

# Rules and Regulations

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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.

**SUMMARY:** The Office of Government Ethics is issuing this rule to revoke the designation of a departmental component and to designate two additional departmental components for purposes of the one-year post-employment conflict of interest restriction at 18 U.S.C. 207(c), to change the name of an existing departmental component, and to correct a clerical error in the name of another existing departmental component.

**DATES:** The amendments to appendix B to part 2641 (as set forth in amendatory paragraph 2) are effective March 6, 2008. The additional removal of a designated component from the listing for the Department of Commerce in appendix B to part 2641 (as set forth in amendatory paragraph 3) is effective June 4, 2008.

**FOR FURTHER INFORMATION CONTACT:** Amy E. Braud, Attorney-Advisor, or William E. Gressman, Senior Associate General Counsel, Office of General Counsel and Legal Policy, Office of Government Ethics, Telephone: 202-482-9300; TDD: 202-482-9293; FAX: 202-482-9237.

#### SUPPLEMENTARY INFORMATION:

##### A. Substantive Discussion

###### *Revocation and Addition of Departmental Components*

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

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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).

#### *Department of Commerce*

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 changes in light of the criteria in 18 U.S.C. 207(h) as implemented in 5 CFR 2641.201(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 Commerce has requested that OGE remove the Technology Administration from its list of component designations and in its place designate the National Institute of Standards and Technology (NIST) and the National Technical Information Service (NTIS) as distinct and separate components of the Department of Commerce for purposes of 18 USC 207(c). These two entities formerly were the two institutes within the Technology Administration, which is currently a designated component of the Department of Commerce. The Technology Administration was abolished by the America COMPETES Act, Public Law 110-69 (August 9, 2007). NIST and NTIS are the entities that remain after the dissolution of the Technology Administration.

NIST was the major component of the Technology Administration during the latter's existence. NIST's mission is to promote U.S. innovation and industrial competitiveness by advancing measurement science, standards and technology in ways that enhance economic security and improve quality of life. It functions as the lead national laboratory for providing the measurements, calibrations, and quality assurance techniques which underpin U.S. commerce, technological progress, improved product reliability and manufacturing processes, and public safety. Because the Technology Administration has been abolished, the

Director of NIST now reports directly to the Secretary of Commerce.

NTIS is a small entity that performs a Government function different from that of NIST. NTIS collects information on scientific, technical, engineering, and business-related research conducted or sponsored by the U.S. Government and creates a permanent archive that the public can access. Because the Technology Administration has been abolished, the Director of NTIS now reports directly to the Secretary of Commerce.

According to the Department of Commerce, the functions of NIST and NTIS are distinct and separate from each other and distinct and separate from every other agency within the Department. This distinction was previously recognized when OGE designated their parent agency, the Technology Administration, as a component for purposes of 18 USC 207(c). The act that abolished the Technology Administration left the NIST and the NTIS in its place.

Accordingly, the Director is granting the request of the Department of Commerce and therefore is amending the Department of Commerce listing in appendix B to part 2641 to remove the Technology Administration from the component designation list and to designate NIST and NTIS as new components as discussed.

The Department of Commerce has also advised that the name of one component currently listed in appendix B of part 2641 has been changed. According to the Department of Commerce, the "Patent and Trademark Office" has been the "United States Patent and Trademark Office" since November 29, 1999. Accordingly, the Director is amending the Department of Commerce listing in appendix B to reflect the current name of this component.

The Department of Commerce has further noted that the name of one of its existing components is incorrect. One of the existing components is listed as the "Minority Business Development Administration." According to the Department of Commerce, this component has never carried this name. It has always been the "Minority Business Development Agency." The Director is therefore amending the listing in appendix B to reflect the correct name of the 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 designations made by this rulemaking document, as well as the component name change and the name correction being reflected herein (which do not affect their underlying component designation dates), are effective March 6, 2008.

As also indicated in 2641.201(e)(4), revocation is effective 90 days after the effective date of the rule that revokes the designation. Accordingly, the component designation revocation made in this rulemaking will take effect June 4, 2008. Revocations are not effective as to any individual terminating senior service prior to the expiration of the 90-day period.

## 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 designations herein by OGE of the specified separate departmental components, which reflect the current organization of the concerned department, as well as the component name change, the component name correction and the component revocation, 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: February 24, 2008.

**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 March 6, 2008, appendix B to part 2641 is amended by revising the listing for the Department of Commerce to read as follows:

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

\* \* \* \* \*

*Parent: Department of Commerce*

Components:

Bureau of the Census  
 Bureau of Industry and Security (formerly Bureau of Export Administration)  
 (effective January 28, 1992)  
 Economic Development Administration  
 International Trade Administration  
 Minority Business Development Agency  
 (formerly listed as Minority Business Development Administration)  
 National Institute of Standards and Technology (effective March 6, 2008)  
 National Oceanic and Atmospheric Administration  
 National Technical Information Service (effective March 6, 2008)  
 National Telecommunications and Information Administration  
 Technology Administration (effective January 28, 1992; expiring June 4, 2008)  
 United States Patent and Trademark Office (formerly Patent and Trademark Office)

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■ 3. Effective June 4, 2008, appendix B to part 2641 is further amended by removing the Technology Administration from the listing for the Department of Commerce.

