) 942-1676.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On August 7, 1992, OGE published new Standards of Ethical Conduct for Employees of the Executive Branch (standards). See *57 FR 35006-35067*, as corrected at *57 FR 48557* and *57 FR 52583*, with an additional grace period extension at *59 FR 4779-4780*. Codified at 5 CFR part 2635, the new standards became effective on February 3, 1993. On June 2, 1993, the Board issued a final rule (*58 FR 31332*) which replaced all of the provisions of its prior standards of conduct regulations at 5 CFR part 1633 that had been superseded by part 2635, or by OGE's executive branch financial

disclosure regulations at 5 CFR part 2634. The Board preserved only those provisions that were specifically grandfathered under the notes following 5 *CFR* 2635.403(a) and 2635.803.

With the concurrence of OGE, 5 *CFR* 2635.105 authorizes agencies to publish agency-specific supplemental regulations that are necessary to implement their respective ethics programs. The Board, with OGE's concurrence, has determined that the following supplemental rules, being codified in new chapter LXXVI of 5 CFR, are necessary to the success of its ethics program. The Board is simultaneously repealing the remaining provisions of 5 CFR part 1633, which are superseded upon issuance of the Board's supplemental regulations, and is replacing those provisions with a single section that provides cross-references to 5 CFR parts 2634 and 2635, as well as to the Board's new supplemental regulations.

## **II. Analysis of the Regulations**

### **Section 8601.101 General**

Section 8601.101 explains that these regulations supplement the executive branch-wide standards of ethical conduct and reminds Board employees, including Board members, that they are subject to these regulations and the executive branch-wide financial disclosure regulations. However, because Board members are special Government employees, the requirement for prior approval of outside employment in section 8601.102 does not apply to them.

### **Section 8601.102 Prior Approval for Outside Employment**

5 *CFR* 2635.803 authorizes individual agencies to issue supplemental regulations to require agency employees to obtain prior approval before engaging in outside employment, with or without compensation. The Board has long had a prior approval requirement to ensure that any problems relating to an employee's outside employment are resolved before an employee begins such an undertaking. Section 8601.102 continues that prior approval requirement, but differs from the old Board requirement because it contains a definition of employment that clarifies the circumstances under which prior approval must be obtained. The outside employment must be approved by the employee's office director. In the written request, the employee is required to describe the organizations, duties, hours of work, and remuneration pertaining to the outside employment. An employee must submit the written request through his or her immediate supervisor, unless the immediate supervisor is the employee's office director.

In addition to approval by the employee's office director, if the outside employment involves teaching, speaking, or writing that relates to the employee's official duties, the employee must also obtain the advance written approval of the Executive Director of the Board. The Executive Director may approve or disapprove such outside employment, or may permit the performance of the teaching, speaking, or writing as an official duty (for which no compensation may be received). This requirement does not apply to teaching, speaking, or writing that relates to the purely private interests of the employee that are nonwork-related.

## **III. Repeal of Board Standards of Conduct Regulations**

Because the Board's retained Standards of Conduct at 5 CFR part 1633 are superseded by the supplemental regulations contained in new 5 CFR part 8601, the Board is repealing all of existing 5 CFR part 1633. To ensure that employees are on notice of the ethical standards to which they are

subject, the Board is replacing its old standards at 5 CFR part 1633 with a provision that cross-references 5 CFR parts 2634 and 2635 and the Board's new supplemental regulations at 5 CFR part 8601.

#### **IV. Matters of Regulatory Procedure**

##### **Administrative Procedure Act**

The Board has found that good cause exists under 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 these rules and repeals. The supplemental regulations are essentially a restatement of rules previously contained in the standards of conduct, and the Board believes that it is important to a smooth transition from the Board's standards of conduct to the executive branch standards that these rules become effective as soon as possible. Furthermore, this rulemaking is related to the Board's organization, procedure and practice.

##### **Regulatory Flexibility Act**

The Board has determined under the Regulatory Flexibility Act (5 *U.S.C.* chapter 6) that these regulations will not have a significant impact on small business entities because they affect only Board employees.

##### **Paperwork Reduction Act**

The Board has determined that the Paperwork Reduction Act (44 *U.S.C.* chapter 35) does not apply because these regulations do not contain any information collection requirements that require the approval of the Office of Management and Budget.

##### **Environmental Impact**

This decision will not have a significant impact upon the quality of the human environment or the conservation of energy resources.

##### **List of Subjects**

###### *5 CFR Part 1633*

Conflict of interests, Government employees.

###### *5 CFR Part 8601*

Conflict of interests, Government employees.

Dated: September 21, 1994.

**Roger W. Mehle,**

*Executive Director, Federal Retirement Thrift Investment Board.*

Approved: September 30, 1994.

**Stephen D. Potts,**

*Director, Office of Government Ethics.*

For the reasons set forth in the preamble, the Federal Retirement Thrift Investment Board, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations as follows:

**TITLE 5-[AMENDED]**

**5 CFR CHAPTER VI-FEDERAL RETIREMENT THRIFT INVESTMENT BOARD**

1. Part 1633 of 5 CFR Chapter VI is revised to read as follows:

**PART 1633-STANDARDS OF CONDUCT**

**§ 1633.1 -- Cross-reference to employee ethical conduct standards and financial disclosure regulations.**

Employees of the Federal Retirement Thrift Investment Board (Board) are subject to the executive branch-wide Standards of Ethical conduct at 5 CFR part 2635, the Board regulations at 5 CFR part 8601 which supplement the executive branch-wide standards, and the executive branch-wide financial disclosure regulations at 5 CFR part 2634.

**Authority:** *5 U.S.C. 7301.*

2. A new chapter LXXVI, consisting of part 8601, is added to title 5 of the Code of Federal Regulations to read as follows:

**5 CFR CHAPTER LXXVI-FEDERAL RETIREMENT THRIFT INVESTMENT BOARD**

**PART 8601-SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE FEDERAL RETIREMENT THRIFT INVESTMENT BOARD**

Sec.

8601.101 General.

8601.102 Prior approval for outside employment.

**Authority:** *5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.803.*

**§ 8601.101 -- General.**

In accordance with *5 CFR 2635.105*, the regulations in this part apply to employees of the Federal Retirement Thrift Investment Board (Board) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. In addition, Board employees are subject to the executive branch financial disclosure regulations at 5 CFR part 2634.

**§ 8601.102 -- Prior approval for outside employment.**

(a) Before engaging in outside employment, with or without compensation, an employee, other than a special Government employee, must obtain written approval from his or her office director. The written request shall be submitted through the employee's immediate supervisor, unless the supervisor is the employee's office director, and shall identify the employer or other person for whom the services are to be provided, as well as the duties, hours of work, and compensation involved in the proposed outside employment.

(b) Approval under paragraph (a) of this section 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.

(c) In addition to the approval required by paragraph (a) of this section, an employee whose outside employment involves teaching, speaking, or writing that relates to his or her official duties within the meaning of 5 *CFR* 2635.807(a)(2) shall obtain approval from the Executive Director of the Board to engage in the activity as an outside activity, rather than as part of the employee's official duties.

(d) For purposes of this section, employment means any form of non-Federal employment or business relationship involving the provision of personal services by the employee. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher or speaker. It includes writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service or civil organization, unless the participation involves the provision of professional services or advice for compensation other than reimbursement for actual expenses.