

UNITED STATES OFFICE OF  
**GOVERNMENT ETHICS**



Preventing Conflicts of Interest  
in the Executive Branch

# Navigating the Supplemental Agency Ethics Regulation Process

# Today's Panel



- Navigating the Supplemental Process
- The Agency Perspective
- The Role of OGE
- Introduction of Panelists

# Legal Advisory 11-07



United States  
**Office of Government Ethics**  
1201 New York Avenue, NW., Suite 500  
Washington, DC 20005-3917

October 31, 2011  
LA-11-07

TO: Designated Agency Ethics Officials

FROM: Don W. Fox  
General Counsel

SUBJECT: THE OGE SUPPLEMENTAL AGENCY REGULATION PROCESS

The Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Ethical Conduct) codified in 5 C.F.R. part 2635 applies to all executive branch employees. As authorized by Executive Order 12674 and implemented by 5 C.F.R. § 2635.105, an agency may modify or supplement the Standards of Ethical Conduct, with the concurrence of OGE, to meet particular needs of that agency. A supplemental agency regulation is issued jointly by the agency and OGE and is published in title 5, Code of Federal Regulations.

# Background



- What are Supplemental Agency Ethics Regulations?
- OGE's Role in the Supplemental Regulation Process
- OGE Has Exclusive Authority

# Substance of Supplemental Regulations

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- Things that Should be in a Supplemental Regulation
- Things that Could be in a Supplemental Regulation
- Things that Don't Belong in a Supplemental Regulation

# CFPB Case Study

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Does My Agency Need  
a Supplemental Ethics  
Regulation?





# The Agency Perspective



- Internal Process
  - Identification of a Need for Regulations to Final Draft
- External Process
  - Initial Contact, Continuing Coordination, and Final Concurrence with OGE
- Issuance and Rollout
  - Implementation and Rollout to Employees
- Ongoing
  - Ongoing Training, Enforcement of Violations, Modification of Regulations as Needed

# Agency Internal Process



- Identifying Need for Supplemental Ethics Regulations
  - Ethics Office repeatedly sees the same ethics concerns
  - Senior Leaders or Management repeatedly raise concerns regarding an issue
  - Proactive approach in addressing certain ethics issues



# Agency Internal Process



After Identifying Issues:

- Look at how Other Agencies Have Addressed the Same Ethics Issue or Concern – Do Not Reinvent The Wheel
- Review the Supplemental Ethics Regulations of Departments, Agencies or Components with Similar Missions

# Agency Internal Process



- Early Internal Agency Coordination
- Different Agency Components & Offices May Have Competing Interests
- Resolving Policy Issues
- Agency Leadership and Executive-Level Sign-Off

# Agency Internal Process



- Determine Type of Rulemaking
- Draft Presented to OGE Should be a Final Draft Cleared Internally in Your Agency
- Ensure Adequate Resources to Support Implementation of Regulations

# External Process



- Notify OGE Desk Officer Early in Process for Guidance
- Closely Coordinate with OGE if you Question Whether Something Is Appropriate for Inclusion
- Contact Federal Register to Reserve a Chapter and Part in Title 5 CFR

# Concurrence From OGE



## Best Practice

With initial draft of proposed regulations, include a chart that:

1. Summarizes each section of regulations
2. References any other agency's ethics regulation on which you based the language used in your regulation section
3. Briefly explains the difference between your proposed regulatory language and similarly published sections

# Concurrence From OGE



## Example of Chart\*

CFPB Section Number & Title	Brief Summary of the Provision	Reference to Other Agencies' Supplemental Ethics Regulation on which the Provision is Based	Brief Explanation of Differences Between CFPB's Proposal and Regulations of other Financial Regulatory Agencies
§ XXXX.107: <b>Prohibition on Acceptance of Credit on Preferential Terms</b>	This section prohibits employees from accepting credit from or entering into a financial relationship with an entity supervised by CFPB if the relationship is based on terms more favorable than those offered in comparable circumstances to the public.	CFPB used language from the FED's supplemental regulations at § 6801.105.	CFPB extended the prohibition to an employee's spouse and minor child in order to reduce the appearance that an employee's spouse or minor child is using the employee's public office for his or her private gain.

\* A larger example is available as a handout to this presentation



# Concurrence with OGE



- When Submitting to OGE, Recommend that the Draft be in Proper Format for Publication in Federal Register
- OGE's Comments and Suggestions were Extremely Helpful. Strongly Encourage Agencies to Talk Through the Comments with Your POC at OGE

# Implementation Challenges



## Effectively Communicating New Rules to All Employees

- Suggest Creating a Training Roll-Out Plan Working Backwards from Date Rule Becomes Effective
- Get Support of Agency Leadership
- Develop a Core Message
- Explain Rule in Plain English and in Sufficient Detail to Ensure Compliance

# Training Plan Example

Date	Communication & Mgmt Support	Training for Employees	Ethics Office	Who
<b>Publish in Federal Register (Target date of Week of April 16<sup>th</sup>)</b>	<b>1. Announcement of publication on CFPBedia:</b> Announce publication in Federal Register. The announcement should: <ul style="list-style-type: none"> <li>Provides a link to where employees can access the regulations on intranet.</li> <li>Provide a link to the summary of the rules.</li> </ul>		<b>2. Make copies of regulations available in each office.</b>  <b>3. Draft All-Hands email regarding Prohibited Financial Interests.</b>	

