

eligibility of the voter to vote in the referendum.

§ 1205.206 Reporting results of referendum.

(a) Each FSA county office shall transmit a written county summary of ballots showing the results of the referendum in its county to its State office.

(b) Each State office shall transmit a written summary of the referendum results from the county offices within its State to DAFO, and DAFO will provide a copy to the AMS. AMS will make the results available for public inspection for a period of 5 years following the end of the referendum period.

(c) AMS shall prepare and submit to the Secretary a report as to the results of the referendum. The Secretary shall then publically proclaim the results of the referendum.

§ 1205.207 Challenge of correctness of county summary of ballots.

The FSA state offices shall make a prompt investigation and decision in case of any dispute or challenge regarding the correctness of the county summary of ballots in any county: *Provided*, That no dispute of challenge shall be investigated unless it is brought to the attention of the State FSA office within 3 days after receipt by the FSA State office of the county summary of ballots from such county.

§ 1205.208 Disposition of ballots and records.

The FSA county office shall seal the voted ballots, challenged ballots found to be ineligible, spoiled ballots, register sheets, and summary sheets for the county in one or more envelopes or packages, plainly marked with the identification of the referendum, the date and the names of the county and State, and place them under lock and key in a safe place under the custody of the FSA county office for a period of 45 days after the referendum period. If no notice to the contrary is received by the end of such time, and after the ballots and other records have been examined by a representative of the State FSA office, the voted ballots and challenged ballots shall be destroyed, but the registers and county summary sheets shall be filed for a period of 5 years in the office of the FSA county office.

§ 1205.209 Confidential information.

(a) The ballots cast or the manner in which any person voted and all information furnished to, compiled by, or in the possession of the referendum agent shall be regarded as confidential.

(b) The ballots and other information or reports that reveal, or tend to reveal,

the vote of any person covered under the Order and the voter list shall be strictly confidential and shall not be disclosed.

§ 1205.210 Additional instructions and forms.

AMS is hereby authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart for the use of State and County FSA offices in conducting a referendum. Such additional instructions may include procedures for FSA county and State offices to report and announce the results of the preliminary count of the votes in the county and the State.

Dated: September 28, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9-23831 Filed 10-2-09; 8:45 am]

BILLING CODE P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1212

RIN 2590-AA19

Post-Employment Restriction for Senior Examiners

AGENCY: Federal Housing Finance Agency.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) is issuing a final regulation that sets forth a one-year post-employment restriction for senior examiners of FHFA pursuant to the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, which provides that each examiner of FHFA shall be subject to the same disclosures, prohibitions, obligations, and penalties applicable to examiners employed by the Federal Reserve Banks.

DATES: The final regulation is effective November 4, 2009.

FOR FURTHER INFORMATION CONTACT:

Janice A. Kullman, Assistant General Counsel, telephone (202) 414-8970 (not a toll-free number), Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Housing and Economic Recovery Act of 2008 (HERA), Public Law No. 110-289, 122 Stat. 2654 (2008), amended the Federal Housing

Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) (Safety and Soundness Act) to establish FHFA as an independent agency of the Federal Government.¹ FHFA was established to oversee the prudential operations of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (collectively, the Enterprises), and the Federal Home Loan Banks (Banks) (collectively, the regulated entities), and to ensure that they operate in a safe and sound manner including being capitalized adequately; foster liquid, efficient, competitive and resilient national housing finance markets; comply with the Safety and Soundness Act and rules, regulation, guidelines and orders issued under the Safety and Soundness Act, and the respective authorizing statutes of the regulated entities; and carry out their missions through activities authorized and consistent with the Safety and Soundness Act and their authorizing statutes; and, that the activities and operations of the regulated entities are consistent with the public interest. FHFA also has regulatory authority over the Office of Finance under 12 U.S.C. 4511.

