

Commissioner for Administration and approved by the Conflict of Interest Review Board as an amendment to the original exception. A memorandum recording such approval shall be made public in accordance with paragraph (b) of this section.

(d) An employee may temporarily retain a prohibited financial interest pending review of a written request for an exception submitted in accordance with this section.

(e) Except as provided in § 73a.735-501(c), no employee may participate in an official matter whose outcome will have a direct and predictable effect on a financial interest held by him. This prohibition applies to official matters handled before and after approval of an exception under this section.

Subparts F-I [Reserved]

Subpart J—Statements of Employment and Financial Interests

§ 73a.735-1004 Submission and review of statements.

(a) Employees occupying control activity positions shall file Form HHS-473 "Confidential Statement of Employment and Financial Interests" with the Associate Commissioner for Administration within 30 days after entrance in this category and annually thereafter as of June 30, or such other dates as the Secretary, with the concurrence of the Civil Service Commission, may approve. Prior to the due date, the Associate Commissioner for Administration shall advise "control activity" employees of the annual filing requirement through normal administrative channels. The annual reporting requirement shall commence as of June 30, 1977.

(b) The Associate Commissioner for Administration (or his designee) shall serve as the principal reviewing official for Outside Activity Forms, HHS-520 and 521, and shall make final determinations on matters arising from activities reported on Form HHS-473.

PART 73b—DEBARMENT OR SUSPENSION OF FORMER EMPLOYEES

Sec.

- 73b.1 Scope.
- 73b.2 Rules and regulations.
- 73b.3 Reports of violations.
- 73b.4 Proceedings.
- 73b.5 Hearings.

AUTHORITY: 18 U.S.C. 207(j).

SOURCE: 47 FR 17505, Apr. 23, 1982, unless otherwise noted.

§ 73b.1 Scope.

This part contains rules governing debarment or disqualification action against a former officer or employee of the Department, including former and retired officers of the commissioned corps of the Public Health Service, because of violation of the post-employment restrictions of the conflict of interest laws and regulations.

§ 73b.2 Rules and regulations.

This part will be applied in accordance with the standards established by the Office of Government Ethics in its regulations, 5 CFR Part 737, and interpretations thereof. Former officers and employees of the Department may request advice and assistance in compliance with those regulations from the Assistant General Counsel, Business and Administrative Law Division, Department of Health and Human Services.

§ 73b.3 Reports of violations.

(a) If an officer or employee of the Department has reason to believe that a former officer or employee of the Department has violated any provision of 18 U.S.C. 207 (a), (b) or (c) or if any such officer or employee receives information to that effect, he/she shall promptly make a written report thereof which shall be forwarded to the Inspector General. If any other person has information of such violations, he/she may make a report thereof to the Inspector General or to any officer or employee of the Department.

(b) The Inspector General shall coordinate proceedings under this part with the Department of Justice in

§ 73b.4

cases where it appears criminal prosecution is warranted.

§ 73b.4 Proceedings.

(a) Upon a determination by the Assistant General Counsel, Business and Administrative Law Division, or his/her designee, after investigation by the Inspector General, that there is reasonable cause to believe that a former officer or employee, including a former special Government employee, of the Department of Health and Human Services (former departmental employee) has violated 18 U.S.C. 207 (a), (b) or (c), the Assistant General Counsel, or his/her designee, shall cause a copy of written charges of the violation(s) to be served upon such individual, either personally or by registered mail. The charges shall be accompanied by a notice to the former departmental employee to show cause within a specified time of not less than 30 days after receipt of the notice why he/she should not be prohibited from engaging in representational activities in relation to matters pending in the Department, as authorized by 18 U.S.C. 207(j), or subjected to other appropriate debarment or disqualification action under that statute. The notice to show cause shall include:

(1) A statement of allegations, and their bases, sufficiently detailed to enable the former departmental employee to prepare an adequate defense;

(2) Notification of the right to a hearing, and that failure to answer shall constitute a waiver of defense; and

(3) An explanation of the method by which a hearing may be requested.

(b) If a former departmental employee who submits an answer to the notice to show cause does not request a hearing or if the Assistant General Counsel does not receive an answer within the time prescribed by the notice, the Assistant General Counsel shall forward the record, including the report(s) of investigation, to the Assistant Secretary for Personnel Administration (Assistant Secretary). In the case of a failure to answer, such failure shall constitute a waiver of defense.

(c) Upon receipt of a former departmental employee's request for a hearing, the Assistant General Counsel shall notify him/her of the time and

45 CFR Subtitle A (10-1-07 Edition)

place thereof, giving due regard both to such person's need for an adequate period to prepare a suitable defense and an expeditious resolution of allegations that may be damaging to his or her reputation.

(d) The presiding officer at the hearing and any related proceedings shall be a federal administrative law judge. He/she shall insure that the former departmental employee has the following rights:

(1) To self-representation or representation by counsel,

(2) To introduce and examine witnesses and submit physical evidence,

(3) To confront and cross-examine adverse witnesses,

(4) To present oral argument, and

(5) To a transcript or recording of the proceedings, upon request.

(e) The Assistant General Counsel shall designate one or more officers or employees of the Department to present the evidence against the former departmental employee and perform other functions incident to the proceedings.

(f) A decision adverse to the former departmental employee must be sustained by substantial evidence that he/she violated 18 U.S.C. 207 (a), (b) or (c). If a judgment of conviction has been entered by a Federal district court against the former departmental employee for violation of 18 U.S.C. 207 (a), (b) or (c), regardless of whether the judgment is based upon a verdict or a plea of guilty, such judgment of conviction shall be conclusive evidence of a violation of 18 U.S.C. 207 (a), (b) or (c), unless and until the judgment is vacated or reversed on appeal.

(g) The administrative law judge shall issue an initial decision based exclusively on the transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, and shall set forth in the decision findings and conclusions, supported by reasons, on the material issues of fact and law presented on the record.

(h) Within 30 days after issuance of the initial decision, either party may appeal in writing to the Assistant Secretary who in that event shall issue the final decision based on the record of the proceedings or those portions