

Rules and Regulations

Federal Register

Vol. 59, No. 22

Wednesday, February 2, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2635

RINs 3209-AA04, 3209-AA15

Additional Grace Period Extension for Certain Existing Agency Standards of Conduct

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule; technical amendment.

SUMMARY: The Office of Government Ethics is granting an additional grandfathering grace period extension for up to one year for certain existing executive agency standards of conduct, dealing with financial interest prohibitions and prior approval for outside employment/activities, which have been temporarily preserved. This action is necessary because many agencies have not been able to develop, with OGE concurrence, supplemental regulations for such provisions during the first one-year grace period. This additional extension will help ensure that concerned agencies have adequate time to issue successor regulatory provisions to replace the restrictions noted.

EFFECTIVE DATE: February 2, 1994.

FOR FURTHER INFORMATION CONTACT: William E. Gressman, Office of Government Ethics, telephone: 202-523-5757, FAX: 202-523-6325.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics (OGE) is granting under the executive branch standards of ethical conduct an additional extension of time for up to one year, until February 3, 1995, for certain agencies' existing conduct standards dealing with prohibited financial interests and prior approval for outside employment and activities. When OGE published its ethical conduct standards for executive branch employees in the **Federal**

Register on August 7, 1992 (as now codified at 5 CFR part 2635), it provided, by means of notes following 5 CFR 2635.403(a) and 2635.803, that although most existing individual agency standards of conduct would be superseded once the executive branch-wide standards took effect on February 3, 1993, existing agency standards dealing with the two types of restrictions noted above would be preserved for one year (until February 3, 1994) or until the agency concerned issued a supplemental regulation, whichever occurred first. See 57 FR 35006-35067, as corrected at 57 FR 48557 and 52583.

Various executive branch departments and agencies have expressed an interest in developing supplemental regulations involving one or both of these types of provisions. Through OGE's liaison efforts, the Office of the Federal Register has assigned new chapters and parts at the end of title 5 of the Code of Federal Regulations to accommodate these agencies' future supplemental standards regulations (on these two and other appropriate subject areas), as well as any supplemental agency regulations under OGE's executive branch-wide financial disclosure provisions at 5 CFR part 2634. However, although some of the agencies have, with OGE concurrence, issued interim final or final supplemental regulations, many have not yet had the time to finalize their planned supplemental regulations.

The Office of Government Ethics has therefore determined to permit preservation of existing agency standards setting forth financial interest prohibitions and outside employment/activities prior approval requirements for up to one more year, until February 3, 1995 (or until issuance by each agency of its supplemental regulation, whichever comes first), while the concerned agencies continue to work to promulgate their new provisions in these two areas. The agencies subject to this additional grandfathering grace period extension are enumerated at new appendix A, which is being added to 5 CFR part 2635, in the order of the assignment of chapter numbers at the end of 5 CFR. Agencies not listed either have not expressed an interest in issuing supplemental agency regulations pursuant to 5 CFR 2635.105 (or 5 CFR 2634.103) or have already issued final or interim final supplemental regulations.

For agencies not listed in appendix A, the initial grace period for any existing standards of conduct financial interest prohibitions and prior approval for outside employment/activities expires on February 3, 1994.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553 (b) and (d), as Director of the Office of Government Ethics, I find good cause exists for waiving the general notice of proposed rulemaking and 30-day delay in effectiveness as to this grace period extension. The notice and delayed effective date are being waived because this rulemaking concerns a matter of agency organization, practice and procedure and because it is in the public interest that those agencies concerned have adequate time to promulgate successor provisions to their existing standards of conduct regulations in these two areas, while preserving existing restrictions in the meantime.

Executive Order 12866

In promulgating this grace period extension technical amendment, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This amendment has not been reviewed by the Office of Management and Budget under that Executive order, as it is not deemed "significant" thereunder.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this rulemaking does not contain information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2635

Conflict of interests, Government employees.

Approved: January 27, 1994.
 Stephen D. Potts,
 Director, Office of Government Ethics.

Accordingly, the Office of Government Ethics pursuant to its authority under title IV of the Ethics in Government Act is amending 5 CFR part 2635 as follows:

PART 2635—[AMENDED]

1. The authority citation for part 2635 continues to read as follows:

Authority: 5 U.S.C. 7351, 7353; 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.

2. The notes following both §§ 2635.403(a) and 2635.803 are amended by adding a new sentence at the end to read as follows:

Note: * * * Provided, that for those agencies listed in appendix A to this part, the grace period for any such existing provisions shall be extended for an additional year until February 3, 1995 (for a total of two years after the effective date of this part) or until issuance by each individual agency concerned of a supplemental regulation, whichever occurs first.

