

§ 200.735-4

17 CFR Ch. II (4-1-03 Edition)

Regional Administrator as being sufficiently related to the employee's official duties, or important to the interests of the Commission to warrant the use of Commission facilities for their accomplishment. Division Directors, Office Heads and Regional Administrators may, for their own activities meeting the same criteria, obtain the concurrence of the Executive Director.

(ii) An employee has a positive duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to him or her.

(1) Participate, while on Government-owned or leased property or while on duty for the Government, in any gambling activity, including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket.

(12) Engage in unlawful or unethical conduct, or other conduct prejudicial to the Government.

[45 FR 36064, May 29, 1980; 45 FR 40975, June 17, 1980, as amended at 50 FR 23287, June 3, 1985; 53 FR 17458, May 17, 1988; 54 FR 33500, Aug. 15, 1989]

§ 200.735-4 Outside employment and activities.

(a) No member or employee shall permit his or her name to be associated in any way with any legal, accounting or other professional firm or office.⁸

(b)(1) No employee shall have any outside or private employment, activity, or affiliation incompatible with concurrent employment by the Commission. Incompatible activities include but are not limited to

(i) Employment or association with any securities exchange, association of securities dealers, or other self-regulatory organization either registered under the Securities Exchange Act of 1934 or otherwise involved with the securities industry, any registered

broker, dealer, registered municipal securities dealer, public utility holding company, investment company, investment adviser, securities information processor, transfer agent, clearing agency or other persons who are subject to regulation by the Commission, or where the facts relating to a particular employment would create an appearance of impropriety, because the employment is directly or indirectly related to the issuance, sale, purchase or investment of securities;

(ii) Legal, accounting, or engineering work for compensation involving matters in which the Federal government may be significantly interested;

(iii) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in or create the appearance of conflicts of interest;

(iv) Outside employment or activity which impairs the employee's mental or physical capacity to perform his or her Commission duties and responsibilities in an acceptable manner;

(2) For the purposes of this paragraph (b), the private employment of an employee's spouse, or other member of his or her immediate household with any securities exchange, association of securities dealers, or other self-regulatory organization either registered under the Securities Exchange Act of 1934 or otherwise involved in the securities industry, any registered broker, dealer, registered municipal securities dealer, public utility holding company, investment company, investment adviser, securities information processor, transfer agent, clearing agency or other persons who are subject to regulation by the Commission, or where the particular employment is directly related to the issuance, sale, purchase or investment of securities is deemed to be incompatible with the employee's concurrent employment by the Commission if the duties and activities incident to such employment relate directly to the official activities of the Commission employee, except as determined otherwise by the Commission in a specific case.

(i) *Member of his or her immediate household* is defined for the purposes of

⁸With respect to members, this paragraph supplements the statutory prohibition against outside employment contained in section 4(a) of the Securities Exchange Act of 1934, quoted in footnote 2. Except as otherwise indicated, the remaining provisions of this section are not made applicable to members in view of the provisions of section 4(a) of the Securities Exchange Act of 1934.

this paragraph as a resident of the employee's household who is related to the employee by blood or marriage.

(3) No employee shall accept or perform outside employment prohibited by law, regulations of the Office of Personnel Management or the rules in this subpart.

(4) No employee shall receive any salary or anything of monetary value from a private source as compensation for his or her services to the Government (18 U.S.C. 209), except as otherwise provided by law.

(5) The Commission encourages employees to engage in teaching, lecturing, and writing activities with or without compensation.⁹ In participating in such activities, employees should be guided by the following:

(i) No teaching, lecturing, or writing should be engaged in if prohibited by law, Executive order, Office of Personnel Management regulations, or the rules in this subpart.

