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OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2641

RIN 3209-AA14

Post-Employment Conflict of Interest Restrictions; Revision of Departmental Component Designations

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule, amendments.

SUMMARY: OGE is issuing this rule to designate an additional departmental component for purposes of the one-year post-employment conflict of interest restriction at 18 U.S.C. 207(c).

DATES: The amendments to appendix B to part 2641 (as set forth in amendatory paragraph 2) are effective May 25, 2011.

FOR FURTHER INFORMATION CONTACT: Amy E. Braud, Attorney-Advisor, Office of General Counsel and Legal Policy, Office of Government Ethics, Telephone: 202-482-9300; TTY: 800-877-8339; FAX: 202-482-9237.

SUPPLEMENTARY INFORMATION:

A. Substantive Discussion

Addition of Departmental Component

The Director of OGE (Director) is authorized by 18 U.S.C. 207(h) to designate distinct and separate departmental or agency components in the executive branch for purposes of 18 U.S.C. 207(c). The representational bar of 18 U.S.C. 207(c) usually extends to the whole of any department or agency in which a former senior employee served in any capacity during the year prior to termination from a senior employee position. However, 18 U.S.C. 207(h) provides that whenever the Director of OGE determines that an agency or bureau within a department or agency in the executive branch exercises functions which are distinct and separate from the remaining functions of the department or agency

and there exists no potential for use of undue influence or unfair advantage based on past Government service, the Director shall by rule designate such agency or bureau as a separate component of that department or agency. As a result, a former senior employee who served in a "parent" department or agency is not barred by 18 U.S.C. 207(c) from making communications to or appearances before any employees of any designated component of that parent, but is barred as to employees of that parent or of other components that have not been separately designated. Moreover, a former senior employee who served in a designated component of a parent department or agency is barred from communicating to or making an appearance before any employee of that component, but is not barred as to any employee of the parent or of any other component.

Under 18 U.S.C. 207(h)(2), component designations do not apply to persons employed at a rate of pay specified in or fixed according to subchapter II of 5 U.S.C. chapter 53 (the Executive Schedule). Component designations are listed in appendix B to 5 CFR part 2641.

The Director of OGE regularly reviews the component designations and determinations and, in consultation with the department or agency concerned, makes such additions and deletions as are necessary. Specifically, the Director "shall by rule make or revoke a component designation after considering the recommendation of the designated agency ethics official." 5 CFR 2641.201(e)(3)(iii). Before designating an agency component as distinct and separate for purposes of 18 U.S.C. 207(c), the Director must find that there exists no potential for use by former senior employees of undue influence or unfair advantage based on past Government service, and that the component is an agency or bureau within a department or agency that exercises functions which are distinct and separate from the functions of the parent department or agency and from the functions of other components of that parent. 5 CFR 2641.201(e)(6).

Pursuant to the procedures prescribed in 5 CFR 2641.201(e), one department has forwarded a written request to OGE to amend its listing in appendix B. After carefully reviewing the requested change in light of the criteria in 18

U.S.C. 207(h) as implemented in 5 CFR 2641.210(e)(6), the Director of OGE has determined to grant this request and amend appendix B to 5 CFR part 2641 as explained below.

The Department of Labor has requested that OGE designate the Pension Benefit Guaranty Corporation (PBGC) as a distinct and separate component of the Department of Labor for purposes of 18 U.S.C. 207(c). The PBGC is a wholly owned Federal corporation created by the Employee Retirement Income Security Act (ERISA) of 1974, Public Law 93-406, 88 Stat. 829, and established within the Department of Labor. 29 U.S.C. 1302(a). According to the Department of Labor, PBGC performs a Government function that is separate and distinct from every other agency within the Department of Labor. The mission of the PBGC is to protect the retirement income of those workers who have defined benefit plans with their employers.

Accordingly, the Director is granting the request of the Department of Labor and therefore is amending the Department of Labor listing in appendix B to part 2641 to designate the PBGC as a new component.

As indicated in 5 CFR 2641.201(e)(4), a designation "shall be effective as of the effective date of the rule that creates the designation, but shall not be effective as to employees who terminated senior service prior to that date." Initial designations were effective as of January 1, 1991. The effective date of subsequent designations is indicated by means of parenthetical entries in appendix B. The new component designation made by this rulemaking document is effective May 25, 2011.

B. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553, as the Director of the Office of Government Ethics, I find that good cause exists for waiving the general requirements for notice of proposed rulemaking, opportunity for public comment, and a 30-day delayed effective date. It is important and in the public interest that the designation herein by OGE of the specified separate departmental component be published in the **Federal Register** and take effect as promptly as possible.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rule will not have a significant economic impact on a substantial number of small entities because it affects only Federal departments and agencies and current and former Federal employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this rule because it does not contain information collection requirements that require the approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), the final rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (as adjusted for inflation) in any one year.

Congressional Review Act

The Office of Government Ethics has determined that this rulemaking involves a non-major rule under the Congressional Review Act (5 U.S.C. chapter 8) and will submit a report thereon to the U.S. Senate, House of Representatives and Government Accountability Office in accordance with that law at the same time this rulemaking document is sent to the Office of the Federal Register for publication in the **Federal Register**.

Executive Order 12866

In promulgating this final rule, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This rule has not been reviewed by the Office of Management and Budget under that Executive order since it deals with agency organization, management, and personnel matters and is not "significant" under the order.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

List of Subjects in 5 CFR Part 2641

Conflict of interests, Government employees.

Approved: May 18, 2011.

Robert I. Cusick,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending 5 CFR part 2641 as follows:

PART 2641—POST-EMPLOYMENT CONFLICT OF INTEREST RESTRICTIONS

■ 1. The authority citation for part 2641 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 18 U.S.C. 207; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

■ 2. Effective May 25, 2011, appendix B to part 2641 is amended by revising the listing for the Department of Labor to read as follows:

Appendix B to Part 2641—Agency Components for Purposes of 18 U.S.C. 207(c)

* * * * *

Parent: Department of Labor

Components:

Bureau of Labor Statistics.
Employee Benefits Security Administration (formerly Pension and Welfare Benefits Administration) (effective May 16, 1997).
Employment and Training Administration.
Employment Standards Administration.
Mine Safety and Health Administration.
Occupational Safety and Health Administration.
Office of Disability Employment Policy (effective January 30, 2003).
Pension Benefit Guaranty Corporation (effective May 25, 2011).

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[FR Doc. 2011-12798 Filed 5-23-11; 8:45 am]

BILLING CODE 6345-03-P

FARM CREDIT ADMINISTRATION**12 CFR Part 614****RIN 3052-AC62****Loan Policies and Operations; Loan Purchases From FDIC**

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA or we) issues this final rule to amend its regulations on loan policies and operations. This final rule will permit Farm Credit System (System or FCS) institutions with direct

lending authority to purchase from the Federal Deposit Insurance Corporation (FDIC) loans to farmers, ranchers, producers or harvesters of aquatic products and cooperatives that meet eligibility and scope of financing requirements. This will allow the System to provide liquidity and a stable source of funding and credit for borrowers of eligible agricultural loans in rural areas affected by the failure of their lending institution.

DATES: This regulation will be effective 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. We will publish a notice of the effective date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

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Mary Alice Donner, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TTY (703) 883-4020.

SUPPLEMENTARY INFORMATION:**I. Background**

Agriculture and rural sectors in the United States are adversely affected by bank failures and the resultant depressed local economies. Many commercial banks are active in agricultural and cooperative lending and, when they fail, farmers, ranchers, producers or harvesters of aquatic products, and cooperatives can be left seeking new lenders to meet their ongoing credit needs. Representatives from the FDIC, the System, and others have asked whether System institutions, directly or in partnership with other market participants, could provide a source of credit and liquidity to borrowers whose operations are financed with agricultural or cooperative loans affected by commercial bank failures.¹

On May 18, 2010, the FCA published a Notice of Proposed Rulemaking (NPRM) to amend FCA regulations governing purchase and sale of interests in loans (75 FR 27660). The proposed rule would allow System institutions to purchase certain agricultural or cooperative loans of failed commercial

¹ System institutions are federally chartered, cooperatively owned corporations authorized under titles I, II, and III of the Farm Credit Act of 1971, as amended (Act), to make long-term mortgage and short- and intermediate-term production loans to farmers, ranchers, aquatic producers or harvesters, and, in the case of banks for cooperatives, to eligible cooperative associations. See 12 U.S.C. 2001 *et seq.*