

meeting announcement for informational briefings sponsored by the military, a document confirming an appointment with a counselor or school official, or a copy of a bill for services for the handling of legal or financial affairs;

(2) The approximate date on which the qualifying exigency commenced or will commence;

(3) If an employee requests leave because of a qualifying exigency for a single, continuous period of time, the beginning and end dates for such absence;

(4) If an employee requests leave because of a qualifying exigency on an intermittent or reduced leave schedule basis, an estimate of the frequency and duration of the qualifying exigency; and

(5) If the qualifying exigency involves meeting with a third party, appropriate contact information for the individual or entity with whom the employee is meeting (such as the name, title, organization, address, telephone number, fax number, and e-mail address) and a brief description of the purpose of the meeting.

(c) *Verification.* If an employee submits a complete and sufficient certification to support his or her request for leave because of a qualifying exigency, the agency may not request additional information from the employee. However, the agency may verify the information described in paragraphs (c)(1) and (c)(2) of this section and does not need the employee's permission to do so.

(1) If the qualifying exigency involves meeting with a third party, the agency may contact the individual or entity with whom the employee is meeting for purposes of verifying a meeting or appointment schedule and verifying the information provided in the employee's statement under paragraph (b)(1) of this section regarding the meeting between the employee and the specified individual or entity. No additional information may be requested by the agency.

(2) An agency may contact an appropriate unit of the Department of Defense to request verification that a covered military member is on covered active duty or call to covered active duty status. No additional information may be requested by the agency.

■ 9. In § 630.1210 as redesignated, revise the last three sentences in paragraph (h) and all of paragraph (l) to read as follows:

**§ 630.1210 Protection of employment and benefits.**

\* \* \* \* \*

(h) \* \* \* The same conditions for verifying the adequacy of a medical certification in § 630.1208(c) apply to the medical certification to return to work. No second or third opinion on the medical certification to return to work may be required. An agency may not require a medical certification to return to work during the period the employee takes leave intermittently or under a reduced leave schedule under § 630.1205.

\* \* \* \* \*

(l) An employee who does not comply with the notification requirements in § 630.1207 and does not provide medical certification signed by the health care provider that includes all of the information required in § 630.1208(b) is not entitled to family and medical leave.

■ 10. In redesignated § 630.1213, revise paragraph (b)(3) to read as follows:

**§ 630.1213 Records and reports.**

\* \* \* \* \*

(b) \* \* \*

(3) The number of hours of leave taken under § 630.1203(a), including any paid leave substituted for leave without pay under § 630.1206(b); and

\* \* \* \* \*

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**MERIT SYSTEMS PROTECTION BOARD**

**5 CFR Part 1201**

**Practices and Procedures**

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Final rule.

**SUMMARY:** The Merit Systems Protection Board (MSPB or the Board) is amending its rules of practice and procedure to clarify procedures regarding the issuance and citation of nonprecedential Orders.

**DATES:** This Final Rule is effective October 1, 2011.

**FOR FURTHER INFORMATION CONTACT:** William D. Spencer, Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW., Washington DC 20419; (202) 653-7200, fax: (202) 653-7130, or e-mail: [mspb@mspb.gov](mailto:mspb@mspb.gov).

**SUPPLEMENTARY INFORMATION:** On October 5, 2010, the MSPB published an interim rule amending 5 CFR 1201.117. (75 FR 61321) The interim rule amended 5 CFR 1201.117(c) to make clear that the Board may, in its discretion, include discussion of issues

raised in an appeal in a nonprecedential Order and amended 5 CFR 1201.117(b) to make clear that the Board may issue a final decision and, when appropriate, order a date for compliance with that decision.

The Board received comments concerning this interim rule from two individuals. The first commenter expressed unease with 5 CFR 1201.117(a)(5) and feared that this provision could be used to "scuttle" cases and asked that this provision be amended to state clearly that it would not be used to the detriment of employees and applicants for Federal positions. The interim rule did not amend 5 CFR 1201.117(a)(5). The Board has considered this comment and declines to amend this section.

A second commenter offered several observations. First, this commenter noted that there was no need for a separate class of nonprecedential Orders because the Board has in the past used footnotes to provide additional information in cases summarily denying petitions for review. The Board has considered this comment, but has determined that the goal of giving parties greater insight into the Board's reasoning in a particular case, without requiring the Board to issue a precedential decision, is best served by the issuance of nonprecedential Orders. This commenter also expressed the concern that if the Board's purpose was to avoid publication of nonprecedential Orders on the Board's Web site or by other reporting services, this goal would likely be thwarted by commercial reporting services with the result that two classifications of Board decisions would be published and ultimately cited by parties. The Board's goal was not to avoid publication of nonprecedential Orders. The Board will post nonprecedential Orders on its Web site. In addition, this final rule contains specific guidelines for the citation of nonprecedential Orders. Finally, this commenter opined that issuance and publication of nonprecedential Orders would complicate legal research, lead to confusion, and not serve the goal of open government. As noted above, the Board has included specific guidelines for the citation of nonprecedential Orders. Further, the Board is convinced that the issuance and publication of nonprecedential Orders will serve the goal of openness in the Board's decision-making by giving parties greater insight into the Board's reasoning.