(ii) No teaching, lecturing, or writing should be engaged in (including for the purpose of the special preparation of a person or class of persons for an examination of the Office of Personnel Management or Board of Examiners for the Foreign Service) that depends on information filed with the Commission, or obtained by the Commission in an investigation or otherwise, or generated within the Commission which is nonpublic, unless the Commission gives formal approval for the use of such nonpublic information on the basis that the use thereof is in the public interest.¹⁰

(6)(i) Subject to the specific prohibition and requirements set forth below,

⁹As to employees, while the receipt of honoraria is discouraged (See 17 CFR 200.735-4(b)(7)), that rule is not applicable to the receipt of compensation for teaching.

¹⁰Since members of the Commission are covered by section 401(a) of Executive Order 11222, they are prohibited by Civil Service Regulations (5 CFR 735.203(c)) from receiving compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of their agencies, or which draws substantially on official data or ideas which have not become part of the body of public information.

¹¹[Reserved]

the Commission may accept payment or reimbursement in cash or in kind, for travel and subsistence expenses actually incurred by Commission members and employees, while on official duty status, in connection with the participation of such members and employees in conferences, proceedings, meetings, seminars, and educational programs concerning the functions and responsibilities of the Commission and related topics.

(ii)(A) The Commission shall accept no payment or reimbursement for expenses described in paragraph (b)(6)(i) of this section from or in connection with a conference sponsored by:

(1) A person directly required to file reports or registration statements with the Commission, or

(2) A person directly or indirectly regulated by the Commission, or

(3) Any association or other group composed predominantly of persons regulated by the Commission, *Provided, however,* That the Chairman may authorize the Commission to accept payment or reimbursement from such a group. In determining whether to authorize such payment or reimbursement, the Chairman shall consider the benefits to the Commission and the public of participation in the particular program and the possibility of any appearance of impropriety.

(B) For purposes of this section, the phrase *person regulated by the Commission* means all persons whose activities are directly regulated by, or who are required to register with, the Commission, including but not limited to, such persons as brokers or dealers in securities, national securities exchanges, national securities associations, investment companies, investment advisers, public utility holding companies, and any self-regulatory organization, as that term is defined in section 3 of the Securities Exchange Act of 1934, 15 U.S.C. 78(c).

(iii)(A) Subordinate members of the staff who are invited to participate in programs which offer payment or reimbursement meeting the criteria of paragraph (b)(6)(i) of this section must, prior to participation, obtain the written approval of their Division Director, Office Head, or Regional Administrator to participate in the program and the

written approval of the Chairman, if paragraph (b)(6)(ii)(A)(3) of this section applies. If paragraph (b)(6)(ii)(A)(3) of this section does not apply, the Executive Director shall determine in writing whether the Commission will accept the payment or reimbursement.

(1) In acting on requests to participate, Division Directors, Office Heads, and Regional Administrators shall consider: (i) The benefit to the Commission and the public of participation; (ii) the expertise of the proposed participant; and (iii) the appropriate allocation of resources.

(2) In determining whether the Commission shall accept payment or reimbursement, the Executive Director shall consider the possibility of any appearance of impropriety.

(B) Division Directors, Office Heads, and Regional Administrators must, prior to participation, obtain the written approval of the Chairman, if paragraph (b)(6)(ii)(A)(3) of this section applies. If paragraph (b)(6)(ii)(A)(3) of this section does not apply, the Executive Director shall determine, in writing, considering the possibility of any appearance of impropriety, whether the Commission will accept the payment or reimbursement. Division Directors, Office Heads, and Regional Administrators shall make the determinations specified in paragraph (b)(6)(iii)(A)(1) of this section as to their own participation.

(C) Except if paragraph (b)(6)(ii)(A)(3) of this section applies, each Commissioner shall determine for himself or herself whether payment or reimbursement for his or her expenses incident to participation in programs meeting the criteria of paragraph (b)(6)(i) of this section should be accepted by the Commission. Notice of each decision shall be sent to the Executive Director.

(D) Whenever it is determined, pursuant to paragraphs (b)(6)(iii)(A), (B), or (C) of this section that the Commission will accept a particular payment or reimbursement, the Executive Director shall forward notice of that decision to the Public Reference Room, Washington, DC, for insertion in a public file.

