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BUREAU OF CONSUMER FINANCIAL PROTECTION

5 CFR Chapter LXXXIV

[Docket No. CFPB–2012–0016]

RIN 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Bureau of Consumer Financial Protection

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Interim final rule with request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (CFPB or Bureau), with the concurrence of the Office of Government Ethics (OGE), is issuing this interim final rule for employees of the Bureau. This rule supplements the Standards of Ethical Conduct for Employees of the Executive Branch (OGE Standards) issued by OGE and is necessary because it addresses ethical issues unique to the Bureau. The rule establishes restrictions on outside employment and business activities; prohibitions on the ownership of certain financial interests; restrictions on seeking, obtaining or renegotiating credit and indebtedness; prohibitions on recommendations concerning debt and equity interests; disqualification requirements based on credit or indebtedness; prohibitions on purchasing certain assets; and restrictions on participating in particular matters involving outside entities.

DATES: This interim final rule is effective June 26, 2012. Written comments are invited and must be received on or before June 26, 2012.

ADDRESSES: You may submit comments, identified by *Docket No. CFPB–2012–0016,* by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail/Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

Instructions: All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Amber Vail at (202) 435–7305 or Amy Mertz Brown at (202) 435–7256 at the Office of General Counsel, Consumer Financial Protection Bureau.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, OGE published the OGE Standards. *See* 57 FR 35006–35067, as corrected at 57 FR 48557, 57 FR 52483, and 60 FR 51167, with additional grace period extensions for certain existing provisions at 59 FR 4779–4780, 60 FR 6390–6391, and 60 FR 66857–66858. The OGE Standards, codified at 5 CFR part 2635, effective February 3, 1993, established uniform standards of ethical conduct that apply to all executive branch personnel.

Section 2635.105 of the OGE Standards authorizes an agency, with the concurrence of OGE, to adopt agency-specific supplemental regulations that are necessary to properly implement its ethics program. The Bureau, with OGE's concurrence, has determined that the following supplemental regulations are necessary for successful implementation of its ethics program in light of the Bureau's unique programs and operations.

II. Analysis of the Regulations

Section 9401.101 General

Section 9401.101 explains that the regulations contained in part 9401 (CFPB Ethics Regulations) apply to employees of the Bureau and supplement the OGE Standards. The section also includes cross-references to other ethics restrictions applicable to employees—including the regulations concerning executive branch financial disclosure, financial interests, post-Government restrictions, outside earned income and employment and affiliation limitations, and employee responsibilities and conduct—as well as implementing Bureau guidance and procedures issued in accordance with the OGE Standards.

Section 9401.102 Definitions

Section 9401.102 defines terms and phrases used throughout these supplemental regulations. Many of the definitions reference terms defined in the OGE Standards or in the Consumer Financial Protection Act of 2010 (CFPA) (12 U.S.C. 5301 *et seq.*).

The terms ''credit'' and ''Director'' are statutory terms taken from the CFPA. *See* 12 U.S.C. 5481(7), 5481(10).

This regulation broadly defines the term ''debt or equity interest'' to include without limitation, ''secured and unsecured bonds, debentures, notes, securitized assets, commercial papers, and preferred and common stock.'' It extends to any right to acquire or dispose of any such debt or equity interest and to beneficial or legal interests derived from a trust. However, the term does not include deposit accounts (e.g., savings accounts, checking accounts, certificates of deposit, money market accounts), credit union shares, future interests created by someone other than the employee or the employee's spouse or dependent child, or a right as a beneficiary of an estate that has not been settled.

The term ''dependent child'' has the same meaning as in OGE's financial disclosure regulations at 5 CFR 2634.105(d).

The term ''Designated Agency Ethics Official'' (DAEO) means the individual appointed by the Director to coordinate and manage the ethics program. It also includes the Alternate DAEO and a

designee of the DAEO or Alternate DAEO, unless a particular provision in these supplemental regulations states otherwise.

The term ''domestic partner'' includes an individual with whom an employee has a close, committed, personal, and financially interdependent relationship in which both parties have agreed to be responsible for each other's common welfare and share financial obligations, and who for at least six months have shared the same regular and permanent residence and intend to do so indefinitely, or would have a common residence but for an assignment abroad or other employment-related, financial or similar obstacle. The definition of ''domestic partner'' in these supplemental regulations is the same as the one used to determine whether an individual is eligible to receive benefits under the Bureau's Domestic Partner Health Insurance Subsidy Program.

The term ''employee'' includes all Bureau employees, including special Government employees.

The phrase ''entity supervised by the Bureau'' means a person that is subject to the Bureau's supervision authority pursuant to 12 U.S.C. 5514(a)(1) or 5515(a) and in regulations promulgated thereunder, as identified on a list to be maintained and regularly updated by the Bureau.

The terms ''indebted'' and ''indebtedness'' refer to a legal obligation under which an individual or borrower received money or assets on credit, and now owes payment.

The term ''indebted to an entity'' means an obligation to make payments to that entity as a result of an indebtedness, whether originally made with that entity or with another entity. This includes without limitation a servicer on a mortgage to whom payments are made.

The term ''participate'' means to participate personally and substantially and has the meaning set forth in the OGE Standards at 5 CFR 2635.402(b)(4).

The terms ''particular matter,'' ''particular matter involving specific parties,'' ''person,'' and ''special Government employee'' have the same meanings as in the OGE Standards and in OGE's regulations on post-employment conflict of interest at 5 CFR 2635.402(b)(3), 2641.201(h), 2635.102(k) and 2635.102(l), respectively.

The term ''spouse'' means an employee's husband or wife by lawful marriage, but does not include a legally separated spouse when the employee and spouse live apart, there is an intention to end the marriage or separate permanently, and the employee has no control over the legally separated spouse's debt or equity interests.

Section 9401.103 Prior Approval for Outside Employment

This section requires employees to obtain written approval prior to engaging in certain outside employment and activities. This prior approval requirement will be an integral part of the Bureau's ethics program. The prior approval requirement is necessary to ensure that an employee's participation in certain outside employment or activities does not adversely affect Bureau operations or place the employee at risk of violating applicable Federal conduct statutes and regulations. In addition, prior approval is necessary to avoid the appearance that an outside employment or activity was obtained through a misuse of the employee's official position and to address a number of other ethics concerns.