II. Proposed Rulemaking

Section 6303(b) of the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law No. 108-458 (Dec. 17, 2004), in amending section 10 of the Federal Deposit Insurance Act, established a post-employment restriction for senior examiners of the Office of the Comptroller of the Currency, Federal Reserve System, Federal Deposit Insurance Corporation, and Office of Thrift Supervision.² In response, the Board of Governors of the Federal Reserve System (Federal Reserve) and the other financial regulators issued regulations on November 17, 2005, to reflect the new post-employment restriction.

The Safety and Soundness Act provides that each examiner of FHFA “shall be subject to the same disclosures, prohibitions, obligations and penalties as are applicable to examiners employed by the Federal Reserve Banks.” 12 U.S.C. 4517(e). In light of that provision, FHFA published a proposed Post-Employment Restriction for Senior Examiners regulation for public comment in the **Federal Register**, 74 FR 27470 (June 10, 2009). The proposed regulation set forth

¹ See Division A, titled the “Federal Housing Finance Regulatory Reform Act of 2008,” Title I, Section 1101 of HERA.

² 12 U.S.C. 1820(k).

a post-employment restriction that is essentially the same as the restriction in the post-employment regulation of the Federal Reserve at 12 CFR part 264a. The Federal Reserve relies on section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) for the penalty enforcement section of its regulation. The proposed regulation relied on similar provisions in section 1376 and 1377 of the Safety and Soundness Act (12 U.S.C. 4636 and 4636a, respectively). Specifically, the regulation, as proposed, prohibited a senior examiner from knowingly accepting compensation as an employee, officer, director, or consultant of a regulated entity or the Office of Finance for one year after leaving the employment of FHFA if he or she has examined the regulated entity or the Office of Finance for two or more months during the last 12 months of employment at FHFA.

III. Final Rulemaking

In response to the request for public comment, FHFA received one comment from a member of the public. The comment recommended that the one-year post-employment restriction period be expanded to five years. It also recommended that the post-employment restriction be expanded to include employment in any related industry, not just the regulated entity that the senior examiner inspects, supervises, or examines.

FHFA has considered this comment and has determined not to expand the post-employment restriction as recommended. Expansion of the restriction would make the FHFA post-employment restriction inconsistent with that of the Federal Reserve. Further, FHFA believes that the recommended expansion of the restriction is not needed to ensure public trust in the impartiality and objectivity of FHFA's actions. Therefore, the proposed regulation is adopted as a final regulation without change.

IV. Section-by-Section Analysis

The following is a section-by-section analysis of the regulation.

Subpart A

Subpart A is reserved. FHFA intends to cross-reference the Supplemental Standards of Ethical Conduct for Employees of the Federal Housing Finance Agency when such standards are published.

Subpart B—Post-Employment Restriction for Senior Examiners

Section 1212.1 Purpose and Scope

Section 1212.1 provides that the purpose of subpart B is to set forth special post-employment restrictions for senior examiners. These restrictions are in addition to the post-employment restriction for FHFA employees under section 12 U.S.C. 4523, which is restated in 5 CFR part 9001. The post-employment restriction applicable to FHFA employees under 12 U.S.C. 4523 provides that officers and employees of FHFA who are compensated at a certain salary level are not permitted to accept compensation from the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation for a period of two years after leaving FHFA.

Section 1212.2 Definitions

This section sets forth definitions applicable to subpart B.

Consultant is defined as a person who works directly on matters for, or on behalf of, a regulated entity, or the Office of Finance.

Director means the Director of FHFA or his or her designee.

Employee is defined as an officer or employee of FHFA, including a special Government employee.

Federal Home Loan Bank or *Bank* is defined as a Bank established under the Federal Home Loan Bank Act; the term "Federal Home Loan Banks" means, collectively, all the Federal Home Loan Banks.

Office of Finance is defined as the Office of Finance of the Federal Home Loan Bank System.

Regulated entity is defined as the Federal National Mortgage Association and any affiliate thereof, the Federal Home Loan Mortgage Corporation and any affiliate thereof, or any Federal Home Loan Bank; the term "regulated entities" means, collectively, the Federal National Mortgage Association and any affiliate thereof, the Federal Home Loan Mortgage Corporation and any affiliate thereof, and the Federal Home Loan Banks.