(iv) Payment or reimbursement shall not be accepted for expenses which are unreasonable or lavish.

(v) On a quarterly basis, the Commission shall publish in the *SEC Docket* a compilation of payments and reimbursements accepted.

(vi) The Commission's acceptance from any person of payment or reimbursement for the expenses of a spouse or traveling companion accompanying a member or employee is prohibited. If a staff member wishes to participate in a program which offers payment or reimbursement meeting the criteria of paragraph (b)(6)(i) of this section and acceptance would not be prohibited by paragraph (b)(6)(ii) of this section, but is denied approval in accordance with paragraphs (b)(6)(iii)(A) or (B) of this section, or wishes to accept reimbursement for the travel expenses of his or her spouse or traveling companion, the staff member may participate in the program and accept such reimbursement personally, *Provided, That*:

(A) No reimbursement for travel expenses may be accepted from a person who does, or is seeking to do, business with the Commission, is regulated directly or indirectly by the Commission, is registered with the Commission, or has interests which may be substantially affected by the official's performance or non-performance of his or her official duties.

(B) No reimbursement may be accepted for the travel expenses of an employee's spouse or traveling companion unless the prior written approval of the General Counsel is obtained. Under appropriate circumstances, such as programs where participants are expected to engage in social activities, the General Counsel may approve acceptance upon written application.

(C) A copy of the General Counsel's approval and notice of the amount of payment or reimbursement accepted from the sponsor must be sent to the Executive Director for inclusion in the public file in accordance with paragraph (b)(6)(iii)(D) of this section.

(D) Such staff member's participation and travel occur only while on annual leave, approved in accord with regular leave procedures. *Note* 7 CFR 200.735-4(e)(2)(ii).

(vii) Members or employees who are participating in a program meeting the criteria of paragraph (b)(6)(i) of this section, which is sponsored by a person

determined by the Secretary of the Treasury to be a tax-exempt organization pursuant to 26 U.S.C. 501(c)(3), and for which reimbursement for the member's or employee's participation will be accepted by the Commission, may, while on official duty, accept from the sponsoring entity *bona fide* reimbursement for actual expenses for travel and necessary subsistence for a spouse or traveling companion *Provided* that the procedures detailed in paragraphs (d)(6)(vi) (A)-(C) of this section are followed.

(7) The provisions of this paragraph (b) and § 200.735-3(b)(2) do not preclude a member or employee from:

(i) Participation in the activities of national or State political parties not proscribed by law;

(ii) Participation in the affairs of, or acceptance of an award for a meritorious public contribution or achievement given by, a charitable, religious, professional, social, fraternal, non-profit educational, recreational, public service, or civic organization.

(8)(i) As a matter of general policy, the Commission discourages the acceptance of honoraria or similar fees and payments which are given for publications, speeches or lectures based on the official duties of the employee. In accord with this policy, no member or employee may accept such an honorarium unless written approval is obtained in advance from the Commission's General Counsel, subject to the general review of the Commission. Requests for such approval should be submitted to the General Counsel in writing and should include a statement in support of the request.

(ii) Honoraria which are most likely to be deemed acceptable are those which appear to be remuneration for teaching. An employee may not, under any circumstances, accept an honorarium from any person from whom reimbursement for travel expenses is prohibited by paragraph (b)(6)(ii) of this section. In any event an employee may not accept an excessive honorarium as described in 2 U.S.C. 441(i). This section does not preclude the acceptance of a modest gift for participation as a speaker, as provided in Rule 3.