3. A new appendix A is added at the end of part 2635 to read as follows:

Appendix A to Part 2635—Agencies Entitled to Additional One-Year Grace Period Extension Pursuant to Notes Following §§ 2635.403(a) and 2635.803

1. Department of the Treasury
2. Federal Deposit Insurance Corporation
3. Department of Energy
4. Federal Energy Regulatory Commission
5. Department of the Interior
6. Department of Commerce
7. Department of Justice
8. Federal Communications Commission
9. Department of Veterans Affairs
10. Farm Credit Administration
11. ACTION
12. Securities and Exchange Commission
13. Office of Personnel Management
14. Thrift Depositor Protection Oversight Board
15. United States Information Agency
16. Occupational Safety and Health Review Commission
17. Department of State
18. Department of Labor
19. National Science Foundation
20. Small Business Administration
21. Department of Health and Human Services
22. Nuclear Regulatory Commission
23. Federal Labor Relations Authority
24. Department of Transportation
25. Pension Benefit Guaranty Corporation
26. Export-Import Bank of the United States
27. Department of Education
28. Environmental Protection Agency
29. Committee for Purchase from People Who Are Blind or Severely Disabled

30. National Transportation Safety Board
 31. General Services Administration
 32. Board of Governors of the Federal Reserve System
 33. National Aeronautics and Space Administration
 34. United States Postal Service
 35. National Labor Relations Board
 36. Equal Employment Opportunity Commission
 37. Inter-American Foundation
 38. Resolution Trust Corporation
 39. Department of Housing and Urban Development
 40. National Archives and Records Administration
 41. Peace Corps
 42. Federal Maritime Commission
 43. Tennessee Valley Authority
 44. Defense Nuclear Facilities Safety Board
 45. Consumer Product Safety Commission
 46. Executive Office of the President
 47. Department of Agriculture
 48. Federal Mine Safety and Health Review Commission
 49. National Endowment for the Humanities
 50. Federal Retirement Thrift Investment Board
 51. Office of Management and Budget
 52. Agency for International Development
- [FR Doc. 94-2289 Filed 2-1-94; 8:45 am]
 BILLING CODE 6345-01-U

FEDERAL RESERVE SYSTEM

12 CFR Part 231

Regulation EE; Docket No. R-0801]

Netting Eligibility for Financial Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board has adopted a rule to include certain entities under the definition of "financial institution" in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991 so that they will be covered by the Act's netting provisions. The Act authorizes the Board to expand the definition of "financial institution" to the extent consistent with the purposes of enhancing efficiency and reducing systemic risk in the financial markets.

EFFECTIVE DATE: March 7, 1994.

FOR FURTHER INFORMATION CONTACT:

Oliver Ireland, Associate General Counsel (202/452-3625), or Stephanie Martin, Senior Attorney (202/452-3198), Legal Division. For the hearing impaired *only*: Telecommunications Device for the Deaf, Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

Background

The Federal Deposit Insurance Corporation Improvement Act of 1991 (Act) (Pub. L. 102-242, sections 401-407; 105 Stat. 2236, 2372-3; 12 U.S.C. 4401-4407) validates netting contracts among financial institutions. Parties to a netting contract agree that they will pay or receive the net, rather than the gross, payment due under the netting contract. The Act provides certainty that netting contracts will be enforced, even in the event of the insolvency of one of the parties. The Act's netting provisions, effective December 19, 1991, are designed to promote efficiency and reduce systemic risk within the banking system and financial markets.

The netting provisions apply to bilateral netting contracts between two financial institutions and multilateral netting contracts among members of a clearing organization. Section 402(9) of the Act defines "financial institution" to include a depository institution, a securities broker or dealer, a futures commission merchant, and any other institution as determined by the Board. In addition, the Act's definition of "broker or dealer" (section 402(1)(B)) includes any affiliate of a registered broker or dealer, to the extent consistent with the Act, as determined by the Board.

Proposed Rule

In May 1993, the Board requested comment on a proposed regulation that would expand the application of the Act's netting provisions to a broader range of financial market participants (58 FR 29149, May 19, 1993). The Board proposed that persons meeting certain tests based on market activity would qualify as "financial institutions" under the Act. The proposed tests were designed to capture institutions that are significant market participants whose coverage could enhance market liquidity and whose failure without coverage could have systemic risk implications. The Board chose the activity-based tests instead of tests based on an institution's status as a regulated entity, its affiliation with a defined financial institution, or its class of charter. As these three latter tests likely would be both over- and under-inclusive, the Board believed they were not as appropriate as an activity-based test.

The test proposed by the Board had both a qualitative and a quantitative aspect. First, to qualify as a financial institution under the proposed rule, a