Date	Communication & Mgmt Support	Training for Employees	Ethics Office	Who
<b>Week before Effective Date</b>	<b>1. All Hands Email:</b> Reminder about effective date. If you have not divested of all holdings, you should seek advice from ethics official.	<b>2. Conduct online training session.</b>	<b>3. Create specialized training for quarterly supervisory meeting.</b>	
<b>Effective Date</b>	<b>1. Posters:</b> New Ethics Rules are effective. Questions? Contact the Ethics Office at <a href="mailto:EthicsHelp@cfpb.gov">EthicsHelp@cfpb.gov</a> .	<b>Conduct last online training session.</b>		

# Specific Issues



## Prohibited Financial Holdings

- Notification Process
- Time to Come into Compliance – Initially and Ongoing
- Revised Holdings List – Communication and Time to Divest

# Specific Issues

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## Compliance Issues

- Adequate Resources for Your Ethics Office to Ensure Employee Compliance
- How Will Your Agency Enforce the New Ethics Rules?

# The Role of OGE



- Consult with agency early in process
- Review agency's draft preamble and proposed supplemental
- Provide advice about proposed supplemental



# Resources



- [www.oge.gov](http://www.oge.gov)
  - LA-11-07 and attachments
  - Video: Navigating the Supplemental Agency Ethics Regulation Process: under Education Resources for Ethics Officials in the Education section
  - Current Agency Supplemental Regulations: in the Laws & Regulations section

# Proposed, Interim, and Final Rules



- Laws & Regulations → Federal Register Issuances
- Citation filter: 5 CFR Part 2635, Subpart A
- Focus filter: Supplemental Agency Regulations
- Search

# Questions?



# CFPB Contact Information

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## Section by Section Analysis of CFPB’s Proposed Supplemental Ethics Regulations

CFPB Section Number & Title	Brief Summary of the Provision	Reference to Other Agencies’ Supplemental Ethics Regulation on which the Provision is Based	Brief Explanation of Differences Between CFPB’s Proposal and Regulations of other Financial Regulatory Agencies
§ XXXX.101: <b>General</b>	This section explains the purpose of the supplemental regulations and cross-references the other regulations that are applicable to CFPB employees.	CFPB used the language and format from the Merit Systems Protection Board’s (MSPB) supplemental ethics regulations at § 7401.101.	N/A
§ XXXX.102: <b>Definitions</b>	<p>This section defines terms used throughout the supplemental regulations.</p> <p>The definition of “domestic partner” is the same as the one used to determine whether an individual is eligible to receive benefits under CFPB’s Domestic Partner Health Insurance Subsidy Program.</p>	<p>Many definitions cross- reference terms defined in the Consumer Financial Protection Act (CFPA), OGE’s Standards of Ethical Conduct and the Financial Disclosure Regulations.</p> <p>CFPB used the definition of “debt or equity interest” from the Federal Reserve Board’s (FED) supplemental regulations at § 6801.102. This is the same definition that Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), and Federal Depositary Insurance Corporation (FDIC) use to define “security” or “securities” in their supplemental regulations.</p> <p>CFPB defined the term “spouse” to exclude a legally separated spouse and looked at Securities Exchange Commission (SEC) regulations at § 4401.102(g)(1)(ii) for guidance in defining this term.</p>	<p>CFPB choose to include special Government employees (SGEs) in its definition of “employee.” CFPB is unique in that it has utilized SGEs for positions in CFPB that have policy-making authority, including several executives.</p> <p>The terms “indebted” and “indebtedness” are used in the FED’s regulations but are not defined there. CFPB used common dictionary definitions to develop these definitions.</p>

CFPB Section Number & Title	Brief Summary of the Provision	Reference to Other Agencies' Supplemental Ethics Regulation on which the Provision is Based	Brief Explanation of Differences Between CFPB's Proposal and Regulations of other Financial Regulatory Agencies
§ XXXX.103: <b>Prior Approval for Outside Activities</b>	This section requires an employee to obtain written approval prior to engaging in certain outside employment and activities.	CFPB used language from the MSPB's regulations at § 7401.102.	<p>CFPB used the definition of "employment" from the MSPB. However, CFPB did not exclude from the prior written approval requirement an employee's participation in nonprofit, charitable, religious, public service or civic organizations because the Bureau wants to ensure that an employee's outside activities conform to applicable statutes and regulations, which apply equally to these types of organizations. The Bureau likely will incorporate some exceptions to the prior written approval process in CFPB's internal directives.</p> <p>Unlike the MSPB, CFPB did not include a description of the procedure for requesting approval. CFPB will describe the procedure in its internal directive; this provides the Bureau with greater flexibility in the event that CFPB would like to change the procedure in the future.</p>
§ XXXX.104: <b>Additional Rules Concerning Outside Employment for Covered Employees</b>	A "covered employee" shall not engage in compensated outside employment for an entity supervised by CFPB or for an officer, director or employee of such entity.	CFPB modified the approach taken in the OCC and FDIC regulations at §3101.108(f) and § 3201.107(a). CFPB's regulation is based in part on 18 U.S.C. § 1909, which prohibits national-bank examiners from performing any service for compensation for any bank or banking or loan association, or any officer, director or employee thereof.	The FDIC extends this rule to all employees, while the OCC extends the rule only to "covered employees." CFPB extended its rule to "covered employees" and defined the term to include those employees who typically are involved in the supervision of entities offering or providing a consumer financial product or service.

