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EXPORT-IMPORT BANK OF THE UNITED STATES

5 CFR Chapter LII

12 CFR Part 400

RIN 3209-AA15

Supplemental Standards of Ethical Conduct for Employees of the Export-Import Bank of the United States

AGENCY: Export-Import Bank of the United States (Eximbank).

ACTION: Interim rule with request for comments.

SUMMARY: The Export-Import Bank of the United States, with the concurrence of the Office of Government Ethics (OGE), is issuing regulations for employees of Eximbank that supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE. The supplemental rules prohibit certain Eximbank employees and their spouses and minor children from owning securities in any of the entities designated as having the most substantial dealings with Eximbank and require Eximbank employees, other than special Government employees, to obtain prior approval to engage in outside employment.

Eximbank is also repealing its existing regulations setting forth agency standards of ethical conduct which have been substantially superseded by the executive branch-wide Standards of Ethical Conduct and by the executive branch-wide financial disclosure regulations issued by OGE. In place of the existing Eximbank regulations in 12 CFR part 400, Eximbank is substituting a cross-reference to the new executive branch-wide regulations and to these supplemental regulations.

DATES: Interim rule effective April 7, 1995. Comments are invited and must be received on or before May 22, 1995.

ADDRESSES: Send comments to the Export-Import Bank of the United States, 811 Vermont Avenue NW., Washington, DC 20571, Attention: Mr. Paul W. Boyer.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. McKinsey, Export-Import Bank of the United States, Office of The General Counsel, telephone (202) 565-3452.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, OGE published a final rule entitled "Standards of Ethical Conduct for Employees of the Executive Branch" (Standards). See 57 FR 35006-35067, as corrected at 57 FR 48557 and 57 FR 52583, with additional grace period extensions at 59 FR 4779-4780 and 60 FR 6390-6391. The Standards, codified at 5 CFR part 2635 and effective February 3, 1993, establish uniform standards of ethical conduct that are applicable to all executive branch personnel.

5 CFR 2635.105 authorizes an executive branch agency to issue, with OGE's concurrence, agency-specific supplemental regulations that are necessary to implement effectively its ethics program. Eximbank, with OGE's concurrence, has determined that the following supplemental rules, being codified in new 5 CFR chapter LII, are necessary for the successful implementation of Eximbank's ethics program, in light of Eximbank's operations.

II. Analysis of the Regulations

Section 6201.101 General

Section 6201.101 explains that the regulations contained in the interim rule apply to employees of Eximbank and are supplemental to the executive branch standards.

Section 6201.102 Prohibited Financial Interests

The Standards, at 5 CFR 2635.403(a), specifically recognize that an individual agency may find it necessary or desirable to issue a supplemental regulation prohibiting or restricting the acquisition or holding of a financial interest or a class of financial interests by its employees, or any category of 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

interests would cause a reasonable person to question the impartiality and objectivity with which agency programs are administered. Eximbank has made such a determination with respect to certain holdings by those employees, other than special Government employees, who are required to file public or confidential disclosure statements. With respect to the spouses and minor children of these Eximbank employees, Eximbank has made an additional determination that there is a direct and appropriate nexus between the prohibition on holding certain financial interests as applied to spouses and minor children and the efficiency of the service provided by Eximbank. To help ensure public confidence in the integrity of Eximbank's programs and operations, this interim rule, for codification at 5 CFR 6201.102, will prohibit covered employees of Eximbank and their spouses and minor children from owning securities of any of the entities designated by Eximbank as having the most substantial dealings with Eximbank.

Section 6201.103 Prior Approval of Outside Employment

The Standards, at 5 CFR 2635.803, also specifically recognize that an agency may find it necessary or desirable to issue a supplemental regulation requiring its employees to obtain approval before engaging in outside employment or activities. The Eximbank standards of conduct regulations have long required employees to obtain written permission prior to engaging in outside employment. Eximbank has found this requirement useful in ensuring that the outside employment activities of employees conform with all applicable laws and regulations. In accordance with 5 CFR 2635.803, Eximbank has determined that it is necessary to the administration of its ethics program to continue to require such prior approval. This interim rule, for codification at 5 CFR 6201.103, will require employees of Eximbank, other than special Government employees, who desire to engage in outside employment to obtain prior approval of such employment from their immediate supervisor and from Eximbank's Designated Agency Ethics Official.