Because the Bureau engages in enforcement, supervisory and regulatory functions across the consumer financial services sector, requiring prior approval is necessary to ensure that a reasonable person will not question the integrity of Bureau programs and operations. The Bureau would be hindered in fulfilling its mission if members of the public did not have confidence in employees' ability to act impartially while performing their official duties.

Paragraph (a) requires that an employee obtain prior written approval from the employee's supervisor and the concurrence of the DAEO before engaging in outside employment, except to the extent the Bureau has issued an instruction or internal directive exempting an activity or class of activities from this requirement. Under paragraph (d), an employee must submit a new request for approval when the scope of the approved activity changes or when the employee's position changes.

Paragraph (b) broadly defines ''employment'' to include any form of non-Federal employment or business relationship involving the provision of personal services other than in the discharge of official duties, regardless of whether the services are compensated. It includes outside teaching, speaking, or writing.

A note following paragraph (b) pertains to the special approval requirement in both 18 U.S.C. 203(d) and 205(e) for certain representational activities otherwise covered by the conflict of interest restrictions on compensation and activities of employees in claims against and other matters affecting the Government. The note explains that in addition to the regulatory approval required in this section, an employee who wishes to act as agent or attorney for or otherwise represent his or her parents, spouse, child, or a person for whom or for an estate for which he or she is serving as guardian, executor, administrator, trustee, or other personal fiduciary in such matters must obtain the approval of the Government official responsible for the employee's appointment to the federal service.

Paragraph (c) sets out the standard to be applied by the employee's supervisor and the DAEO in acting on requests for prior approval of outside employment. Approval will be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute, the OGE Standards, or these supplemental regulations.

Under paragraph (e), the DAEO may issue instructions or internal directives governing the submission of requests for approval of outside employment that may exempt categories of employment from the prior approval requirement of this section based on a determination that employment within those categories generally would be approved and is not likely to involve prohibited conduct or create an appearance of lack of impartiality.

Section 9401.104 Additional Rules Concerning Outside Employment for Covered Employees

This section supplements § 2635.802 of the OGE Standards by prohibiting covered employees from engaging in compensated outside employment for any entity supervised by the Bureau or for an officer, director, or employee of such entity. This regulation addresses situations unique to covered employees, including those who are involved in the supervision of entities offering or providing a consumer financial product or service, and prohibits activity that may interfere with the objective and impartial performance of an employee's official duties. This regulation is based in part on 18 U.S.C. 1909, which prohibits national bank examiners from performing any service for compensation for any bank or banking or loan association, or any officer, director, or employee thereof.

For purposes of this section, the term ''covered employee'' means all employees serving in an examiner or attorney position, specified persons within the Office of Research and the Office of Enforcement, all Public Financial Disclosure Report filers, and other employees specified in a Bureau order or directive who the DAEO

determines should be covered by the rule.

Section 9401.105 Additional Rules Concerning Outside Employment for Bureau Attorneys

Employees serving in an attorney position are subject to restrictions in addition to the prior approval of outside employment requirement in § 9401.103 and the prohibited outside employment restriction in § 9401.104. This section prohibits all such individuals from practicing law outside of their official duties where they may in fact or in appearance take a legal position in conflict with the interests of the Bureau. Bureau attorneys are prohibited from interpreting a statute, regulation, or rule administered by the Bureau as part of the outside practice of law. The regulation in this section is consistent with the rules of professional conduct governing the attorney-client relationship. It is a necessary supplement to the OGE Standards because it specifically addresses the unique and sensitive relationship between an attorney and a client, which for Bureau attorneys is the Bureau.

Paragraph (b) contains an exemption allowing an employee to represent himself or herself unless the employee participated personally and substantially in the matter as part of his or her official duties or the matter is the subject of the employee's official responsibility.

Section 9401.106 Prohibited Financial Interests

Paragraph (a) prohibits an employee or the employee's spouse or minor child from owning or controlling a debt or equity interest in an entity supervised by the Bureau. As set forth in Section 9401.102, the term ''supervised by the Bureau'' refers to the Bureau's authority under the CFPA to supervise and examine certain financial institutions and other providers of consumer financial products and services. Under 5 CFR 2635.403(a), an agency may, by supplemental regulation, prohibit or restrict the holding of a financial interest by its employees and the spouses and minor children of those employees based on the agency's determination that the acquisition or holding of such financial interest would cause a reasonable person to question the impartiality and objectivity with which agency programs are administered.

The Bureau has determined that in light of the Bureau's sensitive supervisory functions, the restriction is necessary to: (1) Maintain public confidence in the impartiality and objectivity with which the Bureau executes its supervisory functions; (2) eliminate any concern that sensitive information provided to the Bureau might be misused for private gain; and (3) avoid the widespread disqualification of employees from official matters that might impair the Bureau's ability to fulfill its mission.

The prohibition in paragraph (a) also applies to the spouse and minor children of an employee. Under 5 CFR 2635.403(a), a restriction on the holdings of financial interests by spouses or minor children of agency employees must be based on the agency's determination that there is a direct and appropriate nexus between the restriction as applied to spouses and minor children and the efficiency of the service. The Bureau has determined that such a nexus exists and is adopting this provision to avoid the need to disqualify employees from official matters to prevent violations of criminal law (18 U.S.C. 208), to maintain public confidence in the objectivity and impartiality of the Bureau's administration of its programs, and to avoid the potential appearance that an employee's spouse could trade on information obtained through the employee's official position.

The scope of this prohibition extends only to those entities supervised by the Bureau that are identified on a list maintained by the Bureau for the purposes of easing administration of this provision and minimizing inadvertent violations. The Bureau's regulatory and enforcement authority under the CFPA may extend beyond those entities supervised by the Bureau that are identified on the list. However, the regulation limits the prohibition on ownership of debt and equity interests to only those entities identified on the list, in order to establish a bright-line test and enable employees to easily identify prohibited interests.

Paragraph (b) sets forth several exceptions intended to ease the restrictions on the financial interests of employees and their spouses and minor children to permit interests of a character unlikely to raise questions regarding the objective and impartial performance of employees' official duties or the possible misuse of their positions. The exceptions permit employees and their spouses and minor children to own or control interests in entities supervised by the Bureau through investments in a publicly traded or available mutual fund (as long as the fund does not have a stated policy of concentrating in the financial services industry or the banking industry), a widely held and diversified pension plan, or a fund administered by a Federal government agency.

Paragraph (c) requires employees to immediately disqualify themselves if they own or control a prohibited interest and consult with the DAEO concerning a potential waiver under paragraph (d).