(c) No employee shall appear in court or on a brief in a representative capac-

ity (with or without compensation) or otherwise accept or perform legal, accounting, engineering, or similar professional work, unless specifically authorized to do so by the Commission. Acceptance of a forwarding fee shall be deemed to be within the foregoing prohibition. As a matter of general policy, outside or private professional work or practice by the staff is discouraged and only in unusual cases or circumstances will it be authorized. However, the Commission encourages its employees, in off-duty hours and consistent with official responsibilities, to participate, without compensation, in programs to provide legal or other appropriate assistance and representation to indigents.¹² Such participation may include limited appearances in court and on briefs when required in connection with such programs. However, such participation may not involve any activities which are prohibited by law, Executive orders, Office of Personnel Management regulations, or this subpart M.¹³ For example, 18 U.S.C. 205 prohibits a Federal employee from appearing in court in a matter in which the United States has an interest

¹²As a matter of policy, the Commission encourages members of its staff to participate in matters involving improvement to their communities and service to indigent persons, provided that the necessary approval is obtained in advance. However, in no case will approval be given to participate in matters involving securities.

¹³Attention is called to Title 18, United States Code, sections 201 through 209 which provide, among other things, that Federal employees are prohibited from acting as agent or attorney in prosecuting any claim against the United States or from aiding and assisting in any way, except as otherwise permitted in the discharge of official duties, in the prosecution or support of any such claim, or from receiving any gratuity, or any share of an interest in any claim from any claimant against the United States; and from directly or indirectly receiving or agreeing to receive any compensation whatever for services rendered or to be rendered to any persons in relation to any matter in which the United States is a party or directly or indirectly interested. 18 U.S.C. 205 contains an exception from the foregoing restrictions for acting as agent or attorney, without compensation, for government employees who are the subject of disciplinary, loyalty or other personnel-type proceedings, in connection with these proceedings.

(other than on behalf of the United States), without regard to compensation.

(1) The provisions of this paragraph (c) and § 200.735-3(b)(2) do not preclude an employee from:

(i) Acting without compensation as agent or attorney (A) for a Commission employee who is sued or is under investigation in connection with his or her official duties; (B) for any Commission employee who is the subject of disciplinary, loyalty or other personnel administrative proceedings in connection with those proceedings; or (C) for any Commission employee who raises claims or against whom allegations of wrongdoing are made pursuant to the Commission's Equal Opportunity regulations, if such representation is not inconsistent with the faithful performance of the employee's duties.¹⁴

(2) [Reserved]

(d) No member or employee shall hold office in or be a director of any company which has public security holders, except not for profit corporations, savings and loan associations, and similar institutions, whose securities are exempted under section 3(a)(4) or 3(a)(5) of the Securities Act of 1933 (15 U.S.C. 77c(a)(4), 77c(a)(5)).

(e)(1) As paragraph (b)(5) of this section indicates, the Commission encourages employees to engage in teaching, lecturing and writing activities.¹⁵ It is understood, however, that Commission employees in their teaching, writing and lecturing shall not

(i) Use confidential or nonpublic information;

(ii) Make comments on pending litigation in which the Commission is participating as a party or *amicus curiae*; or

(iii) Make comments on rulemaking proceedings pending before the Com-

mission which would adversely affect the operations of the Commission.

(2) To assist employees in conforming to these requirements the following procedure for reviewing writings prior to publication, or prepared speeches prior to delivery, has been established:

(i) Employees must submit proposed publications or prepared speeches relating to the Commission, or the statutes or rules it administers, to the General Counsel for review. Employees will be notified as promptly as possible, with due regard to publication deadlines, but in any event within 30 days of receipt of the written document, whether such document conforms to the requirements of this Rule.

(ii) A determination by the General Counsel that a proposed publication conforms to the requirements of the rule will not involve adoption of, or concurrence in, the views expressed. Therefore, such publication or speech shall include at an appropriate place or by way of footnote, or otherwise, the following disclaimer of responsibility:

The Securities and Exchange Commission, as a matter of policy, disclaims responsibility for any private publication or statement by any of its employees. The views expressed herein are those of the author and do not necessarily reflect the views of the Commission or of the author's colleagues upon the staff of the Commission.

In appropriate cases, the above disclaimer may be modified by the General Counsel or the Commission to reflect the circumstances of an individual case. In addition, any publication or speech which reflects positions taken by the Commission shall set forth those positions accurately and, if it contains differences with Commission positions, it shall clearly state that such positions are those of the employee.