[FR Doc. E8-4282 Filed 3-5-08; 8:45 am]

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**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**12 CFR Part 16**

[Docket ID OCC-2008-0003]

RIN 1557-AD04

**Securities Offering Disclosure Rules**

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is amending its securities offering disclosure rules to eliminate the general requirement that a national bank in organization include audited financial statements as part of a public offering of its securities. The OCC has determined that, due to the very limited nature of the activities of a bank in the organizational phase, this requirement typically adds little information that is of benefit to potential investors or of significance in our review of an application for a national bank charter. However, the final rule enables the OCC to request audited financial statements in circumstances where doing so would be

in the best interest of investors or would further the safe and sound operation of the national bank.

**DATES:** *Effective Date:* April 7, 2008.

**FOR FURTHER INFORMATION CONTACT:** Lee Walzer, Counsel, Legislative and Regulatory Activities Division, (202) 874-4487; Stuart Feldstein, Assistant Director, Legislative and Regulatory Activities Division, (202) 874-5090; Ted Dowd, Senior Attorney, Securities and Corporate Practices, Division, (202) 874-5210; Beverly Evans, Director, Licensing Activities, (202) 874-5060.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On October 18, 2007, the OCC published a notice of proposed rulemaking (NPRM) to streamline the process for applying for a new national bank charter by eliminating, in most cases, the requirement that a national bank in organization submit audited financial statements as part of a public offering of its securities.<sup>1</sup> The NPRM further provided that the OCC would be able to require such statements if their inclusion would be in the best interests of investors or would further the safe and sound operation of a national bank.

By reference to rules issued by, and forms required by, the Securities and Exchange Commission (SEC), the OCC's securities offering disclosure regulations currently require national bank charter applicants to provide audited financial statements in connection with registration statements filed with the OCC for a public offering of securities.<sup>2</sup> However, as we discussed in the preamble to the NPRM, the requirement for a national bank in organization to submit audited financial statements is not warranted in most cases.<sup>3</sup> Obtaining audited financial statements can be time-consuming and costly for the organizing group without resulting in corresponding benefits. The statements usually reflect little more than the bank account of the organizing group and its organizational expenses incurred and there is no clear need for this information to be subject to an independent audit. The OCC also typically does not rely on audited financial statements in deciding applications for *de novo* national bank

<sup>1</sup> 72 FR 59,039 (October 18, 2007).

<sup>2</sup> 12 CFR 16.15 (OCC rule referencing SEC rules governing form and content of securities registration statements). See Regulation S-X, 17 CFR 210.3-01(a) (SEC requirement to file consolidated financial statements); Regulation S-B, 17 CFR 228.310(a) (SEC regulations governing financial statements by small business issuers); Rule 1-02(h), Regulation S-X, 17 CFR 210.1-02(h) (SEC definition of developmental stage company).

<sup>3</sup> 72 FR at 59,040.

charters. The OCC's process for chartering *de novo* national banks is comprehensive and includes extensive, ongoing review of the proposed bank's management, financial resources, and business plan. This process provides the OCC the opportunity to carefully consider, on the basis of detailed information, whether the organizing group has the expertise and resources to operate a viable national bank. Audited financial statements typically do not add materially to the information already available to the OCC through the application process.

The OCC received no comments on the NPRM and, accordingly, we are adopting the regulatory changes as proposed.

**II. Description of the Final Rule**

The final rule is substantively identical to the proposal, with minor wording changes to improve technical descriptions. Specifically, part 16 is amended to provide a waiver from the requirement to use audited financial statements as part of a registration statement for the offering of securities for a national bank in organization.

Under the final rule, the OCC will retain the authority to require audited financial statements if the OCC determines that factors particular to the proposal indicate that such statements would be in the interest of investors or would further the safe and sound operation of a national bank. For example, the OCC may require audited financial statements where review of the registration statement, or any other aspect of the application to charter a national bank, uncovers incomplete or inaccurate information about the proposed bank's finances or capital, or other material inaccuracies or misstatements.

This final rule is part of the OCC's ongoing effort to reduce unnecessary regulatory burden on national banks, including applicants for national bank charters. These efforts include an internal review of OCC regulations, which soon will be issued in final form.<sup>4</sup> In addition, the OCC together with the other Federal banking, thrift, and credit union regulators recently concluded an interagency review of regulations pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), the results of which are described in detail in a report submitted to the Congress late last year.<sup>5</sup>

<sup>4</sup> See proposed rule at 74 FR 36,550 (July 3, 2007).

<sup>5</sup> Section 2222 of the EGRPRA directed the OCC, together with the Board of Governors of the Federal

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