Paragraph (d) authorizes the DAEO, in consultation with senior management in the Division in which the employee works, to waive under certain limited circumstances on a case-by-case basis the prohibition in paragraph (a). In general, a request for a waiver will be considered if mitigating circumstances exist due to how the employee or the employee's spouse or minor child acquired ownership or control, the employee makes a prompt and complete written disclosure of the debt or equity interest to the DAEO, and the employee's disqualification from matters involving the entity in which the prohibited interest is held would not unduly interfere with the full performance of the employee's duties. If owning or controlling the debt or equity interest would raise financial conflict of interest concerns under 18 U.S.C. 208(a), the DAEO will consult with OGE prior to authorizing the employee to own or control the debt or equity interest. The DAEO also will consult with OGE prior to authorizing an employee to work on a particular matter that would raise financial conflict of interest concerns under 18 U.S.C. 208(a).

Paragraph (e) attributes to an employee a debt or equity interest held by entities described in this subsection (e.g., trusts, partnerships, closely held corporations). An employee who has knowledge of an attributed interest that would violate subparagraph (a) of this section is required to report the interest in writing to the DAEO. The DAEO may require the employee to terminate the relationship with the third party entity, disqualify himself or herself from participating in a matter, or take other appropriate action as determined by the DAEO to avoid a violation of the conflict of interest statutes, the OGE Standards or these supplemental regulations, or an appearance of misuse of position or loss of impartiality.

Section 9401.107 Prohibition on Acceptance of Credit on Preferential Terms From an Entity Supervised by the Bureau

Section 9401.107 prohibits employees or the employee's spouse or minor child from accepting credit from or entering into a financial relationship with an entity supervised by the Bureau if the relationship is based on terms more favorable than those offered in

comparable circumstances to the public. This provision is intended to reinforce the general principle that employees may not use their public office for private gain and the requirement that employees have a responsibility to avoid receiving preferential treatment in their personal dealings with entities supervised by the Bureau.

Section 9401.108 Restrictions on Seeking, Obtaining, or Renegotiating Credit From an Entity That Is or Represents a Party to a Matter to Which an Employee Is Assigned or May Be Assigned

Section 9401.108 prohibits an employee from seeking, obtaining, or renegotiating credit from an entity, while the employee is assigned to participate in a particular matter involving specific parties in which the entity is or represents a party to the matter. The prohibition also extends to those matters to which the employee is not currently assigned, but the employee is aware of the pendency of the matter and believes it is likely that he or she will participate in the matter. This prohibition also applies for two years after the employee's participation in the matter has ended.

This prohibition applies equally to the employee's spouse or minor children, unless the credit or indebtedness is supported exclusively by the income or independent means of the spouse or minor child and is obtained on terms and conditions no more favorable than those offered to the public, and the employee does not participate in the negotiations for the credit or indebtedness or serve as a co-maker, endorser, or guarantor of the loan.

The prohibition on seeking, obtaining, or renegotiating credit is necessary for several reasons. Under 5 CFR 2635.403(a), the Bureau may prohibit or restrict the acquisition or holding of a financial interest or class of financial interests by employees, and the spouses and minor children of those employees, when the Bureau has determined that the acquisition or holding of such financial interests would cause a reasonable person to question the impartiality and objectivity with which the Bureau programs are administered. ''Financial interest'' may include an indebtedness relationship, under 5 CFR 2635.403(c). This prohibition is necessary to prevent the loss of public confidence in the integrity of Bureau programs and to prevent the appearance of loss of impartiality. These concerns might arise if an employee appears to be using his or her official position or contacts with an entity resulting from the employee's work on a matter to obtain loans or extensions of credit on favorable terms, or to be benefitting from his or her official position through possible forbearance by the lender in collecting on the indebtedness. This section also will strengthen public confidence in the Bureau's integrity by limiting the ability of employees to engage in financial transactions with entities that are or represent a party to a particular matter involving specific parties to which the employee is assigned.

Under paragraph (c), an employee must immediately disqualify himself or herself from participating in a particular matter involving specific parties after the employee becomes aware that certain identified persons are seeking, obtaining, or renegotiating credit or indebtedness with an entity that is or represents a party to the matter, while the matter is pending before the Bureau. The Bureau does not intend to impose an affirmative duty on the part of the employee to investigate or inquire whether the persons identified in this section are seeking, obtaining, or renegotiating credit.

Because this section supplements § 2635.502 of the OGE Standards, the list of persons identified in paragraph (c) of this section are defined broadly and include the employee's spouse, domestic partner, and dependent child, and other related entities. This section is designed to ensure that employees and persons associated with employees in a non-governmental capacity do not benefit or appear to benefit from the employees' official positions and that employees do not lose or appear to lose their impartiality.

Paragraph (d) provides exemptions to the prohibition in paragraphs (a) and (b) and the disqualification requirement in paragraph (c), for two forms of credit: borrowing through the use of a credit or charge card and borrowing through overdraft protection, on terms and conditions available to the public. The need for regulation is diminished because these forms of credit are typically fairly standardized and low credit amounts are customary. The Bureau has determined permitting employees to have adequate access to sources of credit to meet their individual financial needs outweighs the incremental benefit that may be gained by extending the rule to cover these forms of credit.

The DAEO may grant a waiver under paragraph (e) based on a determination that the participation in matters otherwise prohibited by this section is not prohibited by law and would not create an appearance of loss of impartiality or use of public office for private gain.

Section 9401.109 Disqualification of Employees From Particular Matters Involving Creditors

Section 9401.109(a) prohibits an employee from participating in a particular matter involving specific parties if the employee is aware that the employee, the employee's spouse, domestic partner, or dependent child, or a specified related entity has credit with or is indebted to an entity that is or represents a party to the matter.

This section supplements § 2635.502 of the OGE Standards. The disqualification requirement is designed to ensure that employees and persons and entities related to employees do not benefit or appear to benefit from employees' official positions and the employees do not lose or appear to lose their impartiality when taking official action.

Paragraph (b) exempts certain forms of credit and indebtedness from the disqualification requirement in paragraph (a) as long as the person with the credit or indebtedness is not in an adversarial position with the entity that extended the credit or to which the indebtedness is owed, and the credit or indebtedness was offered on terms and conditions no more favorable than those offered to the general public. The exemptions include revolving consumer credit and charge cards; overdraft protection on checking and similar accounts; amortizing indebtedness on consumer goods (e.g., automobiles); educational loans (e.g., student loans; loans taken out by a parent or guardian to pay for a child's education costs); and loans on residential homes (e.g., mortgages, home equity lines of credit).