(f) An employee who intends to accept or perform any outside or private employment or professional work shall obtain necessary authorization in advance of such acceptance or performance. A request for such authorization shall be submitted to the Division Director, Office Head or Regional Administrator concerned, together with all pertinent facts regarding the proposed employment, such as the name of the employer, the nature of the work to be

¹⁴This is adapted from the provision in 18 U.S.C. 205 and expresses the Commission's general policy which favors the representation of fellow employees without compensation. However, it may be necessary to look to other regulations for specific provisions regarding such representation.

¹⁵This paragraph (e), requiring review of prepared speeches or writings relating to the Commission, does not apply to teaching activities.

performed, its estimated duration, and the fee or compensation to be received. Division Directors, Office Heads and Regional Administrators have been delegated the authority to approve routine requests for outside employment. The approving official shall forward to the Director of Personnel a copy of each request showing the date of approval. Requests of a non-routine nature should be forwarded to the Director of Personnel.

(g) The Director of Personnel, or his designee, is authorized to approve or disapprove requests for outside or private employment under this rule, except as to those cases which, in his judgment, should be considered and decided by the Commission. An employee may appeal a disapproved request to the Commission. The written appeal, submitted through the Director of Personnel, shall give reasons why the proposed outside or private employment is consistent with this rule. The Director of Personnel may not approve proposed outside or private employment which is absolutely prohibited by these rules. The Commission may, in a particular case, approve such employment.¹⁶

(Pub. L. 98-38)

[45 FR 36064, May 29, 1980; 45 FR 40975, June 17, 1980; 48 FR 39216, Aug. 30, 1983; 50 FR 45603, Nov. 1, 1985]

§ 200.735-5 Securities transactions.

(a)(1) This section applies to all transactions effected by or on behalf of a member or employee. This includes transactions for the accounts of other persons effected by the member or employee, directly or indirectly, under a power of attorney or otherwise. In addition, a member or employee is considered to have sufficient interest in the securities transactions of his or her spouse or unemancipated minor child or other member of his or her immediate household so that transactions effected by or on behalf of such persons must be reported and are subject to all the terms of this section.

(i) Except, this section shall not apply to securities transactions of a legally separated spouse living apart

¹⁶The Commission does not favor the granting of waivers from the provision of this subsection.

from the member or employee, including transactions for the benefit of a minor child, if the member or employee has no power to control and does not, in fact, advise or control with regard to such transactions. If the member or employee has knowledge of securities held by a separated spouse or for the benefit of a minor child, the disqualification provisions of Rule 6, 17 CFR 200.735-6, and 18 U.S.C. 208 are applicable.

(ii) For purposes of this section *member of his or her immediate household* means a resident of the member's or employee's household who is related to the employee by blood or marriage or who is in the legal care and/or custody of the employee by reason of adoption, prospective adoption or guardianship.

(2) Members and employees are prohibited from recommending or suggesting the purchase or sale of securities:

(i) Based on non-public information gained in the course of employment; or

(ii) Which a member or employee could not purchase because of the restrictions of this rule, in any circumstance in which the member or employee could reasonably expect to benefit from the recommendation, or to anyone over whom the member or employee has or may have control or substantial influence.

(b)(1) No member or employee shall effect or cause to be effected any transaction in a security except for bona fide investment purposes. Therefore, all securities purchased by a member or employee must be held for a minimum of six months. Except, this holding period is not applicable to

(i) Securities sold for less than the purchase price pursuant to a stop-loss order entered at the time of purchase and submitted to the Office of Personnel with the report of purchase;

(ii) Money market fund shares;¹⁷

(iii) Securities purchased by a member or employee prior to entrance on duty with the Commission;

¹⁷For purposes of this rule a *money market fund* is defined as an open end investment company whose investment policy calls for investment of at least 80% of its assets in debt securities maturing in 13 months or less.