

(b) Agencies must take reasonable steps to ensure eligible employees are notified of all vacancies the agency is filling in locations where there are CTAP eligibles, and what is required for them to be determined well-qualified for the vacancies. Vacancy announcements within an agency must contain information on how eligible employees within the agency can apply, what proof of eligibility is required, and the agency's definition of "well-qualified." If there are no CTAP eligibles in a local commuting area, the agency may document this fact as an alternative to posting the vacancy under the CTAP program.

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Subpart G—Interagency Career Transition Assistance Plan for Displaced Employees

3. In § 330.705, paragraph (c)(19) is revised to read as follows:

§ 330.705 Order of selection in filling vacancies from outside the agency's workforce.

* * * * *

(c) * * *

(19) Transfer or reinstatement of an individual who meets the eligibility requirements of § 330.704 to a position having promotion potential no greater than the potential of a position the individual currently holds or previously held on a permanent basis in the competitive service and did not lose because of performance or conduct reasons.

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OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2640

RIN 3209-AA09

Exemption Under 18 U.S.C. 208(b)(2) for Financial Interests of Non-Federal Government Employers in the Decennial Census

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule.

SUMMARY: The Office of Government Ethics is issuing a final rule, permitting certain temporary employees of the Department of Commerce Bureau of the Census (the Bureau) who have been hired under authority of 18 U.S.C. 23 to perform duties in connection with the decennial census, notwithstanding these employees' disqualifying financial

interest under 18 U.S.C. 208(a) arising from the interests of their non-Federal employers.

EFFECTIVE DATE: September 5, 2000.

FOR FURTHER INFORMATION CONTACT: Karen Kimball, Associate General Counsel, Office of Government Ethics, telephone: 202-208-8000; TDD: 202-208-8025; FAX: 202-208-8037.

SUPPLEMENTARY INFORMATION: Section 208(a) of title 18 of the United States Code prohibits Government employees from participating in an official capacity in particular Government matters in which, to their knowledge, they, or, *inter alia*, any organization in which they are serving as an employee, have a financial interest, if the particular matter would have a direct and predictable effect on that interest. Section 208(b)(2) of title 18 permits the Office of Government Ethics to promulgate branchwide regulations describing financial interests that are too remote or inconsequential to warrant disqualification pursuant to section 208(a).

On March 29, 2000, the Office of Government Ethics (OGE) published an interim rule with a 30-day request for comments to provide for an additional exemption under 5 CFR 2640.203 from the prohibition in the conflict of interest statute at 18 U.S.C. 208(a). See 65 FR 16511-16513 (March 29, 2000).

The new exemption, to be codified at 5 CFR 2640.203(l), permits employees who work for State, local, or tribal governments to work temporarily as enumerators, crew leaders, and field operations supervisors in a Local Census Office or an Accuracy and Coverage Evaluation function at the Department of Commerce Bureau of the Census (the Bureau). These employees have been hired under authority of 18 U.S.C. 23 to perform duties in connection with the decennial census, notwithstanding these employees' disqualifying interest under 18 U.S.C. 208(a) arising from the interests of their non-Federal employers. However, the exemption does not cover employees who work for State, local, or tribal governments whose positions are filled through public election.

The interim rule was published after obtaining the concurrence of the Department of Justice pursuant to section 201 of Executive Order 12674. Also, as provided in section 402 of the Ethics in Government Act of 1978, as amended, 5 U.S.C. appendix, section 402, OGE has consulted with both the Department of Justice (as additionally required under 18 U.S.C. 208(d)(2)) and the Office of Personnel Management on the interim rule. No further consultation

with the Department of Justice or the Office of Personnel Management is being adopted without change.

As noted, the interim rule provided for a 30-day comment period. Comments were received from two sources, one from the Department of Commerce and one from a private citizen. After carefully considering these comments, the Office of Government Ethics is adopting the interim rule as final without change.

Summary of Comments

The Department of Commerce recommended a change to the exemption to provide for a newly created position of "crew leader assistant" and to cover any future positions that the Department might create within the occupations of enumerator, crew leader, or field operations supervisor. These newly created positions would have similar duties and responsibilities as those occupations covered by the exemption, but would be performed at different activity levels, such as crew leader assistant. In OGE's view, it would not be necessary to amend the regulation to cover such newly created positions since all activity levels within those designated occupations in a Local Census Office or an Accuracy and Coverage Evaluation function would automatically be covered by the exemption.