Paragraph (c) allows an employee to participate in a matter from which they would be disqualified under paragraph (a), if the credit or indebtedness is the sole responsibility of a person listed in paragraphs (a)(2) through (a)(8), and other conditions are met. The exception is intended to address situations where the credit or indebtedness is unlikely to raise ethics concerns regarding the motivation of the lender or the impartiality of an employee's performance of official duties because the connection between the employee and that credit or indebtedness is attenuated.

Despite the general disqualification requirement in paragraph (a) of this section, the DAEO may authorize an employee to participate in the matter using the authorization process set forth in 5 CFR 2635.502(d) of the OGE Standards.

Section 9401.110 Prohibited Recommendations

This section prohibits employees from making any recommendation or suggestion regarding the acquisition, sale, or other divestiture of a debt or equity interest of an entity supervised by the Bureau or of an entity that is or represents a party to a particular matter involving specific parties to which the employee is assigned. This rule is intended in part to eliminate any misunderstanding or harm that could result from such a recommendation. For example, an investor should not be misled into believing that an equity interest in a particular entity supervised by the Bureau is a good investment because the investor believes that the employee from whom the investor receives a recommendation may have access to inside information concerning that entity. This provision also supplements 5 CFR 2635.704 with a provision designed specifically to prohibit employees from using or creating the appearance of using information unavailable to the general public to further a private interest.

Section 9401.111 Restrictions on Participating in Matters Involving Covered Entities

This section disqualifies an employee from participating in a particular matter involving specific parties if a covered entity is or represents a party to the matter. For purposes of this disqualification requirement, the term ''covered entity'' includes a person for whom the employee is aware that his or her spouse, domestic partner, fiancé, child, parent, sibling, or member of the employee's household is serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee. Disqualification of the employee eliminates the potential for an appearance of preferential treatment in those instances where the employee's connection to a covered entity would likely raise questions regarding the appropriateness of actions taken by the employee or the Bureau. This section is not intended to impose an affirmative duty on the part of the employee to investigate or inquire as to whether these individuals have these relationships with covered entities.

The DAEO may authorize an employee to participate in the matter using the authorization process set forth in 5 CFR 2635.502(d) of the OGE Standards.

Section 9401.112 Prohibited Purchase of Assets

This section prohibits employees, or their spouse and minor children, from purchasing real or personal property from an entity supervised by the Bureau unless it is sold at public auction or by other means that assures that the selling price of the property is the asset's fair market value. For example, fixed price retail transactions from an entity supervised by the Bureau would be excluded from this prohibition. This section is proposed to maintain public confidence in the impartiality and objectivity with which the Bureau executes its supervisory functions and as a supplement to the general prohibition in 5 CFR 2635.702 against the use of public office for private gain.

Section 9401.113 Waivers

This section authorizes the DAEO to grant a written waiver of any provision of this part based upon a determination that the waiver will not result in conduct inconsistent with the OGE Standards or otherwise prohibited by law. Under this section, the DAEO may grant a written waiver but require the employee to take further action. This provision is intended, in appropriate cases, to lessen the burden that these supplemental regulations may impose on employees while ensuring that employees do not engage in actions or hold financial interests that may interfere with the objective and impartial performance of their official duties.

III. Matters of Regulatory Procedure

Administrative Procedure Act

Under 5 U.S.C. 553(a)(2), rules relating to agency management or personnel are exempt from the notice and comment rulemaking requirements of the Administrative Procedure Act (APA). In addition, under 5 U.S.C. 553(b)(3)(A), notice and comment rulemaking requirements do not apply to rules concerning matters of agency organization, procedure, or practice. Given that the rule concerns matters of agency management or personnel, and organization, procedure, or practice, the notice and comment requirements of the APA do not apply here. Furthermore, under 5 U.S.C. 553(b)(3)(B), the Bureau finds that good cause exists to waive the proposed rulemaking requirements under the APA because the notice and comment procedures would be contrary to the public interest. The Bureau began exercising certain of its supervision, enforcement, and regulatory authorities on July 21, 2011. Given the Bureau's newly acquired authorities, it is necessary to promptly establish supplemental ethics rules that will: (1) Maintain public confidence in the impartiality and objectivity with which the Bureau executes its regulatory and supervisory functions; (2) eliminate concerns that sensitive information provided to the Bureau might be misused for private gain; and (3) ensure that employees are not disqualified from participating in official matters that might result in the Bureau's inability to fulfill its mission. The absence of such rules may adversely affect the public's confidence and may call into question the impartiality with which Bureau programs are carried out. For these reasons, the Bureau finds good cause to issue this regulation as an Interim Final Rule effective 60 days after publication.

The Bureau is issuing this interim final rule for comment and welcomes comments from the public on all aspects of the rule. The Bureau will consider comments as appropriate. Comments may be submitted in accordance with the instructions in the **ADDRESSES** section of these supplemental regulations.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

List of Subjects in 5 CFR Part 9401

Conflict of interests, Government employees.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau, in concurrence with OGE, is amending title 5 of the Code of Federal Regulations by adding a new chapter LXXXIV, consisting of part 9401, to read as follows:

TITLE 5—ADMINISTRATIVE PERSONNEL

CHAPTER LXXXIV—BUREAU OF CONSUMER FINANCIAL PROTECTION

PART 9401—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE BUREAU OF CONSUMER FINANCIAL PROTECTION

Sec.

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9401.108 Restrictions on seeking, obtaining, or renegotiating credit from an entity that is or represents a party to a matter to which an employee is assigned or may be assigned.
9401.109 Disqualification of employees from particular matters involving creditors.
9401.110 Prohibited recommendations.
9401.111 Restriction on participating in matters involving covered entities.
9401.112 Prohibited purchase of assets.
9401.113 Waivers.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159; 3 CFR, 1898 Comp., p.215, as modified by E.O. 12731, 55 FR 42547; 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403, 2635.502 and 2635.803.

§ 9401.101 General.

(a) *Purpose.* In accordance with 5 CFR 2635.105, the regulations in this part supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635 (OGE Standards) and prescribe the standards of ethical conduct applicable to employees of the Bureau of Consumer Financial Protection (Bureau).

