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OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2641

RIN 3209-AA59

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

AGENCY: Office of Government Ethics.

ACTION: Proposed rule.

SUMMARY: The U.S. Office of Government Ethics (OGE) is issuing a proposed rule to revise the component designations of one agency for purposes of the one-year post-employment conflict of interest restriction for senior employees. Specifically, based on the recommendation of the Department of Health and Human Services, OGE is proposing to designate one new component in its regulations.

DATES: Written comments are invited and must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, in writing, to OGE on this proposed rule, identified by RIN 3209-AA59, by any of the following methods:

Email: usoge@oge.gov. Include the reference “Proposed Rule Revising Departmental Component Designations” in the subject line of the message.

Mail, Hand Delivery/Courier: U.S. Office of Government Ethics, 250 E

Street SW, Suite 750, Washington, DC 20024, Attention: Kimberly L. Sikora Panza, Senior Associate Counsel.

Instructions: All submissions must include OGE's agency name and the Regulation Identifier Number (RIN) for this proposed rulemaking, RIN 3209-AA59. All comments, including attachments and other supporting materials, will become part of the public record and be subject to public disclosure. OGE may post comments on its website, www.oge.gov. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Kimberly L. Sikora Panza, Senior Associate Counsel, U.S. Office of Government Ethics, 250 E Street SW, Suite 750, Washington, DC 20024-3249; Telephone: 202-482-9300; TTY: 800-877-8339; FAX: 202-482-9237.

SUPPLEMENTARY INFORMATION:

I. Substantive Discussion; Addition of New Departmental Component

The Director of OGE (Director) is authorized by 18 U.S.C. 207(h) to designate distinct and separate departmental or agency components in the executive branch for purposes of 18 U.S.C. 207(c), the one-year post-employment conflict of interest restriction for senior employees. 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 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 “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 that there exists no potential for use of undue influence or unfair advantage based on past Government service,” the Director shall by rule designate that agency or bureau as a separate component of that department or agency. As a result, 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, of another designated component, or of any other agency or bureau of the parent that has not been designated. Likewise, 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.

The Director regularly reviews the component designations listed in appendix B to part 2641, and in consultation with the department or agency concerned, makes such additions and deletions as are necessary. Specifically, pursuant to 5 CFR 2641.302(e)(3), the Director “shall, by rule, make or revoke a component designation after considering the recommendation of the designated agency ethics official.” Before designating an agency component as distinct and separate for purposes of 18 U.S.C. 207(c), the Director

must find that the component is an agency or bureau within a parent agency that exercises functions which are distinct and separate from the functions of the parent agency and from the functions of other components of that parent, and that there exists no potential for use of undue influence or unfair advantage based on past Government service. *See* 5 CFR 2641.302(c).

Pursuant to the procedures prescribed in 5 CFR 2641.302(e), one agency provided a complete request to update its components listed in appendix B to part 2641. After carefully reviewing the requested change in light of the criteria in 18 U.S.C. 207(h) as implemented in 5 CFR 2641.302(c), OGE is proposing to grant this request and amend appendix B as explained below.

The Department of Health and Human Services (HHS) has requested that OGE designate the Administration for Strategic Preparedness and Response (ASPR) in appendix B to part 2641 as a separate component of HHS for purposes of 18 U.S.C. 207(c) because it exercises functions that are distinct and separate from the functions of the parent agency and other components. ASPR—previously operated as the Office of the Assistant Secretary for Preparedness and Response—was originally created in December 2006 when Congress passed the Pandemic and All-Hazards Preparedness Act, Pub. L. 109-417, 120 Stat. 2831. On July 22, 2022, HHS announced the reclassification of ASPR from a staff division to an Operating Division at HHS, which elevated ASPR to a standalone agency within HHS. All of the other Operating Divisions of HHS are currently designated as separate agency components in 5 CFR part 2641, appendix B; accordingly, designation of ASPR would align this division with all other HHS Operating Divisions for purposes of the senior employee post-employment restriction, 18 U.S.C.

207(c).

The factors set forth in 5 CFR 2641.302(c) support designation of ASPR as a separate agency component in appendix B. As discussed above, the office was originally created by statute in 2006, and its reclassification as an Operating Division became effective on February 11, 2023. *See Statement of Organization, Functions, and Delegations of Authority*, 88 FR 10125 (Feb. 16, 2023). The subject matter of ASPR is largely distinct and separate from other operations of HHS. Specifically, it has the core responsibility for the Department to plan, prepare, and mobilize in response to future disasters and emergencies, public health issues, and public health emergencies. Although the office at times works with other HHS Operating Divisions and other agencies in its efforts, ASPR's significant responsibilities are performed independently of other Operating Divisions, and many of its most important activities do not cut across organizational lines within the Department. In furtherance of its mission, ASPR has independent authority to publish rules and notices in the *Federal Register*.