The amendments in this final rule affect only 5 CFR 1201.117(c) and include updated procedures for the issuance of Opinions and Orders and

nonprecedential Orders, explain that parties may cite nonprecedential Orders, and also explain that the Board is not bound by nonprecedential Orders in its future decisions.

The Board believes that issuing and publishing nonprecedential Orders that include a substantive review of issues presented in an appeal will serve the useful purpose of informing parties of the Board's reasoning in a particular appeal. In addition, the new regulation should ensure the maximum degree of transparency in the Board's decision-making to the greatest extent possible.

#### List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Government employees.

Accordingly, the Board amends 5 CFR part 1201 as follows:

#### PART 1201—[AMENDED]

■ 1. The authority citation for part 1201 continues to read as follows:

**Authority:** 5 U.S.C. 1204, 1305, and 7701, and 38 U.S.C. 4331, unless otherwise noted.

■ 2. Revise § 1201.117 to read as follows:

#### § 1201.117 Board decisions; procedures for review or reopening.

(a) In any case that is reopened or reviewed, the Board may:

- (1) Issue a single decision that denies or grants a petition for review, reopens an appeal, and decides the case;
- (2) Hear oral arguments;
- (3) Require that briefs be filed;
- (4) Remand the appeal so that the judge may take further testimony or evidence or make further findings or conclusions; or

(5) Take any other action necessary for final disposition of the case.

(b) The Board may affirm, reverse, modify, or vacate the initial decision of the judge, in whole or in part. The Board may issue a final decision and, when appropriate, order a date for compliance with that decision.

(c) The Board may issue a decision in the form of a precedential Opinion and Order or a nonprecedential Order.

(1) *Opinion and Order.* An Opinion and Order is a precedential decision of the Board and may be appropriately cited or referred to by any party.

(2) *Nonprecedential Orders.* A nonprecedential Order is one that the Board has determined does not add significantly to the body of MSPB case law. The Board may, in its discretion, include in nonprecedential Orders a discussion of the issue(s) to assist the parties in understanding the reason(s) for the Board's disposition in a

particular appeal. Nonprecedential Orders are not binding on the Board or its administrative judges in any future appeals except when it is determined they have a preclusive effect on parties under the doctrines of res judicata (claim preclusion), collateral estoppel (issue preclusion), judicial estoppel, or law of the case. Parties may cite nonprecedential Orders, but such orders have no precedential value; the Board and its administrative judges are not required to follow or distinguish them in any future decisions. In contrast, a precedential decision issued as an Opinion and Order has been identified by the Board as significantly contributing to the Board's case law.

**William D. Spencer,**  
*Clerk of the Board.*

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## DEPARTMENT OF THE TREASURY

### Office of Financial Research

#### 12 CFR Chapter XVI

RIN 1505-AC38

#### Supplemental Standards for Ethical Conduct for Employees of the Department of the Treasury

**AGENCY:** Office of Financial Research, Treasury.

**ACTION:** Interim rule.

**SUMMARY:** The Department of the Treasury (Department), with the concurrence of the Director of the Office of Government Ethics (OGE), is establishing a new chapter in Title 12 of the Code of Federal Regulations to incorporate certain post-employment prohibitions that apply to employees of the Office of Financial Research (OFR). The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) provides for certain post-employment prohibitions if OFR employees have had access to transaction or position data or other business confidential information about financial entities required to report to OFR.

**DATES:** *Effective date:* September 30, 2011. *Comment due date:* November 29, 2011.

**ADDRESSES:** Interested persons are invited to submit comments on all aspects of the interim rule through one of these methods:

*Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. Electronic

submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Department to make them available to the public. Comments submitted electronically through the <http://www.regulations.gov> Web site can be viewed by other commenters and interested members of the public.

*Mail:* Department of the Treasury, Office of Financial Research, Attention: Post-Employment Interim Rule, Room 1334, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Fax and e-mail comments will not be accepted.

**Instructions:** In general, the Department will enter all comments received into the docket and make them available, without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. Properly submitted comments will be available for inspection and downloading at <http://www.regulations.gov>.

You may personally inspect comments at the Department of the Treasury Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC. You can make an appointment to inspect comments by calling (202) 622-0990.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Horton, Deputy Assistant General Counsel (Ethics) at (202) 622-0450 or [Ethics@treasury.gov](mailto:Ethics@treasury.gov).

**SUPPLEMENTARY INFORMATION:** Dodd-Frank (Pub. L. 111-203), sets forth rules that apply to employees of the OFR. This interim rule establishes 12 CFR chapter XVI, consisting of part 1600, which generally prohibits the Director of the OFR and any employee of the OFR who has had access to the transaction or position data maintained by OFR's Data Center or other business confidential information about financial entities required to report to the OFR from being employed by or providing advice or consulting services to a financial company, for a period of one year after last having had access in the course of official duties to such transaction or position data or business confidential information, regardless of whether that entity is required to report to the OFR.