(b) *Other regulations, guidance and procedures.* Employees are required to comply with the OGE Standards and the CFPB Ethics Regulations, as well as with guidance and procedures issued by the Bureau pursuant to 5 CFR 2635.105(c). Employees also are subject to all other government-wide regulations concerning executive branch ethics including without limitation, financial disclosure regulations contained in 5 CFR part 2634, regulations concerning financial interests contained in 5 CFR part 2640, post-employment conflict of interest restrictions contained in 5 CFR part 2641, outside earned income limitations and employment and affiliation restrictions applicable to certain noncareer employees contained in 5 CFR part 2636, and the regulations concerning executive branch employee responsibilities and conduct contained in 5 CFR part 735.

§ 9401.102 Definitions.

For purposes of this part:

CFPB Ethics Regulations means the supplemental ethics standards set forth in this part.

Control means the possession, direct or indirect, of the power or authority to manage, direct, or oversee.

Credit has the meaning set forth in 12 U.S.C. 5481(7) and as further defined in regulations promulgated by the Bureau to implement that statute. A person may have credit without any outstanding balance owed.

Debt or equity interest includes without limitation, secured and unsecured bonds, debentures, notes, securitized assets, commercial papers, and preferred and common stock. The term encompasses both current and contingent ownership interests; a beneficial or legal interest derived from a trust; a right to acquire or dispose of any long or short position in debt or equity interests; interests convertible into debt or equity interests; and options, rights, warrants, puts, calls, straddles, derivatives, and other similar interests. It does not include deposits; credit union shares; a future interest created by someone other than the employee or the employee's spouse or dependent child; or a right as a beneficiary of an estate that has not been settled.

Dependent child has the meaning set forth in 5 CFR 2634.105(d). It includes an employee's son, daughter, stepson, or stepdaughter if:

(1) Unmarried, under the age of 21, and living in the employee's household; or

(2) Claimed as a ''dependent'' on the employee's income tax return.

Designated Agency Ethics Official (DAEO) means the official within the Bureau that the Director has appointed to coordinate and manage the ethics program at the Bureau, under 5 CFR 2638.202(b). For purposes of this part, the term ''DAEO'' also includes the Alternate DAEO appointed under 5 CFR 2638.202(b), and a designee of the DAEO or Alternate DAEO unless a particular provision says an authority is reserved to the DAEO.

Director means the Director of the Bureau.

Domestic partner means a person with whom a Bureau employee:

(1) Has a close and committed personal relationship and both parties are at least 18 years of age, are each other's sole domestic partner, and intend to remain in the relationship indefinitely, and neither is married to, in a civil union with, or partnered with any other spouse or domestic partner;

(2) Is not related by blood in a manner that would bar marriage under the laws of the jurisdiction in which the employee resides;

(3) Is in a financially interdependent relationship in which both agree to be responsible for each other's common welfare and share in financial obligations; and

(4) Has shared for at least six months the same regular and permanent residence in a committed relationship and both parties intend to do so indefinitely, or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle.

Employee means an employee of the Bureau, including a special Government employee.

Entity supervised by the Bureau means a person that is subject to the Bureau's supervision authority pursuant to 12 U.S.C. 5514(a)(1) or 5515(a) and in regulations promulgated thereunder, as identified on a list to be maintained by CFPB.

Indebted or *indebtedness* means a legal obligation under which an individual or borrower received money or assets on credit, and currently owes payment.

Indebted to an entity means an obligation to make payments to an entity as a result of an indebtedness, whether originally made with that entity or with another entity. This includes without limitation, a servicer on a mortgage to whom payments are made.

OGE Standards mean the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635.

Participate means personal and substantial participation and has the meaning set forth in 5 CFR 2635.402(b)(4). An employee participates when, for example, he or she makes a decision, gives approval or disapproval, renders advice, provides a recommendation, conducts an investigation or examination, or takes an official action in a particular matter, and such involvement is of significance to the matter. It requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue.

Particular matter has the meaning set forth in 5 CFR 2635.402(b)(3). The term includes a matter that involves deliberation, decision, or action and is focused upon the interests of specific persons or a discrete and identifiable class of persons. It may include governmental action such as legislation, regulations, or policy-making that is narrowly focused on the interest of a discrete and identifiable class of persons.

Particular matter involving specific parties has the meaning set forth in 5 CFR 2641.201(h). Such a matter typically involves a specific proceeding affecting the legal rights of the parties or an isolatable transaction or related set of transactions between identified parties. The term includes without limitation, a contract, audit, enforcement action, examination, investigation, litigation proceeding, or request for a ruling.

Person has the same meaning set forth in 5 CFR 2635.102(k). It includes without limitation, an individual, corporation and subsidiaries it controls, company, association, firm, partnership, society, joint stock company, or any other organization or institution.

Special Government employee has the meaning set forth in 5 CFR 2635.102(l).

Spouse means an employee's husband or wife by lawful marriage, but does not include an employee's spouse if:

(1) The employee and the employee's spouse are legally separated;

(2) The employee and the employee's spouse live apart;

(3) There is an intention to end the marriage or separate permanently; and

(4) The employee has no control over the legally separated spouse's debt or equity interests.

§ 9401.103 Prior approval for outside employment.

(a) *General requirement.* Before engaging in outside employment, an employee must obtain written approval from the employee's supervisor and the concurrence of the DAEO, except to the extent that the Bureau has issued an instruction or internal directive pursuant to paragraph (e) of this section exempting an activity or class of activities from this requirement.

(b) *Definition of employment.* For purposes of this section, ''employment'' means any form of non-Federal employment, business relationship, or activity involving the provision of personal services by the employee, regardless of whether the services are compensated. It includes without limitation, personal services as an officer, director, employee, agent, advisor, attorney, consultant, contractor, general partner, trustee, teacher, speaker, or writer.

Note to § 9401.103(b): Both 18 U.S.C. 203(d) and 205(e) require special approval for certain representational activities in claims against and other matters affecting the interests of the Government. Thus, an employee who wishes to act as agent or attorney for or otherwise represent his or her parents, spouse, child, or a person for whom or for an estate for which he or she is serving as guardian, executor, administrator, trustee, or other personal fiduciary in such matters as described in those statutes shall obtain the approval of the Government official responsible for the employee's appointment in addition to the regulatory approval required in this section.

(c) *Standard for approval.* Approval will be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute, the OGE Standards, or the CFPB Ethics Regulations in this part.