CFPB Section Number & Title	Brief Summary of the Provision	Reference to Other Agencies' Supplemental Ethics Regulation on which the Provision is Based	Brief Explanation of Differences Between CFPB's Proposal and Regulations of other Financial Regulatory Agencies
§ XXXX.105: <b>Additional Rules Concerning Outside Employment for CFPB Attorneys</b>	This section prohibits all employees serving in an attorney position from practicing law outside his or her official duties where the employee may take a legal position in conflict with the interests of CFPB.	CFPB used language similar to the Department of Treasury's regulations at § 3101.107(b).	CFPB included an exception for self-representation unless: (1) the employee participated in the matter as part of his or her official duties, or (2) the matter is subject to the employee's official responsibility. CFPB looked to 18 U.S.C. §§ 203 and 205 for language for this self-representation exemption.
§ XXXX.106: <b>Prohibited Financial Interests</b>	This section prohibits an employee (or the employee's spouse or minor child) from owning or controlling a debt or equity interest in an entity supervised by CFPB. There are several exemptions to this general prohibition.	CFPB used language from the FED's prohibited financial interest regulation at § 6801.103. CFPB's language concerning exemptions, disqualification and waivers also came from the FED's supplemental regulations.  CFPB also will attribute to the employee a debt or equity interest held by third party entities, and require an employee to report the interest in writing to the DAEO. CFPB used language from the OCC's supplemental regulations at § 3101.108(c).	The scope of this prohibition extends only to those entities supervised by CFPB that are identified on a list maintained by CFPB. This approach will ease administration of this provision and minimize inadvertent violations. CFPB's regulatory and enforcement authority under the CFPA may extend beyond those entities supervised by CFPB that are identified on the list. However, the regulation limits the prohibition on ownership of debt and equity interests to only those entities identified on the list, in order to establish a bright-line test and enable employees to easily identify prohibited interests.
§ XXXX.107: <b>Prohibition on Acceptance of Credit on Preferential Terms</b>	This section prohibits employees from accepting credit from or entering into a financial relationship with an entity supervised by CFPB if the relationship is based on terms more favorable than those offered in comparable circumstances to the public.	CFPB used language from the FED's supplemental regulations at § 6801.105.	CFPB extended the prohibition to an employee's spouse and minor child in order to reduce the appearance that an employee's spouse or minor child is using the employee's public office for his or her private gain.

CFPB Section Number & Title	Brief Summary of the Provision	Reference to Other Agencies' Supplemental Ethics Regulation on which the Provision is Based	Brief Explanation of Differences Between CFPB's Proposal and Regulations of other Financial Regulatory Agencies
<p>§ XXXX.108: <b>Restrictions on Seeking, Obtaining, or Renegotiating Credit</b></p>	<p>This section prohibits an employee from seeking, obtaining or renegotiating credit from an entity, while the employee is assigned to participate in a particular matter involving specific parties in which the entity is or represents a party to the matter.</p> <p>This prohibition applies equally to the employee's spouse or minor child, unless certain conditions are met.</p> <p>This prohibition also requires an employee to disqualify himself or herself from participating in such particular matters after the employee becomes aware that certain persons related to the employee are seeking, obtaining or renegotiating credit or indebtedness with an entity that is or represents a party to the matter.</p> <p>Two forms of credit are exempted: borrowing through the use of (1) a credit or charge card, and (2) overdraft protection.</p>	<p>CFPB used language from the FED's supplemental regulations at § 6801.105 to draft the general prohibition in paragraph (a).</p> <p>CFPB also extended the prohibition on borrowing to the employee's spouse or minor child based on the OCC's language in § 3101.108(b)(2).</p> <p>CFPB also combined language from the FED and OCC to draft the disqualification requirement for credit sought by a person related to the employee. See §§ 6801.106(b) and 3101.108(c).</p> <p>CFPB borrowed the language concerning exemptions and waivers from the FED. See § 6801.106(c)-(d).</p>	<p>The FED extends its prohibition on borrowing only to its "supervisory employees." CFPB makes this prohibition applicable to all of its employees, but limits the application of the restriction to only the time period in which the employee is participating personally and substantially on a particular matter involving specific parties, and for two years after the participation has ended.</p> <p>CFPB determined that this prohibition should apply to all employees because it will enhance public confidence in the integrity of CFPB programs and prevent the appearance of loss of impartiality, and it will strengthen public confidence in CFPB's integrity by limiting the ability of its employees to engage in financial transactions with entities that are or represent a party to a particular matter involving specific parties to which the employee is assigned.</p> <p>The FED extended the prohibition on seeking or renegotiating credit for three months after the employee's participation in the matter ended. CFPB extended the prohibition for two years after the employee's participation in the matter ended, which is the same amount of time used in the FDIC's supplemental regulation at § 3201.102(d).</p>