The second commenter, an elected member of a city council, raised two concerns. The commenter believes that the distinction between elected and nonelected officials is arbitrary and both too broad and, at the same time, too narrow in that some elected officials (e.g., coroners) would have no interest in the outcome of the census while some nonelected officials (e.g., city managers) serve in policy-making positions and would have an interest in the outcome of the census. The commenter recommends that the line be drawn to exclude those employees who serve in policy-making positions.

As indicated in the preamble to the interim rule, the distinction between elected and nonelected officials was a general attempt to eliminate concerns about appearances arising from the greater interest that elected officials might have regarding the impact of the census count on their employers. The distinction represents the best line that could be drawn to include the greatest number of individuals who might be perceived as having an interest in the outcome of the census. It also serves the Department of Commerce's need to quickly and easily identify those

individuals whose non-Federal employment might present a conflict of interest or appearance thereof. It may be that, in drawing such a broad distinction, some individuals might be included who need not have been and that some few individuals might not have been excluded who perhaps could have been. However, the distinction represents OGE's best view of how the line should be drawn under the specified circumstances here.

Drawing the distinction on the basis of whether an individual holds a policy-making position would be both cumbersome and unworkable. The exemption must set forth a bright-line distinction because both the Department of Commerce and the employees it hires need to know who is clearly covered by the exemption and who is not. Any incorrect decisions about who is covered by the exemption could potentially subject the employee to criminal penalties should 18 U.S.C. 208(a) be violated. In addition, attempting to define who does and does not serve in a policy-making position would seriously hamper and unnecessarily complicate and impede a truncated hiring process.

The commenter also believes that the exemption would prevent the Department of Commerce from issuing individual waivers which would permit some elected officials to perform work on the decennial census. However, the exemption does not prevent the Department of Commerce from issuing waivers in individual cases in accordance with 18 U.S.C. 208(b)(1) and the requirements set forth in OGE regulations at 5 CFR 2640.301. An agency may issue such waivers in individual cases where it determines that a disqualifying financial interest in a particular matter is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government.

Finally, the commenter believes that the exemption may not be necessary due to the nature of the work to be performed, the inability of the temporary employees to affect the census count to any significant degree, and the remoteness of the financial interests of their non-Federal government employers due to the number of various steps in the census process. However, on balance and in an abundance of caution, OGE believes that an exemption is in the best interest of the Department of Commerce which initiated the request for an exemption and in the best interest of individuals who will be employed by Commerce to work on the decennial census.

Matters of Regulatory Procedure

Executive Order 12866

In promulgating this final regulation, 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 regulation has also been reviewed by the Office of Management and Budget under that Executive order.

Executive Order 12988

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

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 final regulation will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal executive branch employees.

Paperwork Reduction Act

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

List of Subjects in 5 CFR Part 2640

Conflict of interests, Government employees.

Approved: June 1, 2000.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is adopting the interim rule amending 5 CFR part 2640 which was published at 65 FR 16511-16513 on March 29, 2000, as a final rule without change.

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 253

RIN: 0584-AC81

Food Distribution Program on Indian Reservations: Income Deductions and Miscellaneous Provisions

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: The Food and Nutrition Service is amending the regulations for the Food Distribution Program on Indian Reservations. The changes are intended to improve program service by allowing households two additional income deductions when proper verification is provided. The first income deduction will be given to households that pay legally required child support for a nonhousehold member. This change conforms to an income deduction allowed under the Food Stamp Program. The second income deduction will be provided to households that pay the premium for their Medicare Part B medical insurance. This deduction was prompted by a resolution passed by the National Association of Food Distribution Programs on Indian Reservations. This rule will also make technical amendments, such as changing outdated terminology, and revising or removing provisions that are obsolete or have changed.

EFFECTIVE DATE: This rule is effective October 3, 2000.

FOR FURTHER INFORMATION CONTACT:

Lillie F. Ragan, Assistant Branch Chief, Household Programs Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 510, 3101 Park Center Drive, Alexandria, Virginia 22302-1594, or by telephone (703) 305-2662.

SUPPLEMENTARY INFORMATION:

- I. Procedural Matters
- II. Background and Discussion of the Final Rule

I. Procedural Matters

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Public Law 104-4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L.