

**Office of Government Ethics**  
**94 x 18 -- 11/03/94**

**Letter to the Monitoring Director of an  
Employee Association dated November 3, 1994**

Thank you for your letter of October 17, 1994, in which you express certain concerns about the Standards of Ethical Conduct for Employees of the Executive Branch regulation (the Standards) and supplemental regulations that may be issued for employees of your agency.

You have asked for guidance about example 5 in the "Use of nonpublic information" section of the Standards, at 5 C.F.R. § 2635.703. Section 2635.703 of the Standards provides that employees may not use or allow the use of nonpublic information to further their own private interests or the private interests of others. Example 5 explains this rule as follows:

An employee of the Army Corps of Engineers is actively involved in the activities of an organization whose goals relate to protection of the environment. The employee may not, other than as permitted by agency procedures, give the organization or a newspaper reporter nonpublic information about long-range plans to build a particular dam.

The private interest described in this example would be that of the organization or that of the newspaper. The result in this example would be the same if the employee were not actively involved in the organization. Note, however, that nothing in the Standards would permit the use of personnel actions against employees in reprisal for lawful disclosures of information made by such employees on the reasonable belief that the information thus disclosed evidences a violation of law, rule, or regulation, or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

You also have asked about the "Teaching, speaking and writing" section of the Standards, at 5 C.F.R. § 2635.807. Section 2635.807 of the Standards provides that an employee may not receive compensation -- including travel expenses for transportation and lodging -- from any source other than the Government for teaching, speaking or writing that relates to the employee's official duties. The section does not affect

uncompensated teaching, speaking, and writing.

The restriction in section 2635.807 is at issue in *Sanjour v. United States*, 786 F. Supp. 1033 (D.D.C. 1992), aff'd in part and remanded, *Sanjour v. Environmental Protection Agency*, 984 F.2d 434 (D.C. Cir. 1993), vacated en banc, reh'g en banc granted, 997 F.2d 1584 (D.C. Cir. 1993). It has been argued in the case that the rule is not unduly restrictive and that the restriction is consistent with the First Amendment. The Court of Appeals reheard argument in that case on February 9, 1994. The Court of Appeals' decision is being held in abeyance, pending the decision by the Supreme Court in a related case, *National Treasury Employees Union v. United States*, 990 F.2d 1271 (D.C. Cir. 1993), reh'g en banc denied, 3 F.3d 1555 (D.C. Cir. 1993), cert. granted, *United States v. National Treasury Employees Union*, 114 S. Ct. 1536 (1994). Until the litigation has concluded, further response by this Office to your comments about the rule would be inappropriate.

Finally, we have read your comments about [your Department's] "Employee Responsibilities and Conduct" regulations in [citation deleted]. As you probably know, [that] part of [the Department's] regulations was largely superseded by the Standards. Therefore, we understand your comments about the [Department's] regulations to be an attempt to assist in the development of any supplemental regulations that [the Department] may issue. Please be assured that this Office will work closely with [the Department] to ensure that any [Departmental] supplemental regulations are justified and consistent with the Standards.

Sincerely,

Stephen D. Potts  
Director