CFPB Section Number & Title	Brief Summary of the Provision	Reference to Other Agencies' Supplemental Ethics Regulation on which the Provision is Based	Brief Explanation of Differences Between CFPB's Proposal and Regulations of other Financial Regulatory Agencies
<p>§ XXXX.109: <b>Disqualification of Employees from Particular Matters Involving Creditors</b></p>	<p>This section prohibits an employee from participating in a particular matter involving specific parties if the employee is aware that the employee, the employee's spouse, domestic partner or dependent child, or certain persons related to the employee has credit with or is indebted to an entity that is or represents a party to the matter.</p>	<p>CFPB drafted this section based on a similar provision in the FED's supplemental ethics regulations at § 6801.107.</p> <p>CFPB borrowed the list of third party entities from the OCC's regulations at §§ 3101.108(c)(1)–(c)(7).</p> <p>The forms of credit and indebtedness that are exempted from the disqualification requirement are based on the FED's regulations at § 6801.107(b).</p> <p>In drafting paragraphs (c) and (d) of this section, CFPB borrowed the language from the FED's regulations at § 6801.107(b)(2) and § 6801.107(c), respectively.</p>	<p>For the same reasons as explained in the previous section, CFPB decided that this section should apply to all employees.</p> <p>In addition to those types of indebtedness that are exempt from the disqualification requirement under the FED's regulations, CFPB added an exemption for educational loans because of the similarity that this type of indebtedness has to the other enumerated exemptions.</p>
<p>§ XXXX.110: <b>Prohibited Recommendations</b></p>	<p>This section prohibits employees from making any recommendation or suggestion regarding the acquisition, sale or other divestiture of a debt or equity interest of an entity supervised by CFPB or of an entity that is a party or represents a party to a particular matter involving specific parties in which the employee is participating.</p>	<p>This section is based on the OCC and the OTS regulations at §§ 3101.108(d) and 3101.109(e), respectively.</p>	<p>CFPB added the language “an entity that is or represents a party to a particular matter involving specific parties to which the employee is assigned” to broaden the application of this prohibition (e.g., an employee is assigned to an enforcement action against, or to award a contract to, a person or organization that is not an “entity supervised by CFPB”). CFPB does not want its employees making recommendations regarding the acquisition or sale of a debt or equity interest of an entity that is or represents a party to a particular matter to which the employee is assigned.</p>

<b>CFPB Section Number &amp; Title</b>	<b>Brief Summary of the Provision</b>	<b>Reference to Other Agencies' Supplemental Ethics Regulation on which the Provision is Based</b>	<b>Brief Explanation of Differences Between CFPB's Proposal and Regulations of other Financial Regulatory Agencies</b>
§ XXXX.111: <b>Restriction on Participating in Matters involving Covered Entities</b>	This section disqualifies an employee from participating in a particular matter involving specific parties if a "covered entity," as defined in this section, is or represents a party to the matter. Disqualification of the employee eliminates the potential for an appearance of preferential treatment in those instances where the employee's connection to a covered entity would likely raise questions regarding the impartiality of actions taken by the employee or CFPB.	This section is based on a similar provision found in the FDIC's supplemental ethics regulations at § 3201.106.	CFPB expanded the list of "covered entity" to more closely follow the language in OGE's impartiality regulation in § 2635.502(b)(1)(iii). CFPB defined a "covered entity" to include a person for whom the employee is aware the employee's spouse, domestic partner, fiancé, child, parent, sibling, or member of the employee's household is serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee. Under CFPB's regulations, it is presumed that a reasonable person with knowledge of all relevant facts would question the employee's impartiality if he or she were to participate in a particular matter in which a "covered entity" is a party or represents a party.
§ XXXX.112: <b>Prohibited Purchase of Assets</b>	This section prohibits an employee, or an employee's spouse or minor child, from purchasing any real or personal property from an entity supervised by CFPB, unless it is sold at public auction or by other means which would assure that the selling price is the asset's fair market value.	CFPB used language from the Federal Housing Finance Agency's supplement regulations at § 9001.109, and the OCC's and the OTS's supplemental ethics regulations at §3101.108(e) and § 3101.109(f).	N/A



<b>CFPB Section Number &amp; Title</b>	<b>Brief Summary of the Provision</b>	<b>Reference to Other Agencies' Supplemental Ethics Regulation on which the Provision is Based</b>	<b>Brief Explanation of Differences Between CFPB's Proposal and Regulations of other Financial Regulatory Agencies</b>
§ XXXX.113: <b>Waivers</b>	This section authorizes the DAEO to grant a written waiver of any provision of CFPB's supplemental ethics regulations based upon a determination that the waiver will not result in conduct inconsistent with the OGE Standards or otherwise prohibited by law.	Numerous Federal agencies that have promulgated supplemental ethics regulations have included such a waiver section.  CFPB used the language from OCC and OTS regulations at §§ 3101.108(g) and 3101.109(g) for this section.	N/A



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TO: Designated Agency Ethics Officials

FROM: Don W. Fox  
General Counsel

SUBJECT: THE OGE SUPPLEMENTAL AGENCY REGULATION PROCESS

The Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Ethical Conduct) codified in 5 C.F.R. part 2635 applies to all executive branch employees. As authorized by Executive Order 12674 and implemented by 5 C.F.R. § 2635.105, an agency may modify or supplement the Standards of Ethical Conduct, with the concurrence of OGE, to meet particular needs of that agency. A supplemental agency regulation is issued jointly by the agency and OGE and is published in title 5, Code of Federal Regulations.