(d) *Renewed request for approval.* Upon a significant change in either the nature, scope, or duties of the employee's outside employment or in the employee's official Bureau position, the employee shall submit a new request for approval.

(e) *DAEO responsibilities.* The DAEO may issue instructions or internal directives governing the submission of requests for approval of outside employment and designating appropriate officials to act on such requests. The instructions or internal directives may exempt categories of employment from the prior approval requirement of this section based on a determination that employment within those categories generally would be approved and is not likely to involve prohibited conduct or create an appearance of lack of impartiality.

§ 9401.104 Additional rules concerning outside employment for covered employees.

(a) *Prohibited outside employment.* A covered employee shall not engage in compensated outside employment for an entity supervised by the Bureau or for an officer, director, or employee of such entity.

(b) *Definition of employment.* For purposes of this section, ''employment'' has the same meaning as set forth in § 9401.103(b) of this part.

(c) *Definition of covered employee.* For purposes of this section, ''covered employee'' means:

(1) An employee serving in an examiner position;

(2) An employee serving in an attorney position;

(3) An employee in the Office of Research, serving as a section chief at CFPB pay band 71 or above or as a senior economist in the Compliance Analysis Section;

(4) An employee serving in an investigator, paralegal, or financial analyst position in the Office of Enforcement;

(5) An employee required to file a Public Financial Disclosure Report (OGE Form 278) under 5 CFR part 2634; or

(6) Any other Bureau employee specified in a Bureau order or directive whose duties and responsibilities, as determined by the DAEO, require application of the prohibition on outside employment contained in this section to ensure public confidence that the Bureau's programs are conducted impartially and objectively.

§ 9401.105 Additional rules concerning outside employment for Bureau attorneys.

(a) *Prohibited outside practice of law.* In addition to the prior approval requirements under § 9401.103 and the outside employment restrictions under § 9401.104 of this part, an employee serving in an attorney position shall not engage in the practice of law outside his or her official Bureau duties that might require the attorney to:

(1) Take a position that is or appears to be in conflict with the interests of CFPB; or

(2) Interpret any statute, regulation, or rule administered or issued by the Bureau.

(b) *Exemption for self representation.* Nothing in this section prevents a Bureau attorney from acting as an agent or attorney for or otherwise representing himself or herself in the outside practice of law, except:

(1) In those matters in which the employee has participated personally and substantially as a Government employee; or

(2) In those matters which are the subject of the employee's official responsibility.

§ 9401.106 Prohibited financial interests.

(a) *Prohibited interests.* Except as permitted by this section, an employee or an employee's spouse or minor child shall not own or control a debt or equity interest in an entity supervised by the Bureau.

(b) *Exceptions.* Interests prohibited in paragraph (a) of this section do not include the ownership or control of a debt or equity interest in:

(1) *Mutual funds.* A publicly traded or publicly available mutual fund or other collective investment fund if:

(i) The fund does not have a stated policy of concentration in the financial services industry or the banking industry; and

(ii) Neither the employee nor the employee's spouse exercises or has the ability to exercise control over or selection of the financial interests held by the fund.

(2) *Pension plans.* A widely held, diversified pension or other retirement fund that is administered by an independent trustee or custodian. Such a fund is diversified if it holds no more than 5% of the value of its portfolio in the securities of any one issuer (other than the United States Government) and no more than 20% in any particular economic or geographic sector (other than the United States).

(3) *Federal retirement and thrift savings plans.* Funds administered by the Thrift Plan for Employees of the Federal Reserve System, the Retirement Plan for Employees of the Federal Reserve System, the Thrift Savings Plan, or a Federal government agency.

(c) *Disqualification.* If an employee or an employee's spouse or minor child

owns or controls a debt or equity interest that is prohibited under paragraph (a) of this section, the employee shall immediately disqualify himself or herself from participating in all particular matters involving an entity with which the employee or the employee's spouse or minor child has a debt or equity interest, unless and until the employee is granted a waiver pursuant to paragraph (d) of this section and the waiver includes an authorization allowing the employee to participate in such matters.

(d) *Waivers.* Upon request by the employee, the DAEO has the authority to grant an individual waiver under this paragraph, which authority may be delegated only to the Alternate DAEO. The DAEO, in consultation with senior management in the Division in which the employee works, may issue a written waiver permitting the employee or the employee's spouse or minor child to own or control a particular debt or equity interest that otherwise would be prohibited by this section, if:

(1) Mitigating circumstances exist due to the way the employee or the employee's spouse or minor child acquired ownership or control of the debt or equity interest. Mitigating circumstances may include, but are not limited to:

(i) The employee or the employee's spouse or minor child acquired the debt or equity interest through inheritance, gift, merger, acquisition, or other change in corporate structure, or otherwise without specific intent on the part of the employee or the employee's spouse or minor child; or

(ii) The employee's spouse received the debt or equity interest as part of a compensation package in connection with employment or prior to marriage to the employee;

(2) The employee makes a prompt and complete written disclosure of the debt or equity interest to the DAEO; and

(3) The disqualification of the employee from participating in particular matters involving an entity with which the employee or the employee's spouse or minor child has a debt or equity interest, as specified in the written waiver, would not unduly interfere with the full performance of the employee's duties.

(e) *Covered third party entities.* Immediately after becoming aware that a covered third party entity owns or controls a debt or equity interest that an employee would be prohibited from owning or controlling under paragraph (a) of this section, the employee shall report the interest in writing to the DAEO. The DAEO may require the employee to terminate the relationship with the covered third party entity, disqualify himself or herself from certain particular matters, or take other action as necessary to avoid a statutory violation, or a violation of the OGE Standards or the CFPB Ethics Regulations, including an appearance of misuse of position or loss of impartiality. For purposes of this paragraph (e), ''covered third party entity'' includes:

(1) A partnership in which the employee or the employee's spouse or minor child is a general partner;

(2) A partnership or closely held corporation in which the employee or the employee's spouse or minor child individually or jointly holds more than a 10 percent equity interest;

(3) A trust in which the employee or the employee's spouse or minor child has a legal or beneficial interest;

(4) An investment club or similar informal investment arrangement between the employee or the employee's spouse or minor child, and others;

(5) A qualified profit sharing, retirement, or similar plan in which the employee or the employee's spouse or minor child has an interest; or

(6) An entity in which the employee or the employee's spouse or minor child individually or jointly holds more than a 25 percent equity interest.

§ 9401.107 Prohibition on acceptance of credit on preferential terms from an entity supervised by the Bureau.