Safety and Soundness Act is defined as the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended by the Federal Housing Finance Regulatory Reform Act of 2008, Division A of the Housing and Economic Recovery Act of 2008, Public Law No. 110–289, 122 Stat. 2654 (2008).

Senior examiner is defined as an FHFA employee who has been:

- Authorized by FHFA to conduct examinations or inspections on behalf of FHFA;

- Assigned continuing, broad and lead responsibility for examining a regulated entity or the Office of Finance; and

- Assigned responsibilities for examining, inspecting, and supervising the regulated entity or the Office of Finance that—

- Represents a substantial portion of the employee's assigned responsibilities; and

- Requires the employee to interact routinely with officers or employees of the regulated entity or the Office of Finance.

To be considered a "senior examiner," an employee must meet each of the criteria listed above. Thus, an examiner who spends a substantial portion of his or her time conducting or leading a targeted examination, but who does not have broad and lead responsibility for the overall examination program with respect to a regulated entity or the Office of Finance is not a "senior examiner" with respect to that regulated entity or the Office of Finance. An examiner who divides his or her time across a portfolio of regulatory entities, each of which does not represent a substantial portion of the examiner's responsibilities, also is not a "senior examiner." Such an examiner is not likely to develop the type and degree of relationship with any one regulated entity or the Office of Finance that the post-employment restriction is designed to address. FHFA believes that an examiner has continuing responsibility for a regulated entity or the Office of Finance only when the examiner's responsibilities for the regulated entity or the Office of Finance are expected to continue for a period of time that enables the examiner to develop a meaningful, dedicated, and sustained relationship with the regulated entity or the Office of Finance. FHFA believes that such a period of time is at least two months.

To help examiners comply with the post-employment restrictions, the designated agency ethics official (DAEO) or the alternate DAEO will notify examiners in writing if they are subject to either the one-year post-employment restriction or the two-year post-employment restriction under 12 U.S.C. 4523, or both. The DAEO or alternate DAEO will also provide examiners information about how to conform to one or both of the restrictions.

The examiner-in-charge (EIC) of a Bank or the Office of Finance will be subject to the one-year post-employment restriction from working at the Bank or Office of Finance for which he or she served as EIC, but not necessarily other

Banks which he or she may examine. In addition, the portfolio managers, who each generally oversee four Banks, will be subject to the one-year post-employment restriction for each Bank they oversee. These two groups of employees are responsible for establishing the scope of annual exams and assigning the composite rating for the Banks and therefore meet the definition of senior examiner. There may be rare instances of other examiners who meet the definition, but an examiner supervising one aspect of safety and soundness for all the Banks does not fall into the definition of the term "senior examiner." Such a subject matter examiner does not have substantial enough contacts with any one particular bank to warrant a post employment restriction. FHFA estimates that approximately 15 examiners who serve as EICs and portfolio managers for the Banks and the Office of Finance are "senior examiners" for the purposes of this regulation.

Examiners who examine the Enterprises are subject to the two-year post employment restriction set forth in 12 U.S.C. 4523 if they earn a certain salary, as is every FHFA employee. This two-year post-employment restriction subsumes the one-year post-employment restriction with respect to accepting employment at the Enterprises because any examiner who is a "senior examiner" is already precluded from accepting employment from an Enterprise because of his or her salary level. While there are currently approximately 30 examiners whose salary is below the threshold that triggers the two-year post-employment restriction, those examiners do not have broad and lead responsibility for examining a regulated entity or the Office of Finance and therefore do not meet the definition of "senior examiner." FHFA believes that any examiner of an Enterprise who is a "senior examiner" is also subject to the two-year post-employment restriction under 12 U.S.C. 4523.

Section 1212.3 Post-employment restriction for senior examiners

Section 1212.3 prohibits a senior examiner from knowingly accepting compensation as an employee, officer, director, or consultant of a regulated entity or the Office of Finance for one year after leaving the employment of FHFA if he or she has examined the regulated entity or the Office of Finance for two or more months during the last 12 months of employment at FHFA.