The U.S. Office of Government Ethics (OGE) has the exclusive authority to oversee the supplemental ethics regulation process.<sup>1</sup> Executive Order 12674, as modified by Executive Order 12731, requires OGE to “establish a single, comprehensive, and clear set of executive-branch Standards of Ethical Conduct that shall be objective, reasonable and enforceable.” Section 301 of Executive Order 12731 specifically states, “[a]ny supplementary agency regulations shall be prepared as addenda to the branch-wide regulations and promulgated jointly with the Office of Government Ethics, at the agency’s expense, for inclusion in Title 5 of the Code of Federal Regulations.” Given the mandate of Executive Order 12731 and its implementation under 5 C.F.R. § 2635.105, agency ethics regulations and policies promulgated outside of the OGE supplemental regulation process may lack legal effect. *See* Exec. Order No. 12731, § 301 55 Fed. Reg. 42,547 (Oct. 17, 1990); *see also*, Preamble to 5 C.F.R. § 2635.803, 57 Fed. Reg. 35,034; DAEOgram D0-95-008 (Agency supplementation of standards and revocation of superseded standards).

When determining whether an agency should have a supplemental ethics regulation, ethics officials should consider the following questions:

- What are the issues the agency is trying to address and what is the outcome the agency is trying to achieve?

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<sup>1</sup> Exec. Order No. 12674, 54 Fed. Reg. 15,159 (April 12, 1989); *and* Exec. Order No. 12731, 55 Fed. Reg. 42,547 (Oct. 17, 1990). *See generally* 5 U.S.C. app. § 402(a)-(b) (requiring the Director of OGE to evaluate “the need for changes in rules and regulations issued by the Director and the agencies regarding conflict of interest and ethical problems, with a view toward making such rules and regulations consistent with and an effective supplement to the conflict of interest laws.” 5 U.S.C. app. § 402(b)(12)). OGE’s authority in this area is described in 5 C.F.R. § 2635.105, which permits agencies to act without supplemental regulations only in clearly defined instances.

- Does the agency need a supplemental ethics regulation to achieve this goal?
- What is the statutory authority under which a regulation would be issued?
- How have other agencies addressed similar issues?
- When and how should the agency consult with OGE?

This advisory is intended to help ethics officials answer these questions by providing tools to better navigate the supplemental agency ethics regulation process. Specifically, this legal advisory identifies the types of agency ethics policies that fall within the exclusive authority of OGE and, as a result, must be developed through the OGE supplemental agency regulation process. In addition, this advisory identifies agency policies that may derive from authorities outside the scope of OGE authority. Finally, this advisory contains a brief summary of the agency OGE consultation process.

There are three attachments to this advisory. The first attachment illustrates how an agency may determine it needs a supplemental regulation. The second attachment identifies which agencies have a supplemental regulation as well as which ethics issues are addressed by each agency. Finally, the third attachment specifies how the ethics issues are addressed by each agency.

### **When Agency Ethics Policies Belong in Supplemental Agency Regulations**

Whether it is appropriate to create or modify a supplemental ethics regulation will depend on the issue the agency is trying to address and the underlying statutory authority for the proposed regulation.

Implementation by an agency of an agency policy requiring the expansion of restrictions on agency employees set by the Standards of Ethical Conduct is likely to implicate the supplemental regulation process. Common topic areas requiring the creation of a supplemental ethics regulation include, but are not limited to, outside activity restrictions, prior approval requirements for outside activities, prohibited financial holdings, and designation of separate agency components. In addition, if the proposed policy is only generally related to one of the fourteen General Principles of the Standards of Ethical Conduct contained in 5 C.F.R. §2635.101, then OGE can consult with the agency to determine whether the supplemental regulation process is implicated.

An important distinction exists between legally binding ethics regulations and ethics-related practice or advice. Agencies may advise employees to uphold a stricter standard of ethical conduct voluntarily as a best practice; however, an agency may not levy additional legally binding ethics-related requirements on its employees without submitting the proposed regulation or agency policy through the OGE supplemental agency regulation process. For example, an agency may not implement an agency policy requiring some or all of its employees receive prior approval before engaging in outside activities without issuing a supplemental ethics regulation. By consulting with OGE at an early stage of the policy formulation process, an agency can determine whether a supplemental regulation is required to implement a particular agency ethics related policy.

## When Agency Policies May Not Belong in a Supplemental Agency Regulation

When there is specific and direct congressional authority to issue ethics related regulations independent from OGE, even if the regulations build upon the Standards of Ethical Conduct, agencies may promulgate these regulations separately from the title 5 supplementary process. Two primary categories of direct congressional authority meeting this standard include:

- When Congress has directed an agency to promulgate ethics regulations without requiring OGE concurrence or approval; or
- When the scope of the proposed regulation falls outside of OGE's authority.