Repeal of Eximbank Standards of Conduct

Eximbank is repealing its existing standards of ethical conduct regulations codified at 12 CFR part 400 which have been largely superseded by the executive branch-wide Standards at 5 CFR part 2635 or the executive branch financial disclosure regulations at 5 CFR part 2634. In place of its old standards at 12 CFR part 400, Eximbank is issuing a residual cross-reference provision at new 12 CFR 400.101 to refer both to the executive branch-wide Standards and financial disclosure regulations and to Eximbank's new supplemental standards regulations.

II. Matters of Regulatory Procedure

Administrative Procedure Act

As General Counsel of Eximbank, I have found good cause pursuant to 5 U.S.C. 553(b) and (d)(3) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to these interim rules and repeals. The reason for this determination is that it is important to a smooth transition from Eximbank's prior ethics rules to the new executive branch-wide Standards and financial disclosure regulations that these rulemaking actions become effective as soon as possible. Furthermore, this rulemaking is related to Eximbank organization, procedure and practice. Nonetheless, this is an interim rulemaking, with provision for a 45-day public comment period. The Export-Import Bank of the United States will review all comments received during the comment period and will consider any modifications that appear appropriate in adopting these rules as final, with the concurrence of the Office of Government Ethics.

Regulatory Flexibility Act

As General Counsel of Eximbank, I have determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that these regulations will not have a significant impact on small business entities because they affect only Eximbank employees and their immediate families.

Paperwork Reduction Act

As General Counsel of Eximbank, I have determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because these regulations do not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects

5 CFR Part 6201

Conflict of interests, Government employees.

12 CFR Part 400

Conflict of interests, Government employees.

Dated: March 1, 1995.

Carol F. Lee,

General Counsel, Export-Import Bank of the United States.

Approved: March 15, 1995.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Export-Import Bank of the United States, in concurrence with the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations and title 12, chapter IV, of the Code of Federal Regulations as follows:

1. A new Chapter LII, consisting of part 6201, is added to title 5 of the Code of Federal Regulations to read as follows:

5 CFR CHAPTER LII—EXPORT-IMPORT BANK OF THE UNITED STATES

PART 6201—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXPORT-IMPORT BANK OF THE UNITED STATES

Sec.

6201.101 General.

6201.102 Prohibited financial interests.

6201.103 Prior approval for outside employment.

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, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403(a), 2635.803.

§ 6201.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Export-Import Bank of the United States (Bank) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. In addition to the standards in 5 CFR part 2635 and this part, employees of the Bank are subject to the executive branch financial disclosure regulations contained in 5 CFR part 2634.

§ 6201.102 Prohibited financial interests.

(a) *Prohibition.* Except as provided in paragraph (f) of this section, no covered employee or covered family member shall own securities issued by an exporter or lending institution

appearing on the List of Designated Entities under paragraph (b) of this section.

(b) *List of Designated Entities*—(1) *Compilation of list of designated entities.* Once each fiscal year, the designated agency ethics official (DAEO) shall compile a List of Designated Entities based upon the following criteria:

(i) All exporters that, during the preceding two fiscal years, exported an aggregate dollar volume of goods and services supported by the Bank in excess of four hundred million dollars (\$400,000,000);

(ii) All exporters that, during the preceding two fiscal years, had seven (7) or more aggregate export transactions supported by the Bank;

(iii) All lending institutions that, during the preceding two fiscal years, financed an aggregate dollar volume of export transactions supported by the Bank in excess of one hundred fifty million dollars (\$150,000,000); and

(iv) All lending institutions that, during the preceding two fiscal years, financed twenty (20) or more aggregate export transactions supported by the Bank.

(2) *Distribution of list of designated entities.* The DAEO shall distribute the List of Designated Entities to all covered employees promptly after it is compiled, and shall ensure that each new covered employee receives a copy of the current List of Designated Entities promptly after becoming a covered employee.

(c) *Definitions.* For purposes of this section:

(1) *Covered employee* means an employee of the Bank, other than a special Government employee, who is required to file a public or a confidential financial disclosure report (Form SF 278 or SF 450) under 5 CFR part 2634.

(2) *Covered family member* means the spouse or minor child of a covered employee.