A person is a consultant for purposes of the one-year post-employment restriction if such person "directly

works on matters for, or on behalf of" the relevant regulated entity or the Office of Finance. This provision means that a former senior examiner who joins a consulting or other firm or is self-employed as a consultant may not, during the one-year post-employment period, participate in any work that the firm is conducting for a regulated entity or the Office of Finance that the former senior examiner is prohibited from doing directly. The former senior examiner does not, however, violate the post-employment restrictions by joining a firm that performs work for such a regulated entity or the Office of Finance as long as the former senior examiner does not personally participate in any such work.

The post-employment restriction does not apply to any officer or employee of FHFA or any former officer or employee of FHFA who ceased to be an officer or employee of FHFA before the effective date of subpart B of this part.

Section 1212.4 Waiver

Section 1212.4 allows the Director, at the written request of a former senior examiner, to waive in writing, application of the one-year post-employment restriction, on a case-by-case basis, if the Director determines that granting the waiver does not affect the integrity of the supervisory program of FHFA. FHFA expects that waivers will be granted only in special circumstances.

Section 1212.5 Penalties

Section 1212.5 requires FHFA to seek one or both of the following penalties against a former senior examiner who violates the one-year post-employment restriction:

(1) An order removing the individual from his or her position at, or prohibiting the individual from further participation in the affairs of, the regulated entity or the Office of Finance for a period of up to five years, and prohibiting the individual from participating in the conduct of the affairs of any regulated entity or the Office of Finance for a period of up to five years; or (2) a civil money penalty of not more than \$250,000.

The former senior examiner against whom FHFA seeks to impose these penalties has the procedural rights set forth in 12 U.S.C. 4636 and 4636a, as applicable, and any implementing regulations issued by FHFA.

Regulatory Impacts

Paperwork Reduction Act

The regulation does not contain any information collection requirement that

requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation does not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the regulation under the Regulatory Flexibility Act. FHFA certifies that the regulation is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to employees and officers and former employees and officers of FHFA, who are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1212

Administrative practice and procedure, Conflicts of interest, Ethics. ■ Accordingly, for the reasons stated in the preamble, under the authority of 12 U.S.C. 4526 and 4517(e), FHFA amends 12 CFR Chapter XII by adding part 1212 to Subchapter A to read as follows:

PART 1212—POST-EMPLOYMENT RESTRICTION FOR SENIOR EXAMINERS

Subpart A—[Reserved]

Subpart B—Post-Employment Restriction for Senior Examiners

Sec.

1212.1 Purpose and scope.

1212.2 Definitions.

1212.3 Post-employment restriction for senior examiners.

1212.4 Waiver.

1212.5 Penalties.

Authority: 12 U.S.C. 4526, 12 U.S.C. 4517(e).

Subpart A—[Reserved]

Subpart B—Post-Employment Restriction for Senior Examiners

§ 1212.1 Purpose and scope.

This subpart sets forth a one-year post-employment restriction applicable to senior examiners of the Federal Housing Finance Agency (FHFA). This restriction is in addition to the post-employment restriction applicable to

employees of FHFA under 12 U.S.C. 4523.

§ 1212.2 Definitions.

For purposes of subpart B of this part, the term:

Consultant means a person who works directly on matters for, or on behalf of, a regulated entity or the Office of Finance.

Director means the Director of FHFA or his or her designee.

Employee means an officer or employee of FHFA, including a special Government employee.

Federal Home Loan Bank or Bank means a Bank established under the Federal Home Loan Bank Act; the term "Federal Home Loan Banks" means, collectively, all the Federal Home Loan Banks.

Office of Finance means the Office of Finance of the Federal Home Loan Bank System, or any successor thereto.

Regulated entity means the Federal National Mortgage Association and any affiliate thereof, the Federal Home Loan Mortgage Corporation and any affiliate thereof, any Federal Home Loan Bank; the term "regulated entities" means, collectively, the Federal National Mortgage Association and any affiliate thereof, the Federal Home Loan Mortgage Corporation and any affiliate thereof, and the Federal Home Loan Banks.