Congress can enact agency-specific statutes granting specific and direct authority to an agency to issue ethics related regulations independent from OGE, but it is unusual for Congress to do so.<sup>2</sup> A relatively recent example of Congress creating an agency-specific statute granting specific and direct authority to an agency to issue ethics related regulations is the Emergency Economic Stabilization Act of 2008. *See* 12 U.S.C. § 5218 (stating that the Secretary of the Treasury “shall issue regulations . . . to prohibit conflicts of interest that may arise in connection with the administration . . . [of] this Act . . .”). Because these agency-specific statutes come in several different variations and address different topics, an agency should consult with OGE concerning statutory authority it invokes when considering implementing ethics regulations outside of the OGE supplemental agency regulation process.

OGE must concur that an ethics related regulation is appropriately promulgated separately within the agency's independent regulations. 5 C.F.R. §2635.105(c)(3). Examples of regulations relating to employee conduct that should not be placed in agency supplemental regulations include regulations addressing: cooperation with official inquiries, use of government vehicles, the Hatch Act, care of documents and data, and the Privacy Act.<sup>3</sup> Several of these topics deal with the improper use of nonpublic information; however, regulations implicating non-ethics statutes such as the Privacy Act should not be part of a supplemental agency ethics regulation.

The OGE supplemental agency regulation process is not required for materials, pamphlets, or website postings merely explaining the Standards of Ethical Conduct or a supplemental ethics regulation. 5 C.F.R. §2635.105(c)(1). In addition, policies “documenting or processing any determination, approval or other action required or permitted by [the Standards of Ethical Conduct] or by supplemental agency regulations” may be issued outside the OGE supplemental

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<sup>2</sup> General enabling legislation is usually insufficient authority for an agency to issue ethics regulations outside of the OGE supplemental agency regulation process. An established canon of statutory construction holds that the specific governs the general. *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374 (1992). Executive Order 12674, as modified by Executive Order 12731, as well as the Ethics in Government Act of 1978 as implemented by 5 C.F.R. § 2635.105, states specifically that supplemental ethics regulations shall be issued jointly with OGE in Title V of the Code of Federal Regulations. *See* Exec. Order No. 12731, § 301 55 Fed. Reg. 42,547 (Oct. 17, 1990); 5 U.S.C. app. § 402(b)(12); 5 C.F.R. § 2635.105.

<sup>3</sup> Post-employment restrictions also do not belong in an agency supplemental ethics regulation because supplemental agency regulations only apply to employees, not former employees. *See* 5 C.F.R. § 2635.105.

agency regulation process. 5 C.F.R. §2635.105(c)(2)(ii). Finally, agencies may also “delegate to an agency designee authority to make any determination, give any approval, or take any other action required or permitted by [the Standards of Ethical Conduct]” without codifying the delegation in its supplemental agency regulations. 5 C.F.R. §2635.105(c)(2)(i).

### **The Supplemental Agency Regulation Consultation Process**

An agency’s OGE desk officer is the initial point of contact on supplemental regulations. Subsequently, an OGE attorney may provide advice for structuring the substantive ethics provisions of a supplemental regulation, and officials at the Federal Register can offer more complete assistance with the formatting of the proposed rule. In addition, OGE is available to review proposed regulations and offer substantive advice on the composition of the rule and the drafting of a preamble (i.e., justification or explanation) to the rule.

Once the proposed regulation is prepared, and has received initial OGE concurrence, an agency will likely be required to submit the rule to OMB for an informal review.<sup>4</sup> A representative from the agency will need to contact the agency’s OMB desk officer facilitating this review process. Once OMB has given its informal approval to the supplemental agency regulation, the agency should submit the final signed version, in triplicate, to the Director of OGE for approval.

Upon receipt of the signed version of the supplemental regulation from OGE, the agency should submit the regulation directly to the Federal Register for publication.<sup>5</sup> If the rule is a “final” rule, it is effective upon its publication completing the supplemental process. However, supplemental regulations are often first published as either interim rules or proposed rules. If the regulation is first published as an “interim” rule, the rule is effective upon publication; however, an agency must respond to comments to an interim rule. If the supplemental regulation is first published as a “proposed” rule, the rule is not effective upon publication. In the case of a proposed rule, the rule will only be effective once the agency publishes a final rule responding to the comments it received before the end of the notice and comment period. For both a proposed and interim rule, the agency will have to resubmit an updated final rule and preamble, incorporating stakeholder comments, to OGE for re-approval and signature by the Director of OGE. Depending on the extent of the comments and the changes made to the rule, an agency may also have to resubmit the rule to OMB for its informal clearance before publication of a final rule.

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<sup>4</sup> Most supplemental agency regulations are non-significant rules requiring only an informal review. *See generally* Exec. Order No. 12866, § 3(f) 58 Fed. Reg. 51,736 (Oct. 4, 1993). However, if the proposed regulation does not qualify as non-significant, OMB may require a formal 90-day review. *Id.* at § 6(b).

<sup>5</sup> 5 C.F.R. § 2635.105(b) (“After concurrence and co-signature by the Office of Government Ethics, the agency shall submit its supplemental agency regulations to the FEDERAL REGISTER for publication and codification at the expense of the agency in title 5 of the Code of Federal Regulations.”)

## Conclusion

Each agency in the Executive Branch has a unique mission. The OGE supplemental ethics regulatory process provides agencies a mechanism to tailor the Standards of Ethical Conduct to meet agency specific needs. After reviewing this legal advisory, agency ethics officials should be better able to appropriately address their agency specific ethics issues.

