required to obtain authorization to provide expert testimony because the action is not one in which the United States is a party or has a direct and substantial interest. However, the employee is required to obtain prior approval under paragraph 6301.102(a)(2) because he or she is acting as a consultant for a prohibited source.

The new provisions narrow the general requirement that employees obtain approval before engaging in any public writing or speaking, and adopt criteria consistent with the Standards to define when an employee must obtain advance approval for outside teaching, speaking, or writing. For instance, under the Department's previous regulation, an employee was required to obtain approval before publishing an article, or undertaking public speaking on a subject, such as jazz music or gardening, that was clearly unrelated to his or her duties. The new provisions require employees to obtain approval before they participate in teaching, speaking, or writing only if it "relates to their official duties," as that phrase is defined in subpart H of the Standards at 5 CFR part 2635.

The new provisions exclude from the prior approval requirement a number of uncompensated and volunteer activities that are unlikely to raise issues under the Standards. Specifically, employees are not required to obtain approval prior to engaging in activities such as volunteering for a social, fraternal, civic, or political entity, or any religious entity that is not a prohibited source. Further, employees need not obtain approval prior to participating in the activities of a parent association at their children's school. Employees are also not required to obtain prior approval to volunteer with any entity if they are providing direct instructional, social, or medical services.

Even when prior approval is not required by § 6301.102, the Standards and other ethics laws and regulations continue to apply to outside activities and employment. For instance, even if an employee is not required to obtain approval prior to publishing magazine articles on subjects unrelated to his or her duties, that employee may still be subject to the restriction on outside earned income applicable to certain noncareer employees. (See 5 CFR 2635.804(b) and subpart C of 5 CFR part 2636.) Furthermore, employees are generally prohibited from using Government resources to participate in outside activities and outside employment, regardless of whether they are required to obtain prior approval to participate. See subpart G of 5 CFR part

2635 and 5 CFR 2635.801. Additionally, whether subject to advance approval or not, an outside activity or outside employment may raise conflict of interest or impartiality concerns under subparts D and E of 5 CFR part 2635.

# III. Repeal and Revision of Department of Education Standards of Conduct

Because 34 CFR 73.22, the Department's residual standards regulation, is superseded by new chapter LIII of title 5, as added by this rulemaking, the Department of Education is herewith amending that section to repeal the Department's previous requirements for prior approval to participate in outside activities, and to provide crossreferences to the executive branch-wide Standards at 5 CFR part 2635, to the Department's new supplemental regulation at 5 CFR part 6301, and to the executive branch financial disclosure regulation at 5 CFR part 2634. A more recent version of the "Code of Ethics for Government Service," as enacted by Congress and signed into law by the President in 1980, is also being adopted in the appendix to amended part 73.

## IV. Matters of Regulatory Procedure

Waiver of Proposed Rulemaking

In accordance with section 437 of the General Education Provisions Act (20 U.S.C. 1232) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. Since these interim final regulations relate to agency management and personnel, they are exempt from notice and comment required under 5 U.S.C. 553(a). However, the Department will consider public comments made within 45 days after the publication of this interim final rule. Depending on the nature of the comments, the Department may or may not adopt and publish amendments to these regulations based on these comments.

Regulatory Flexibility Act Certification

The Department of Education has determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant impact on small business entities because it primarily affects Department employees.

## Paperwork Reduction Act

The Department of Education has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

#### List of Subjects

5 CFR Part 6301

Conflict of interests, Standards of conduct, Education Department, Government employees.

34 CFR Part 73

Conflict of interests, Standards of conduct, Education Department, Government employees.

Dated: January 20, 1995.

#### Richard W. Riley,

Secretary of Education.

Dated: January 23, 1995.

#### Stephen D. Potts,

Director, Office of Government Ethics.

(Catalog of Federal Domestic Assistance Number does not apply)

The Secretary of Education, with the concurrence of the Office of Government Ethics, amends title 5 of the Code of Federal Regulations and title 34, part 73, of the Code of Federal Regulations, as follows:

### TITLE 5—[AMENDED]

1. A new chapter LIII, consisting of part 6301, is added to title 5 of the Code of Federal Regulations to read as follows:

## 5 CFR CHAPTER LIII—DEPARTMENT OF EDUCATION

### PART 6301—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF EDUCATION

Sec.

6301.101 General.

6301.102 Prior approval for certain outside activities.

**Authority:** 5 U.S.C. 301, 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.803.

#### § 6301.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Department of Education and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635.

## § 6301.102 Prior approval for certain outside activities.

- (a) An employee, other than a special Government employee, must obtain written approval prior to engaging—with or without compensation—in the following outside activities:
- (1) Except as provided in paragraph (b)(1) of this section, providing services,