(3) *Securities* means all financial interests evidenced by debt or equity instruments. The term includes, without limitation, bonds, debentures, notes, securitized assets and commercial paper, as well as all types of preferred and common stock. The term encompasses both present and contingent ownership interests, including any beneficial or legal interest derived from a trust. It extends to any right to acquire or dispose of any long or short position in such securities and includes, without limitation, interests convertible into such securities, as well as options, rights, warrants, puts, calls, and straddles with respect thereto. It does not include:

(i) An investment in a publicly traded or publicly available mutual fund or other collective investment fund or in a widely held pension or similar fund, provided that the fund does not invest more than ten percent (10%) of the value of its portfolio in securities of any one entity on the List of Designated Entities and the covered employee or covered family member neither exercises control over nor has the ability to exercise control over the financial interests held in the fund; or

(ii) Certificates of deposit, checking accounts, savings accounts and other deposit accounts.

(4) *Support by the Bank* means:

(i) Direct loans made by the Bank;

(ii) Guarantees by the Bank of loans from lending institutions; or

(iii) Insurance policies issued by the Bank under any of its insurance programs.

(d) *Restrictions arising from third party relationships.* If a covered employee has knowledge that any of the entities described in paragraphs (d)(1) through (d)(6) of this section own any security that a covered employee or covered family member would be prohibited from owning by paragraph (a) of this section, the covered employee shall promptly report such interests to the DAEO. The DAEO may require the covered employee to terminate the third party relationship, undertake an appropriate disqualification, or take other appropriate action necessary, under the particular circumstances, to avoid a statutory violation or a violation of part 2635 of this title or of this part, including an appearance of misuse of position or loss of impartiality. This paragraph applies to any:

(1) Partnership in which the covered employee or covered family member is a general partner;

(2) Partnership in which the covered employee and/or covered family member(s) in the aggregate holds more than a ten percent limited partnership interest;

(3) Closely held corporation in which the covered employee and/or covered family member(s) in the aggregate holds more than a ten percent (10%) equity interest;

(4) Trust in which the covered employee or covered family member has a legal or beneficial interest;

(5) Investment club or similar informal investment arrangement

between the covered employee or covered family member and others; or

(6) Other entity if the covered employee and/or covered family member(s) in the aggregate holds more than a ten percent (10%) equity interest.

(e) *Period to Divest.* Unless a waiver is granted pursuant to paragraph (f) of this section, a covered employee or covered family member who owns securities of a designated entity as of the date that the initial List of Designated Entities is circulated to covered employees, the date that a revised List of Designated Entities is circulated to covered employees, or the first day that an individual becomes a covered employee, shall divest the securities within six (6) months of such date. The DAEO may, in certain cases of unusual hardship, grant a written extension of up to an additional six (6) months within which a covered employee or covered family member must divest securities of a designated entity. Notwithstanding the grant of an extension, a covered employee remains subject to the disqualification requirements of 5 CFR 2635.402 and 2635.502. A covered employee or covered family member who must divest securities pursuant to this section should refer to section 1043 of the Internal Revenue Code and to the regulations of subpart J of 5 CFR part 2634 under which the covered employee or covered family member may be eligible to defer the recognition of taxable gain on the sale or other divestiture.

(f) *Waivers.* The DAEO may grant a written waiver from the securities prohibition contained in this section based on a determination that the waiver is not inconsistent with 5 CFR part 2635 or otherwise prohibited by law and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of misuse of position or loss of impartiality, or otherwise to ensure confidence in the impartiality and objectivity with which Bank programs are administered. A waiver under this paragraph may be accompanied by appropriate conditions, such as requiring execution of a written statement of disqualification. Notwithstanding the grant of any waiver, a covered employee remains subject to the disqualification requirements of 5 CFR 2635.402 and 2635.502.

(g) *Agency determinations of substantial conflict.* Nothing in this section prevents the Bank from

prohibiting or restricting an individual Bank employee from acquiring or holding a financial interest or a class of financial interests based upon the Bank's determination of substantial conflict pursuant to 5 CFR 2635.403(b).

§ 6201.103 Prior approval for outside employment.

(a) *Prior approval requirement.* Before engaging in any outside employment, whether or not for compensation, an employee, other than a special Government employee, must obtain the written approval of the employee's immediate supervisor and the DAEO. Requests for approval shall be forwarded through normal supervisory channels to the DAEO and shall include the name of the person, group, or organization for whom the work is to be performed; the type of work to be performed; and the proposed hours of work and approximate dates of employment.