Attachment 1 – [Determining Whether an Agency Needs a Supplemental Ethics Regulation](#)

Attachment 2 – [Supplemental Regulations Quick Reference Chart](#)

*(Citations are hyperlinked to the e-CFR)*

Attachment 3 – [Supplemental Regulations Detailed Chart](#)

*(Citations are hyperlinked to the e-CFR)*



## Does My Agency Need a Supplemental Ethics Regulation?

### Opportunities for Agency Ethics Policies

- Agency ethics officials identify need for new policy
- OGE Program Review of agency ethics policies
- Media coverage of existing agency ethics policies
- Congressional inquiries into agency ethics policies

### Questions for Agency Ethics Officials

- What is the problem my agency is trying to address?
- What is the goal my agency is trying to achieve?
- How have other agencies addressed similar issues?
- When and how should my agency consult with OGE?

### Is the policy ethics-related?

If unsure, then:

- Does the policy require modification or expansion of the Standards of Ethical Conduct?
- Does the policy regulate an area often reserved for supplemental agency regulations (e.g. outside activity limitations, prior approval requirements, prohibited holdings, designation of separate agency components)?

If yes, then:

### Does the agency have sufficient independent authority to regulate ethics policies internally?

If unsure, then:

- Does the policy fall under 5 C.F.R. § 2635.105(c)?
- Does the agency's enabling legislation provide authority to implement ethics regulations? (Unlikely)
- Did Congress specifically direct the agency to promulgate its own independent ethics regulations? (Unlikely)

If no, then:

**No Supplemental Agency Regulation is required. (e.g. authority outside of E.O. 12731)**

However:

**An agency may wish to consult with OGE to determine whether it has any discretion to include this policy in a supplemental**

If yes, then:

**Agency should initiate the Supplemental Agency Regulation Process.**

If no, then:

**OGE is always available for consultation regarding the supplemental agency regulation process.**

# **CFPB Ethics Regulations – Communications and Training Plan**

## **Objective**

The purpose of this plan is to provide the foundation and guidelines for educating all Bureau employees regarding the CFPB Ethics Regulations, from pre-publication in the Federal Register through post-implementation.

## **Background**

The Supplemental Standards of Ethical Conduct for Employees of the Bureau of Consumer Financial Protection (CFPB Ethics Regulations) supplement the Standards of the Ethical Conduct for Employees of the Executive Branch and are necessary to address ethical issues unique to the Bureau. The rule establishes restrictions on outside employment and business activities; prohibitions on the ownership of certain financial interests; restrictions on seeking, obtaining or renegotiating credit and indebtedness; prohibitions on recommendations concerning debt and equity interests; disqualification requirements based on credit or indebtedness; prohibitions on purchasing certain assets; and restrictions on participating in particular matters involving outside entities.

## **Audiences**

The Ethics Office has identified three audiences and will tailor messaging to meet the specific needs of each. Some may require more communications and frequency.

- Leadership / Executives– including Associate and Assistant Directors
- First Line Supervisors / Employees who review OGE Form 450 reports
- Bureau Employees – ***Key audience***

## **Core Message**

CFPB's Ethics Regulations address ethical issues unique to the Bureau and are necessary to (1) maintain public confidence in the impartiality and objectivity with which the Bureau exercises its supervisory and enforcement authority; (2) eliminate any concern that sensitive information might be misused for private gain; and (3) prevent the appearance that an employee is using his or her Bureau position for private gain. For successful implementation of the CFPB's Ethics Regulations, we need leadership support from the Bureau's top executives. We also need to explain the rules to employees in plain English and in sufficient detail to ensure compliance.

## CFPB Ethics Regulations – Communications and Training Plan

Date	Communication & Mgmt Support	Training for Employees	Ethics Office	Who
Week of April 2 <sup>nd</sup>	1. <b>Senior Staff Meetings:</b> Presentation by DAEO or ADAEO. Deliver core message about importance of the new rules and the necessity of senior management support.	<b>PowerPoint Presentation</b> for Senior Staff meeting was reviewed and approved by DAEO and ADAEO.	<p>2. Write Action Memo for Director to sign regulations for publication in FR.</p> <p>3. Draft language for Weekly Message from Director.</p> <p>4. Meeting to brainstorm on how to create training program for new regulations.</p> <p>5. Work with Human Capital to get additional time during New Employee Orientation so that we can cover new ethics regs. (Ask for 2 hours.)</p> <p>6. Start planning out new intranet page devoted to new ethics regulations.</p>	<p>AMB &amp; RGL</p> <p>AV</p> <p>JT &amp; RGL</p> <p>AB, JT, PS</p> <p>RGL &amp; AMB</p> <p>PS</p>

Date	Communication & Mgmt Support	Training for Employees	Ethics Office	Who
Week of April 9 <sup>th</sup>	<p>1. <b>Weekly Message from Director:</b> Include reference in weekly message about CFPB's ethics rules and individual employee's responsibility to become familiar and ensure compliance.</p> <ul style="list-style-type: none"> <li>Post on intranet site.</li> </ul>		<p>2. Draft initial All-Hands email.</p> <p>3. Finalize Certification Form. Ethics team will further discuss whether it will be mandatory.</p> <p>4. Finish draft of Outside Activity Approval Form and Internal Directive.</p> <p>6. Meet with Non-Bank to discuss prohibited holdings list and who will update.</p> <p>7. Schedule room and times for training sessions. Schedule 3 live and 3 online sessions.</p> <p>8. Finalize regulations for publication in Federal Register.</p> <p>9. Send to Federal Register.</p>	<p>AV</p> <p>AV</p> <p>JT</p> <p>AMB and AV</p> <p>MD</p> <p>AV</p> <p>MD</p>