An employee, and the employee's spouse or minor child, may not accept credit from or enter into any other financial relationship with an entity supervised by the Bureau, if the credit or financial relationship contains terms that are more favorable than those offered to the public in comparable circumstances.

§ 9401.108 Restrictions on seeking, obtaining, or renegotiating credit from an entity that is or represents a party to a matter to which an employee is assigned or may be assigned.

(a) *Prohibition on employee seeking, obtaining, or renegotiating credit or indebtedness.* (1) While an employee is assigned to participate in a particular matter involving specific parties, the employee shall not seek, obtain, or renegotiate credit or indebtedness with an entity that is or represents a party to the matter. This prohibition also applies to a particular matter involving specific parties pending at the Bureau in which the employee is not currently participating but of which the employee is aware and believes it is likely that he or she will participate.

(2) The prohibition in paragraph (a)(1) of this section continues for two years after the employee's participation in the particular matter has ended.

(b) *Prohibition on employee's spouse or minor child seeking, obtaining, or renegotiating credit or indebtedness.* The prohibition in paragraph (a) of this section shall apply to the spouse or minor child of an employee unless:

(1) The credit or indebtedness is supported only by the income or independent means of the spouse or minor child;

(2) The credit or indebtedness is obtained on terms and conditions no more favorable than those offered to the general public; and

(3) The employee does not participate in the negotiation for the credit or indebtedness or serve as co-maker, endorser, or guarantor of the credit or indebtedness.

(c) *Disqualification requirement for credit sought by person related to an employee.* An employee shall disqualify himself or herself from participating in a particular matter involving specific parties as soon as he or she learns that any of the following persons are seeking, obtaining, or renegotiating credit or indebtedness with an entity that is or represents a party to the matter:

(1) The employee's spouse, domestic partner, or dependent child;

(2) A partnership in which the employee or the employee's spouse, domestic partner, or dependent child is a general partner;

(3) A partnership or closely held corporation in which the employee or the employee's spouse, domestic partner, or dependent child individually or jointly owns or controls more than a 10 percent equity interest;

(4) A trust in which the employee or the employee's spouse, domestic partner, or dependent child has a legal or beneficial interest;

(5) An investment club or similar informal investment arrangement between the employee or the employee's spouse, domestic partner, or dependent child, and others;

(6) A qualified profit sharing, retirement, or similar plan in which the employee or the employee's spouse, domestic partner, or dependent child has an interest; or

(7) An entity in which the employee or the employee's spouse, domestic partner, or dependent child individually or jointly holds more than a 25 percent equity interest.

(d) *Exemptions.* The following forms of credit are exempted from the prohibition in paragraphs (a) and (b) of this section and the disqualification requirement in paragraph (c) of this section:

(1) Revolving consumer credit or charge cards issued by insured depository institutions or insured credit unions on terms and conditions no more favorable than those offered to the general public; and

(2) Overdraft protection on checking accounts and similar accounts at insured depository institutions or insured credit unions on terms and conditions no more favorable than those offered to the general public.

(e) *Waivers.* The DAEO, after consultation with senior management in the Division in which the employee works, may grant a written waiver from the prohibition in paragraphs (a) or (b) of this section or the disqualification requirement in paragraph (c) of this section, based on a determination that participation in matters otherwise prohibited by this section would not be prohibited by law (18 U.S.C. 208) or create an appearance of loss of impartiality or use of public office for private gain, and would not otherwise be inconsistent with the OGE Standards or the CFPB Ethics Regulations.

§ 9401.109 Disqualification of employees from particular matters involving creditors.

(a) *Disqualification required.* Absent an authorization pursuant to paragraph (d) of this section, an employee shall not participate in a particular matter involving specific parties if the employee is aware that any of the following have credit with or are indebted to an entity that is or represents a party to the matter:

(1) The employee;

(2) The employee's spouse, domestic partner, or dependent child;

(3) A partnership in which the employee or the employee's spouse, domestic partner, or dependent child is a general partner;

(4) A partnership or closely held corporation in which the employee or the employee's spouse, domestic partner, or dependent child individually or jointly owns or controls more than 10 percent of its equity;

(5) A trust in which the employee or the employee's spouse, domestic partner, or dependent child has a legal or beneficial interest;

(6) An investment club or similar informal investment arrangement between the employee or the employee's spouse, domestic partner, or dependent child, and others;

(7) A qualified profit sharing, retirement, or similar plan in which the employee or the employee's spouse, domestic partner, or dependent child has an interest; or

(8) An entity in which the employee or the employee's spouse, domestic partner, or dependent child individually or jointly holds more than a 25 percent equity interest.

(b) *Forms of credit and indebtedness exempted.* The following forms of credit and indebtedness are exempted from the disqualification requirement in paragraph (a) of this section, as long as the person listed in paragraphs (a)(1) through (a)(8) of this section is not in an adversarial position (e.g., delinquent in payments; disputing the terms or conditions of the account; subject to debt collection measures like wage garnishment; involved in any disagreement that may cast doubt on the employee's ability to remain impartial) with the entity that extended the credit or to which the indebtedness is owed, and the credit or indebtedness was offered on terms and conditions no more favorable than those offered to the general public:

(1) Revolving consumer credit or charge cards issued by insured depository institutions or insured credit unions;

(2) Overdraft protection on checking accounts and similar accounts at insured depository institutions or insured credit unions;

(3) Amortizing indebtedness on consumer goods (e.g., automobiles);

(4) Educational loans (e.g., student loans; loans taken out by a parent or guardian to pay for a child's education costs); and

(5) Loans on residential homes (e.g., home mortgages; home equity lines of credit).

(c) *Credit or indebtedness of employee's spouse, domestic partner, dependent child, or other specified persons.* An employee's disqualification under paragraph (a) of this section is not required if:

(1) The credit or indebtedness is solely the responsibility of the person listed in paragraphs (a)(2) through (a)(8) of this section; and

(2) The credit or the liability for repayment of the indebtedness is not dependent on, attributable to, or derived from the employee's income, assets, or activities.

(d) *Authorization to participate.* The DAEO may authorize an employee to participate in a matter that would require disqualification under paragraph (a) of this section, using the authorization process set forth in 5 CFR 2635.502(d) of the OGE Standards. The DAEO will consult with senior management in the Division in which the employee works before issuing such an authorization.

§ 9401.110 Prohibited recommendations.

