

SOCO ADVISORY

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Standards of Conduct Office

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Clarification Relating to Typographical Error in Recent 5 C.F.R. § 3601.106 Revision

The purpose of this Advisory is to ensure DoD ethics officials correctly advise financial disclosure report filers on the requirement for prior approval of certain outside employment or business activities, and to alert ethics officials to a typographical error in 5 C.F.R. § 3601.106 that is in the process of being corrected.

On February 28, 2023, DoD published in the Federal Register the final rule revising the Supplemental Standards of Ethical Conduct for Employees of the Department of Defense. Included in this revision were changes to Section 2601.106 “Prior approval for outside employment and business activities.” The primary purpose of this revision was to remove the requirement for *written* prior approval that financial disclosure filers must receive to engage in certain outside employment or business activities. The requirement for prior approval was retained, with such approval documented annually in the applicable electronic financial disclosure filing system. However, in the final stages of coordination, a typographical error resulted in the relocation of a comma in the first sentence of paragraph (a). This error may lead to an incorrect and unintended interpretation of DoD’s prior approval requirement.

The sentence with the error currently states:

“A DoD employee, other than a special Government employee who is required to file a financial disclosure report (OGE Forms 450 or 278e), shall obtain approval from the agency designee before engaging in a business activity or compensated outside employment with a prohibited source, unless general approval has been given in accordance with paragraph (b) of this section.”

The correct sentence should state:

“A DoD employee, other than a special Government employee, who is required to file a financial disclosure report (OGE Forms 450 or 278e) shall obtain approval from the agency designee before engaging in a business activity or compensated outside employment with a prohibited source, unless general approval has been given in accordance with paragraph (b) of this section.”

SOCO is initiating the process to publish a technical correction. In the interim, DoD ethics officials should interpret and apply the new rule as if the correct language above were in the published version.

DISCLAIMER: The purpose of this advisory is to disseminate relevant information and sources of general guidance, policy, and law on Government Ethics issues to the Department of Defense ethics community. This advisory is not intended to be and should not be used in lieu of legal advice.

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