Date	Communication & Mgmt Support	Training for Employees	Ethics Office	Who
Week of April 16 <sup>th</sup>	<p>1. <b>All-Hands Email:</b> Send out email notifying employees that over the next few weeks they will receive communications about CFPB's new ethics rules. Email will emphasize prohibited financial interests by explaining the rules may affect financial interests held by the employee, or the employee's spouse or minor child. The email publicizes upcoming training sessions, which all employees are strongly encouraged to attend.</p> <p>- Similar to November 18, 2011 email from HCO concerning retirement plans.</p> <ul style="list-style-type: none"> <li>• Post on intranet site.</li> </ul> <p>2. <b>DAEO sends reminder to Directors and Executives</b> to discuss the All Hands Email with employees and stress the importance of compliance with the new rules.</p> <p>3. <b>Posters:</b> Place posters in the lobbies or common areas of the Bureau. Something along the lines of "Did you know that CFPB has its own ethics regulations?" Work with contractor to create.</p>		<p>4. Publish Prohibited Holdings List on Intranet and provide link to outside website.</p> <p>5. Draft All-Hands email regarding prohibited financial holdings.</p> <p>6. Draft easy to read instructions concerning Certificates of Divestiture.</p>	<p>MD</p> <p>PS</p>

Date	Communication & Mgmt Support	Training for Employees	Ethics Office	Who
<b>Publish in Federal Register (Target date of Week of April 16<sup>th</sup>)</b>	<b>1. Announcement of publication on CFPBedia:</b> Announce publication in Federal Register. The announcement should: <ul style="list-style-type: none"> <li>Provides a link to where employees can access the regulations on intranet.</li> <li>Provide a link to the summary of the rules.</li> </ul>		2. Make copies of regulations available in each office.  3. Draft All-Hands email regarding Prohibited Financial Interests.	
Publication Date + 1 Week	<b>1. All Hands Email:</b> Information on new rules concerning outside prohibited financial interests. The email will: <ul style="list-style-type: none"> <li>Provide a link to prohibited holdings list.</li> <li>Explain that employees need to divest prohibited holdings within a reasonable time - by effective date of regulations.</li> <li>Have instructions on certificates of divestiture.</li> </ul> Post on Intranet Site.  <b>2. Posters:</b> Summary of 4 areas of ethical restrictions. See 4 Part Approach to Training on Ethics Regulations (attached). Advertise upcoming training sessions and ethics official desk hours.		3. Revise NEO and Examiner training slides to include information on CFPB regulations.  4. Finish PowerPoint for training on new rules.  5. Draft All-Hands email on remaining rules.	
Publication	<b>1. All Hands Email:</b> Information on			



Date	Communication & Mgmt Support	Training for Employees	Ethics Office	Who
Date + 3 Weeks	<p>disqualification requirements, outside employment and business activity requirements, and misuse of position. Reminder to attend a training session. Attached summary of rules.</p> <ul style="list-style-type: none"> <li>• Post on Intranet Site.</li> </ul> <p>2. <b>DAEO sends reminder to Directors and Executives</b> to tell employees about upcoming training sessions. The training session also will fulfill the employee's annual training requirement.</p>	<p>3. Present live training session on new ethics regulations.</p> <p>4. Ethics Official Desk Hours for people who have questions about divesting of prohibited holdings and certificates of divestitures.</p>		<p>AV, JT and PS</p> <p>AV, JT and PS</p>

Date	Communication & Mgmt Support	Training for Employees	Ethics Office	Who
Publication Date + 3-4 Weeks	1. <b>Posters:</b> Topic is outside employment requirements.  2. <b>Outreach to Directors and Executives</b> about new Compliance Form and the Outside Activities and Employment Form.	3. Live training session.  4. Incorporate new ethics restrictions into NEO and Examiner Ethics Training.		AV, JT AV
Publication Date + 4 Weeks		1. Conduct live training session.  2. Continue Ethics Help desk at various locations.	3. Draft all-Hands email on remaining training session.	
Publication Date + 5-6 Weeks	1. <b>All-Hands Email:</b> Reminder about training sessions.  2. <b>Posters:</b> Summary of misuse of position restrictions.	3. Conduct online training session.	3. Draft All-Hands email about effective date and necessity of divestiture or withdrawal.	

Date	Communication & Mgmt Support	Training for Employees	Ethics Office	Who
Week before Effective Date	1. <b>All Hands Email:</b> Reminder about effective date. If you have not divested of all holdings, you should seek advice from ethics official.	2. Conduct online training session.	3. Create specialized training for quarterly supervisory meeting.	
Effective Date	1. <b>Posters:</b> New Ethics Rules are effective. Questions? Contact the Ethics Office at EthicsHelp@cfpb.gov.	Conduct last online training session.		