An employee shall not make recommendations or suggestions, directly or indirectly, concerning the acquisition or sale or other divestiture of a debt or equity interest of an entity supervised by the Bureau, or an entity that is or represents a party to a particular matter involving specific parties to which the employee is assigned.

§ 9401.111 Restriction on participating in matters involving covered entities.

(a) An employee shall not participate in a particular matter involving specific parties if a covered entity is or represents a party to the matter, unless the employee receives authorization from the DAEO. For purposes of this paragraph, a ''covered entity'' is a person for whom the employee is aware the employee's spouse, domestic partner, fiancé, child, parent, sibling, or member of the employee's household is serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee.

(b) The DAEO may authorize the employee to participate in the matter using the authorization process set forth in 5 CFR 2635.502(d) of the OGE Standards. The DAEO will consult with senior management in the Division in which the employee works before issuing such an authorization.

§ 9401.112 Prohibited purchase of assets.

An employee, or an employee's spouse or minor child, shall not purchase, directly or indirectly, any real or personal property from an entity supervised by the Bureau, unless it is sold at public auction or by other means which assures that the selling price reflects the asset's fair market value.

§ 9401.113 Waivers.

The DAEO may grant a written waiver from any provision of this part where the DAEO finds good cause to do so; provided, however, that the DAEO will not do so unless the DAEO finds that the waiver is not inconsistent with the OGE Standards or otherwise prohibited by law and that, under the particular circumstances, application of the provision being waived is not necessary in order to avoid a violation of an ethics rule. Each waiver must be in writing and supported by a statement of facts and findings and may impose appropriate conditions, such as requiring the employee to execute a written disqualification statement.

Dated: April 16, 2012.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

Don Fox,

Principal Deputy Director, Office of Government Ethics.

[FR Doc. 2012–10122 Filed 4–26–12; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 210

[FNS–2011–0025]

RIN 0584–AE15

Certification of Compliance With Meal Requirements for the National School Lunch Program Under the Healthy, Hunger-Free Kids Act of 2010

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim final rule.

SUMMARY: This interim rule amends National School Lunch Program regulations to conform to requirements contained in the Healthy, Hunger-Free Kids Act of 2010 regarding performance-based cash assistance for school food authorities certified compliant with meal pattern and nutrition standards. This rule requires State agencies to certify participating school food authorities (SFAs) that are in compliance with meal pattern and nutrition standard requirements as eligible to receive performance-based cash assistance for each reimbursable lunch served (an additional six cents per lunch available beginning October 1, 2012 and adjusted annually thereafter). This rule also requires State agencies to disburse performance-based cash assistance to certified SFAs, and withhold the performance-based cash assistance if the SFA is determined to be out of compliance with meal pattern or nutrition standards during a subsequent administrative review. The intended effect of this rule is to provide additional funding for SFAs to implement new meal pattern requirements, thus increasing the healthfulness of meals served to school children.

DATES: *Effective date:* This interim rule is effective July 1, 2012.

Comment dates: Comments on rule provisions: Mailed comments on the provisions in this rule must be postmarked on or before July 26, 2012; emailed or faxed comments must be submitted by 11:59 p.m. on July 26, 2012; and hand-delivered comments must be received by 5 p.m. July 26, 2012 to be assured of consideration.

Comments on Paperwork Reduction Act requirements: Comments on the information collection requirements associated with this rule must be received by June 26, 2012.

ADDRESSES: The Food and Nutrition Service (FNS) invites interested persons to submit comments on this interim rule. Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Julie Brewer, Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, Department of Agriculture, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302–1594.
- *Hand Delivery or Courier:* Deliver comments to 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302–1594, during normal business hours of 8:30 a.m.–5 p.m. All submissions received in response to this interim rule will be included in the record and will be available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting comments will be subject to public disclosure. FNS will also make the comments publicly available by posting a copy of all comments on *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Julie Brewer, Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, 3101 Park Center Drive, Alexandria, Virginia 22302, or by telephone at (703) 305–2590.

SUPPLEMENTARY INFORMATION:

I. Background

The National School Lunch Program (NSLP) provides cash assistance to States to assist schools in providing nutritious lunches for school children. In order to receive reimbursement, schools must serve lunches that meet program requirements, including statutory and regulatory nutrition standards.

Prior to the enactment of the Healthy, Hunger-Free Kids Act of 2010 (Pub. L. 111–296), on December 13, 2010, the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1751 et al.) authorized only general and special cash assistance for lunches served in the NSLP. Section 4 of the NSLA authorizes the Secretary to provide two levels of general cash assistance for all lunches served, including lunches to children whose family income is above 185 percent of the Federal poverty guidelines. The lower cash assistance level applies to lunches served by SFAs in which less than 60 percent of the lunches served in the school lunch program during the second preceding school year were served free or at a reduced price. The higher payment level applies to lunches served by SFAs in which 60 percent or more of the lunches served during the second preceding school year were served free or at a reduced price.

To supplement the general cash assistance payments, section 11 of the NSLA (42 U.S.C. 1759a) authorizes the Secretary to provide special cash assistance payments to schools providing free and reduced price meals. Children from families with income at or below 130 percent of the Federal poverty level are eligible for free meals, while those from families with incomes between 130 and 185 percent are eligible for reduced price meals. As a result, lunches served to those students are reimbursable at a higher, special assistance rate.

In accordance with section 11 of the NSLA, both the general and special cash assistance reimbursement rates are adjusted annually on July 1 of each year. Annual adjustments reflect changes in the cost of operating the NSLP, as indicated by the change in the Food Away From Home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. Each year, the Department of Agriculture (the Department) publishes a Notice specifying the annual adjustments.

The Healthy, Hunger-Free Kids Act of 2010

The Healthy, Hunger-Free Kids Act of 2010 (the HHFKA) made significant changes to the NSLA. Section 201 of the HHFKA amended section 4(b) of the NSLA, 42 U.S.C. 1753(b), by requiring the Secretary to update the meal patterns and nutrition standards for the NSLP and School Breakfast Program (SBP) and to issue regulations requiring all SFAs to comply with the updated meal patterns and nutrition standards.

On January 13, 2011, the Department published a proposed rule, *Nutrition Standards in the National School Lunch and School Breakfast Programs* (76 FR 2494), which proposed to update the meal patterns and nutrition requirements for the NSLP and SBP, as required by the NSLA. The Department received over 132,000 comments from the public on the proposed rule. Subsequently, on January 26, 2012, the