In absolute terms, ASPR is a small component that has just over 1,200 employees and a budget of \$3.63 billion in fiscal year (FY) 2024; the entirety of HHS employs over 87,000 individuals. In relative terms, ASPR is larger than 3 of the 11 HHS components currently designated in appendix B, and smaller than the other 8.

According to HHS, designation of ASPR as a separate agency component would not create the potential for undue influence or unfair advantage based on the past Government service of ASPR employees. As discussed above, ASPR is unique in that its mission focuses on assisting the country to prepare for, respond to, and recover from

public health emergencies and disasters, and in furtherance of this mission, ASPR engages in work that differentiates it from other HHS components and the larger agency.

OGE therefore is proposing to grant the request of HHS and amend the agency's listing in appendix B to part 2641 to add ASPR as a new component for purposes of 18 U.S.C. 207(c). ASPR is separate and distinct from its parent organization and other HHS components, and given the manner in which ASPR works independently from other Operating Divisions and the entirety of the agency, there exists no potential for the use of undue influence or unfair advantage based on past Government service.

As indicated in 5 CFR 2641.302(f), a designation "shall be effective on the date the rule creating the designation is published in the *Federal Register* and shall be effective as to individuals who terminated senior service either before, on or after that date." Initial designations in appendix B to part 2641 were effective as of January 1, 1991. The effective date of subsequent designations is indicated by means of parenthetical entries in appendix B. The new component designation of ASPR made in this proposed rule will be effective on the date the final rule is published in the *Federal Register*.

II. Matters of Regulatory Procedure

Regulatory Flexibility Act

As Acting Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this proposed 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 proposed 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), this proposed 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 proposed rule is not a major rule as defined in 5 U.S.C. chapter 8, Congressional Review of Agency Rulemaking.

Executive Orders 12866, 13563 and 14094

In promulgating this rule, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in Executive Order 12866, Regulatory Planning and Review (58 FR 51735, Oct. 4, 1993); Executive Order 13563, Improving Regulation and Regulatory Review (76 FR 3821, Jan. 21, 2011); and Executive Order 14094, Modernizing Regulatory Review (88 FR 21879, Apr. 11, 2023). Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select the regulatory

approaches that maximize net benefits (including economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This proposed rule has not been reviewed by the Office of Management and Budget under Executive Order 12866 because it is not a “significant” regulatory action for the purposes of that order.

Executive Order 12988

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

Executive Order 13715

The Office of Government Ethics has evaluated this proposed rule under the criteria set forth in Executive Order 13175 and determined that tribal consultation is not required as this proposed rule has no substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

List of Subjects in 5 CFR Part 2641

Conflict of interests, Government employees.

Approved: May 15, 2024.

Shelley K. Finlayson,

Acting Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the U.S. Office of Government Ethics proposes to amend 5 CFR part 2641 as set forth below:

**PART 2641—POST-EMPLOYMENT CONFLICT OF INTEREST
RESTRICTIONS**

1. The authority citation for part 2641 is revised to read as follows:

Authority: 5 U.S.C. ch. 131; 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. Appendix B to part 2641 is amended by revising the listings for the Department of Health and Human Services to read as follows:

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

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Parent: Department of Health and Human Services

Components:

Administration for Children and Families (effective January 28, 1992).

Administration for Community Living (effective December 4, 2014).

Administration for Strategic Preparedness and Response (effective upon publication of the final rule in the *Federal Register*).

Agency for Healthcare Research and Quality (formerly Agency for Health Care Policy and Research) (effective May 16, 1997).

Agency for Toxic Substances and Disease Registry (effective May 16, 1997).

Centers for Disease Control and Prevention (effective May 16, 1997).

Centers for Medicare and Medicaid Services (formerly Health Care Financing Administration).

Food and Drug Administration.

Health Resources and Services Administration (effective May 16, 1997).

Indian Health Service (effective May 16, 1997).

National Institutes of Health (effective May 16, 1997).

Substance Abuse and Mental Health Services Administration (effective May 16, 1997).

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[FR Doc. 2024-10995 Filed: 5/24/2024 8:45 am; Publication Date: 5/28/2024]