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The National Treasury Employees Union

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OFFICE OF GENERAL
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OFFICE OF THE NATIONAL PRESIDENT COLLEEN M. KELLEY

DATE: June 16, 2010

TO: Robert M. Knopf, ASST. Gen. Counsel
FEC

FAX NO.: 202-219-3923

FROM: Colleen M. Kelley

Confidential? Yes No

Total number of pages, including this page: 4

RE: _____

Our fax number is 202-572-5641.

NTEU

The National Treasury Employees Union

June 16, 2010

VIA FACSIMILE (202) 219-3923
AND FIRST CLASS MAIL

Robert M. Knop
Assistant General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

RE: Proposed Amendments to Standards of Conduct
5 C.F.R. Chapter XXXVII
RIN 3209-AA15

Dear Mr. Knop:

The National Treasury Employees Union ("NTEU") submits these comments in response to the May 17, 2010 *Federal Register* notice of the Federal Election Commission's ("FEC") proposed supplemental regulations in 5 C.F.R. Part 4701, which govern standards of conduct for FEC employees. See 75 Fed. Reg. 54075. We primarily highlight the problems in administering a process that broadly encompasses any type of employment or activity performed outside of an employee's official duties, and we discuss the administrative burden it would have on both supervisors and staff in processing these requests. Additionally, to the extent that this matter is already addressed in the FEC/NTEU Labor Management Agreement ("LMA"), NTEU requests that the FEC not apply these proposed provisions to bargaining unit employees until such time that it has provided notice to NTEU and given us an opportunity to bargain these changes which the FEC seeks to codify.

1. Prior Approval Requirement

The supplemental provision proposed as 5 CFR 4701.102(b)(2) creates a substantial burden on employees to receive prior approval from the employer with respect to any outside employment or activity that involves the application of the same specialized skills or the same educational background as used in the performance of the employee's official duties. First, the proposed provision fails to specify how the employer will determine if an outside activity requires the same specialized skills or educational background as used in the performance of his/her official duties. For instance, if an employee with a degree in Criminal Justice is hired as an investigator within the agency, will he/she have to receive prior approval to assist with a neighborhood search of a missing child? Or, participate in a neighborhood watch? Under the proposed regulation, the employee would need prior approval before he/she could assist in this activity because arguably, he/she will be using both her educational background and specialized skills to conduct the search. See *Proposed* 5 CFR 4701.102(a)(3)(iii), (a)(4) and (b)(2). However, it is impossible to fathom how this neighbor's act of goodwill would somehow interfere or conflict with federal law. The proposal and its explanation fail to justify why the use

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of the same specialized skills or educational background as used in the employee's position may interfere with the efficient performance of the employee's official duties or cause a conflict of interests with his/her official duties.

Additionally, the proposed provision fails to acknowledge that employees' occupational and educational interests may extend beyond federal employment and into civic activities where they may employ the same skills. A prior approval requirement specifically for activities that "involve the application of the same specialized skills or the same educational background as used in the performance of the employee's official duties" may deter employees from participating in any activity that is remotely related to his/her profession. On the other hand, such an all-encompassing criterion may cause an influx in requests, and become an administrative burden to the agency.

Accordingly, the proposed provision 5 CFR 4701.102(b)(2) should be eliminated as it includes so many outside activities that obviously do not conflict with federal employment or law, and may deter employees from participating in community activities or cause a greater administrative burden in having to process so many requests.

2. Submission of Requests for Approval

The supplemental provision proposed in 5 CFR 4701.102(c) requires that the request for approval "be sent through all of the employee's supervisors." The requirement is too broad and overly burdensome. First, it does not specify whose responsibility it is, the employee's or first line supervisor's, to have each supervisor in the chain of command approve the employee's request. Additionally, some employees may have three to four supervisors in the chain of command. Therefore, what happens when two supervisors approve the requests and the other one does not? Having multiple supervisors approve a request that will eventually be submitted to the Designated Agency Ethics Official ("DAEO") for final written approval does not enhance or otherwise ensure that the process for determining whether an employee's actions are ethical. If anything, it creates a long, burdensome process for not only employees, but supervisors, which is unnecessary, especially when the DAEO has the ultimate authority to approve such requests.

Furthermore, the parties' LMA provides the employer with only ten days to respond to an employee's request for outside employment. This deadline would almost be impossible for the agency to meet if an employee has three or four supervisors in his chain of command, each of whom need to approve the requests. Additionally, the LMA only requires one approval and not multiple as the proposed language requires.

Therefore, the proposed provision should be consistent with the LMA and only require employees to receive approval from the DAEO.

3. Standard for Approval

The supplemental provision proposed in 5 CFR 4701.102(d) sets forth the standard for approval as "the outside employment is not expected to involve conduct prohibited by statute or Federal regulation..." which is too broad and subjective. First, the proposed provision allows every supervisor in an employee's chain of command to make this determination regardless of whether the supervisor is trained, as the DAEO is, to make these types of decisions.

Moreover, the use of "expected to" is too broad and subjective, and fails to specify an exact standard. How does a supervisor determine if an activity "is expected to" involve prohibited conduct? Instead of making this a streamlined process, the proposed provision further complicates matters by creating a subjective standard which will undoubtedly lend itself to be challenged on a frequent basis.

Additionally, the proposed provision directly conflicts with the parties' LMA, which states that "such a request [for outside employment] will be disapproved only if it conflicts with the provisions of Section 1." Section 1 covers interference with the performance of regular duties, conflicts of interests, or violation of law, rule, or regulation. Unlike the proposed provisions, the LMA sets forth objective criteria that should be applied to current information with respect to the outside employment or activity, and is not based upon the approving official's expectation.

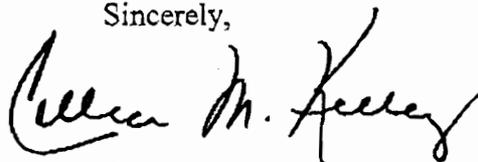
Therefore, the proposed provision should be consistent with the language in the parties' LMA, and at the very least, reflect a more definitive and objective criteria that is clear to employees, such as the following: "Approval shall be granted only upon a determination that the outside employment does not involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635."

4. Bargaining Unit Employees

Due to the fact that the proposed provisions have a substantial impact on the working conditions of bargaining unit employees, and in some cases, conflict with the parties' LMA, NTEU would like to receive notice and an opportunity to bargain these proposed changes prior to them being codified or applied to FEC bargaining unit employees.

NTEU thanks FEC for the opportunity to submit these comments.

Sincerely,



Colleen M. Kelley
National President