(b) *Standard for approval.* Approval shall be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation (including 5 CFR part 2635). In the case of an employee who wishes to practice a profession involving a fiduciary relationship, as defined in 5 CFR 2636.305(b), approval will be granted only for each individual matter in the course of practicing such profession.

(c) *Definition of employment.* For purposes of this section, "employment" means any form of non-Federal employment or business relationship involving the provision of personal services by the employee. It includes but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee or teacher. It also includes writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service or civic organization, unless such activities involve the provision of professional services or advice or are for compensation other than reimbursement of expenses.

12 CFR CHAPTER IV—EXPORT-IMPORT BANK OF THE UNITED STATES

2. Part 400 of 12 CFR chapter IV is revised to read as follows:

PART 400—EMPLOYEE FINANCIAL DISCLOSURE AND ETHICAL CONDUCT STANDARDS REGULATIONS

§ 400.101 Cross-reference to employee financial disclosure and ethical conduct standards regulations.

Employees of the Export-Import Bank of the United States (Bank) should refer to:

(a) The executive branch-wide financial disclosure regulations at 5 CFR part 2634;

(b) The executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635; and

(c) The Bank regulations at 5 CFR part 6201 which supplement the executive branch-wide standards.

Authority: 5 U.S.C. 7301.

[FR Doc. 95-8593 Filed 4-6-95; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 272 and 273

[Amendment No. 359]

RIN 0584-AB78

Food Stamp Program: Medical Expense Deduction

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule.

SUMMARY: This rule finalizes an interim rulemaking published on October 3, 1994. The interim rulemaking amended food stamp regulations to simplify the means by which households with elderly and disabled members claim deductions from income for verified, prospective, non-reimbursed medical expenses.

DATES: The amendments to § 272.1(g)(138), § 273.10(d)(4), and § 273.21(f)(2)(iv), § 273.21(i) and § 273.21(j)(3)(ii)(C) are effective May 8, 1995 and must be implemented no later than September 5, 1995. The remaining provisions of the interim rule which are being adopted as final without change, were effective October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Eligibility and Certification Rulemaking Section, Certification Policy Branch, Program Development Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302, (703) 305-2496.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR 3015, Subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612). Ellen Haas, the Under Secretary for Food, Nutrition, and Consumer Services, has certified that this interim rule will not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program.

Paperwork Reduction Act

This rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) For Program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(1) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or Part 284 (for rules related

to QC liabilities); (3) for Program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Background

On October 3, 1994, the Department published an interim rule at 59 FR 50153 (interim regulation) amending the food stamp regulations to simplify the means by which households with elderly and disabled members claim deductions from income for verified, prospective, non-reimbursed medical expenses. Comments were solicited on the provisions of the interim rule through December 2, 1994. This final action addresses the commenters' concerns. Readers are referred to the interim rule for a more complete understanding of this final action.

The Department received 5 comments on the interim rule. Two of the commenters supported the interim rule, believing that it benefitted households and State agencies alike by eliminating unnecessary reporting requirements. Four of the five commenters raised issues which are addressed below.

Budgeting of Medical Expenses

A commenter noted that, although the interim regulations require State agencies to allow households to estimate, prospectively, recurring medical expenses, they do not explicitly prohibit retrospective budgeting of those expenses. Such retrospective budgeting is prohibited by section 5(e) of the Food Stamp Act of 1977, as amended, 7 USC 2014(e) (Act). Since only households in which all members are elderly or disabled with no earned income are amongst those groups of households exempt from retrospective budgeting, the interim rule's failure to explicitly prohibit the retrospective budgeting of medical expenses leaves open the possibility that some households' medical expenses would be budgeted in that manner.

The Department agrees with the commenter that the interim regulations failed to explicitly prohibit the retrospective budgeting of medical expenses. Therefore, the Department is amending current regulations at 7 CFR 273.21(f)(2)(iv) to require that State agencies prospectively budget recurring medical expenses.

Verification of Medical Expenses

The same commenter requested clarification of the procedures for State agency action on a household's voluntary report of a change in medical expenses. Although reporting of changes in medical expenses during the