Safety and Soundness Act means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended by the Federal Housing Finance Regulatory Reform Act of 2008, Division A of the Housing and Economic Recovery Act of 2008, Public Law No. 110-289, 122 Stat. 2654 (2008).

Senior examiner means an employee of FHFA who has been:

(1) Authorized by FHFA to conduct examinations or inspections on behalf of FHFA;

(2) Assigned continuing, broad and lead responsibility for examining a regulated entity or the Office of Finance; and

(3) Assigned responsibilities for examining, inspecting and supervising the regulated entity or the Office of Finance that—

(i) Represents a substantial portion of the employee's assigned responsibilities; and

(ii) Requires the employee to interact routinely with officers or employees of the regulated entity or the Office of Finance.

§ 1212.3 Post-employment restriction for senior examiners.

(a) *Prohibition.* An employee of FHFA who serves as the senior examiner of a

regulated entity or the Office of Finance for two or more months during the last 12 months of his or her employment with FHFA may not, within one year after leaving the employment of FHFA, knowingly accept compensation as an employee, officer, director, or consultant from a regulated entity or the Office of Finance unless the Director grants a waiver pursuant to § 1212.4.

(b) *Effective date.* The post-employment restriction in paragraph (a) of this section shall not apply to any officer or employee of FHFA or any former officer or employee of FHFA who ceased to be an officer or employee of FHFA before November 4, 2009.

§ 1212.4 Waiver.

At the written request of a senior examiner or former senior examiner, the Director may waive the post-employment restriction in § 1212.3 if he or she certifies, in writing, and on a case-by-case basis, that granting a waiver of such restriction does not affect the integrity of the supervisory program of FHFA.

§ 1212.5 Penalties.

(a) *General.* A senior examiner who, after leaving the employment of FHFA, violates the restriction set forth in § 1212.3 shall be subject to one or both of the following penalties—

(1) An order:

(i) Removing the individual from office at the regulated entity or the Office of Finance or prohibiting the individual from further participation in the affairs of the relevant regulated entity or the Office of Finance for a period of up to five years; and

(ii) Prohibiting the individual from participating in the affairs of any regulated entity or the Office of Finance for a period of up to five years; and/or

(2) A civil money penalty of not more than \$250,000.

(b) *Other penalties.* The penalties set forth in paragraph (a) of this section are not exclusive, and a senior examiner who violates the restrictions in § 1212.3 also may be subject to other administrative, civil, or criminal remedies or penalties as provided in law.

(c) *Procedural rights.* The procedures applicable to actions under paragraph (a) of this section are those provided in the Safety and Soundness Act under section 1376, in connection with the imposition of a civil money penalty; under section 1377, in connection with a removal and prohibition order (12 U.S.C. 4636 and 4636a, respectively); and under any regulations issued by FHFA implementing such procedures.

Dated: September 26, 2009.

Edward J. DeMarco,

Acting Director.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA-2009-0490; Airspace Docket No. 09-AWP-3]

RIN 2120-AA66

Establishment of Restricted Area R-2502A; Fort Irwin, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a restricted area (R-2502A) at Fort Irwin, CA, as part of a Department of the Army initiative at the National Training Center (NTC). The NTC is being expanded to meet the critical need of the Army for additional training land and airspace suitable for maneuvering large numbers of military personnel and equipment. Additionally, the Silver military operation area (MOA) in the vicinity of the NTC Complex has been modified as part of this initiative. Unlike restricted areas, which are designated under Title 14 Code of Federal Regulations (14 CFR) part 73, MOAs are not rulemaking airspace actions. However, since the R-2502A will infringe on the Silver MOA, the FAA is including a description of the Silver MOA change in this rule. The MOA change described here was published in the National Flight Data Digest (NFDD). The Army requested these airspace changes to provide the additional special use airspace (SUA) above the expanded ground maneuver area to facilitate realistic combat training at the NTC.

DATES: *Effective Date:* 0901 UTC, December 17, 2009.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:

History

On July 13, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish