

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL DEPOSIT INSURANCE CORPORATION

5 CFR Part 3201

12 CFR Part 336

RIN: 3064-AA08

Supplemental Standards of Ethical Conduct for Employees of the Federal Deposit Insurance Corporation

AGENCY: Federal Deposit Insurance Corporation (FDIC or Corporation).

ACTION: Proposed rule.

SUMMARY: The Federal Deposit Insurance Corporation, with the concurrence of the Office of Government Ethics (OGE), proposes to issue regulations for the employees of the Corporation which would supplement the Standards of Ethical Conduct for Employees of the Executive Branch (Executive Branch-wide Standards) issued by OGE. The proposed rule is a necessary supplement to the Executive Branch-wide Standards and has been designed to address the specialized functions and operations of the Corporation. The proposed rule would establish: prohibitions on borrowing and extensions of credit; prohibitions on the ownership of certain financial interests; prohibitions on the purchase of property controlled by the Corporation or the Resolution Trust Corporation (RTC); limitations on official dealings with former employers and clients; disqualification requirements relating to employment of family members outside the Corporation; and limitations on outside employment activities.

DATES: Comments must be received on or before September 12, 1994.

ADDRESSES: Send comments to Robert E. Feldman, Acting Executive Secretary, FDIC, 550 17th Street, NW, Washington, DC 20429. Comments may be hand-delivered to room 400, 1776 F Street, NW, Washington, DC 20429 on business days between 8:30 a.m. and 5 p.m. [FAX number: (202) 898-3838].

FOR FURTHER INFORMATION CONTACT: Katherine A. Corigliano, Assistant Executive Secretary (Ethics), (202) 898-7272; Richard M. Handy, Ethics Program Manager, (202) 898-7271; or Paul A. Jeddeloh, Senior Program Attorney, (202) 898-7161, all at the FDIC.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Government Ethics published the Standards of Ethical Conduct For Employees of the Executive Branch. See 57 FR 35006-35067, as corrected at 57 FR 48557 and 57 FR 52583, with an additional grace period extension at 59 FR 4779-4780. The Executive Branch-wide Standards, now codified at 5 CFR part 2635 and effective February 3, 1993, establish uniform standards of ethical conduct for executive branch employees.

With the concurrence of the OGE, 5 CFR 2635.105 and the Resolution Trust Corporation Completion Act (P.L. 103-204) authorize the Corporation to publish agency-specific supplemental regulations necessary to implement its ethics programs. The Corporation and OGE have determined that the following supplemental regulations contained in the proposed rule are necessary to successfully continue the Corporation's ethics program in light of the Corporation's unique programs and operations. The proposed supplemental rule addresses issues relevant to the Corporation's specialized roles as the insurer, conservator, receiver, liquidator, organizer of bridge banks, and regulator or back-up enforcement agency for FDIC-insured depository institutions. Upon finalization of the supplemental regulation, the Corporation will, as proposed, delete those portions of 12 CFR part 336 that are superseded by the Executive Branch-wide Standards and the supplemental regulations.

II. Analysis of Regulation

The following regulations are proposed to appear in new part 3201 of 5 CFR chapter XXII.

Section 3201.101 General

(a) *Purpose.* Proposed § 3201.101(a) explains that the regulations would apply to all Corporation employees and would supplement the Executive

Branch-wide Standards. Because they are covered under rules applicable to the Department of the Treasury, two members of the Board of Directors, the Comptroller of the Currency and the Director of the Office of Thrift Supervision, would be covered only by those provisions of the supplemental regulation specifically made applicable to them in connection with their activities as members of the Corporation's Board of Directors.

(b) *Corporation ethics officials.* Proposed § 3201.101(b) explains that the Designated Agency Ethics Official would be the Executive Secretary and that the Alternate Agency Ethics Official would be the Assistant Executive Secretary (Ethics) of the FDIC. This provision would delegate authority to the Executive Secretary and the Assistant Executive Secretary (Ethics) to act in such capacities as contemplated under 5 CFR part 2638. The provision would continue the designations currently found at 12 CFR part 336, as updated to accommodate organizational changes.

(c) *Agency designees.* Proposed § 3201.101(c) specifies those employees who would hold the authority to act as agency designees under the Executive Branch-wide Standards and the supplemental regulation. It also explains that only the Ethics Counselor or Alternate Ethics Counselor would be able to delegate authority to act as agency designees and that such delegation would have to be in writing and could not be re-delegated.

(d) *Definitions.* Proposed § 3201.101(d) would include as an *affiliate* those companies which control, are controlled by, or are under common control with, an FDIC-insured depository institution. The definition for *affiliate* was taken from the Bank Holding Company Act of 1956 and is intended to be broadly interpreted and include any holding companies, subsidiaries, or other affiliated companies of an FDIC-insured depository institution.

The term *appropriate director* would include the heads of offices and divisions in the Washington office, the highest ranking officials in each division in the regional offices, and the Ethics Counselor.

The term *covered employee* would include all employees of the Corporation required to file confidential

or public financial disclosure reports under 5 CFR part 2634 or 5 CFR part 3202.

Under the proposed regulation, the term *employee* would include all persons, other than special Government employees, employed by the Corporation. Pursuant to the Resolution Trust Corporation Completion Act (P.L. 103-204), the Corporation is also required to consider the employees of contractors as employees of the Corporation for certain purposes. Therefore, the term *employee* would include, for purposes of 5 CFR part 2635 and §§ 3201.103 and 3201.104 of this part, any individual who, pursuant to a contract or any other arrangement, performs functions or activities of the Corporation, under the direct supervision of an officer or employee of the Corporation. The term *employee* would not include independent contractors who are not deemed to be employees under 12 U.S.C. 1822(f)(1)(B). In the case of members of the Board of Directors, it would include only the three members appointed by the President under 12 U.S.C. 1812(a)(1)(C).

The proposed regulation provides a broad definition of the term *security* which includes an interest in debt or equity instruments such as, for example, stocks, bonds, and commercial paper. However, the term *security* would not include a deposit account.

The term *State nonmember bank* is a statutory term taken from 12 U.S.C. 1813 and would include all State banks that are not members of the Federal Reserve System.

The definition of *subsidiary* was taken from section 3(w) of the Federal Deposit Insurance Act, codified to 12 U.S.C. 1813(w), and would include all companies owned or controlled directly or indirectly by another company.

Section 3201.102 Extensions of Credit From FDIC-Insured Depository Institutions

The proposed rules on extensions of credit from FDIC-insured depository institutions provide the conditions under which certain specified categories of Corporation employees can obtain credit from depository institutions insured by the Corporation. Restrictions on the availability of credit to Corporation employees are necessary for several reasons. First, 5 CFR 2635.403(a) permits the Corporation to prohibit or restrict the acquisition or holding of a financial interest or class of financial interests by Corporation employees; and the spouses and minor children of those employees, when the Corporation has made the determination that the

acquisition or holding of such financial interests would cause a reasonable person to question the impartiality and objectivity with which Corporation programs are administered, and 5 CFR 2635.403(c) specifically provides that the term *financial interest* may include an indebtedness relationship. For purposes of the extensions of credit covered by § 3201.102 (a) through (d), the Corporation has made such a determination. These prohibitions and restrictions on employees entering into financial arrangements with institutions over which the Corporation has regulatory and resolution authority are necessary to prevent loss of public confidence in the integrity of the Corporation. In addition, the borrowing prohibition would incorporate the substance of the statutory prohibition at 18 U.S.C. 213 on bank examiners accepting certain loans. Finally, limitations on borrowing from FDIC-insured depository institutions would avoid a high number of employee disqualifications that would have a detrimental effect on the Corporation's administration of its multifaceted responsibilities.

Under proposed § 3201.102(a), a current or contingent financial obligation of an employee is considered a financial obligation for purposes of the prohibition, disqualification, and retention provisions of proposed § 3201.102. A current or contingent financial obligation of a spouse or minor child is attributed to the employee for purposes of this section since the Corporation has determined, pursuant to 5 CFR 2635.403(a), that there is a direct and appropriate nexus between the efficiency of the service and the prohibitions and restrictions in § 3201.102 as applied to the spouses and minor children of Corporation employees.

Under proposed § 3201.102(b), members of the Board of Directors and other Corporation officials who are in top management positions would be prohibited from incurring financial obligations with an institution over which the Corporation has primary Federal supervisory authority or a subsidiary of such an institution. A deputy or an assistant to the Board of Directors or to an individual board member, a covered employee who is an assistant to such deputy or assistant, the director of a Washington office or division (other than the Division of Supervision), and a covered employee immediately subordinate to such a director would be included in the restricted class. The prohibition would not apply to credit extended through an ordinary credit card relationship due to

the standardized handling and low credit amounts customary in such relationship.

Under § 3201.102(c), depository institutions examination staff, including all covered employees assigned to the Division of Supervision, would be prohibited from obtaining credit from an FDIC-insured State nonmember bank, the class of FDIC-insured depository institutions for which the FDIC has primary supervisory responsibility, any subsidiary of such bank, or any person employed by such bank. An exception would be carved out for an ordinary credit card relationship but, for those employees assigned to regional or field offices, the exception would be limited to credit cards offered by FDIC-insured State nonmember banks located outside the employee's region of assignment. The rule, which is substantially the same as 12 CFR 336.16(a), is consistent with 18 U.S.C. 213 which prohibits examiners from accepting credit from institutions which they have examined. Under the proposed rule, an employee would be required to file a report upon obtaining a credit card from a State nonmember bank located outside the employee's region of assignment.

Proposed § 3201.102(d) would impose a two-year prohibition on an employee in the Division of Finance, the Division of Depositor and Asset Services, the Division of Resolutions, or the Legal Division, or who is a member of a standing committee of the Board of Directors obtaining credit from an FDIC-insured depository institution or its subsidiary when the employee has participated personally and substantially in certain matters affecting the institution, its predecessor or successor, or an affiliate of such institution. This prohibition would be applicable to the universe of FDIC-insured depository institutions and would be limited to those Corporation employees who perform functions associated with the audit, resolution, liquidation, supervision, or agency deliberation affecting a specific FDIC-insured depository institution. The two-year prohibition has been designed to eliminate concerns over potential benefits that an employee holding a sensitive non-examiner position could derive through a financial relationship with an institution that has close business ties to the Corporation. An exception has been made for an ordinary credit card relationship. The definition of *personally and substantially* can be found at 5 CFR 2635.402(b)(4) of the Executive Branch-wide Standards.

Proposed § 3201.102(e)(1) would prohibit a member of the depository

institution's examination staff, including senior level staff, from participating in the supervisory review of any institution with which they hold an extension of credit. No exceptions to this rule have been provided due to the sensitive nature of the duties involved.

Under proposed § 3201.102(e)(2)-(4), a covered employee and the Comptroller of the Currency and the Director of the Office of Thrift Supervision would be prohibited from participating in matters affecting persons with whom the employee has an outstanding extension of credit. Exceptions have been provided for ordinary credit card relationships or when the agency designee, with the concurrence of the appropriate director, determines that participation by the employee would be appropriate under the standard outlined under 5 CFR 2635.502(d).

Proposed § 3201.102(f) would clarify that an employee may retain certain extensions of credit that he or she would be prohibited from obtaining anew. For example, an employee who had obtained an extension of credit prior to employment with the Corporation would not be required to refinance the credit. Any extension of credit retained under this section would be required to be reported to an agency designee. An employee would not be allowed to renew or renegotiate the credit without the consent of the agency designee and appropriate director or, in the case of certain higher-level officials, without the consent of the Ethics Counselor. This provision is substantially the same as current 12 CFR 336.16(d), and extensions of credit which were permissibly held under such provision could be retained under the new provision.

Section 3201.103 Prohibitions on Ownership of Securities of FDIC-Insured Depository Institutions

The Corporation has determined that, in light of its sensitive and diverse mission involving the institutions that it insures, restrictions on employee ownership of securities in such institutions are necessary in order to maintain public confidence in the impartiality and objectivity with which the Corporation executes its various functions; eliminate concerns by private entities that sensitive information provided to the Corporation might be used for private gain; and avoid the widespread disqualification of employees from their duties which could result in the Corporation having difficulty in performing its mission. Under proposed § 3201.103(a), an employee would be prohibited from having a direct or indirect ownership

interest in a security of an FDIC-insured depository institution or an affiliate of such institution.

As proposed, the exceptions in § 3201.103(b) would allow an employee to acquire, own or control certain direct and indirect ownership interests in an FDIC-insured depository institution. For example, an employee would be permitted to retain an interest which had been acquired prior to employment with the Corporation or involuntarily acquired by the employee such as by gift, stock split, or through a merger of a company. An employee could also acquire, own or control an interest in an FDIC-insured depository institution through the investment vehicle of a publicly traded or available diversified investment fund when the fund does not have an objective or practice of concentrating its investments in securities of the financial services sector. An employee who owned securities of an FDIC-insured depository institution under one of the exceptions in proposed § 3201.103(b) would be disqualified under 5 CFR 2635.402 from participating in any particular matter that, by reason of his or her ownership of those securities, affects his or her financial interests or those of his or her spouse or minor child.

Under proposed § 3201.103(c), the Ethics Counselor could require an employee, or the spouse or minor child of an employee, to divest an ownership interest that would otherwise be allowed to be retained under § 3201.103(b) using the standard set forth in 5 CFR 2635.403(b).

Section 3201.104 Restrictions Concerning the Purchase of Property Held by the Corporation or the RTC as Conservator, Receiver, or Liquidator of the Assets of an Insured Depository Institution, or by a Bridge Bank Organized by the Corporation

In order to avoid any self-dealing, appearance of self-dealing, adversarial relationship with the Corporation, or diminution of public confidence in the Corporation's ability to accomplish its mission, an employee, or the spouse or minor child of an employee, would be prohibited under § 3201.104(a) from purchasing assets held by the Corporation or the Resolution Trust Corporation (RTC) as conservator, receiver, or liquidator or held by a bridge bank organized by the Corporation. In such roles, the Corporation and the RTC generally act as a fiduciary to the creditors of failed depository institutions. Property held by the RTC has been included in the proposed prohibition because of the

RTC's significant ties with the Corporation.

As proposed, § 3201.104(b) would disqualify an employee involved in the disposition of the assets of a failed insured depository institution from participation in the disposition of such assets when the employee knows that a person with whom he or she holds a covered relationship intends to purchase such assets. Written notification of the disqualification would be required to be made by the employee to his or her immediate supervisor and the agency designee.

Section 3201.105 Prohibition on Dealings With Former Employers, Associates, and Clients

In order to avoid the appearance of favoritism and maintain the integrity of the Corporation's regulatory oversight, insurance assessments, and resolution and liquidation transactions, proposed § 3201.105(a) would prohibit an employee, for a period of one year after entering on duty with the Corporation, from participating in official Corporation matters involving an employer with whom the employee worked during the year preceding the employee's entry on duty with the Corporation. Proposed § 3201.105(b) would include within the definition of the term employer a broad range of persons, as defined in 5 CFR 2635.502, with whom the employee has a covered relationship. In an individual case, § 3201.105(c) would give the agency designee discretion to extend the prohibition beyond the one year period that would automatically apply to all new Corporation employees.

Section 3201.106 Employment of Family Members Outside the Corporation

As proposed, § 3201.106 would continue the Corporation's requirement at 12 CFR 336.21 that an employee be disqualified from participation in particular matters involving employers of family members or members of the employee's household. It would also require the employee to report the employment of family members or members of the employee's household by FDIC-insured depository institutions or companies that have business, or are seeking to do business, with the Corporation. This requirement eliminates the potential for any appearance of preferential treatment in those instances where employment of a family member or a member of the employee's household would be likely to raise questions regarding the appropriateness of actions taken by the employee or the Corporation.

Section 3201.107 Outside Employment and Other Activities

Proposed § 3201.107(a) would prohibit an employee from providing services, for compensation, to an FDIC-insured depository institution or to a person employed by such institution. The prohibition is based, in part, on 18 U.S.C. 1909, which prohibits an examiner from performing any service for compensation for any FDIC-insured depository institution or for any person connected therewith.

Similarly, proposed § 3201.107(b) would restrict an employee from using certain professional licenses in compensated outside activities when the employee's duties to the Corporation involve those activities. The areas involved in the prohibition have been limited to areas identified as especially sensitive and critical to corporate operations.

Proposed § 3201.107(c) would make it the responsibility of the employee to consult with an agency designee concerning outside employment or activities that could result in disqualification of the employee from his or her official duties.

Section 3201.108 Related Statutory and Regulatory Authorities

This section sets forth additional statutory and regulatory authorities with which an employee should be familiar.

Section 3201.109 Provisions of 5 CFR Part 2635 Not Applicable to Corporation Employees

Certain provisions of the Standards of Ethical Conduct have been determined by the Corporation to be inapplicable to its employees based on the Corporation's status as a mixed-ownership Corporation. To avoid confusion, the authorities which are not applicable to the Corporation and its employees would be listed in § 3201.109 (b) through (e). Proposed § 3201.109(a) would caution examiners that they may not use the gift exceptions in 5 CFR 2635.204 to accept a gift that would violate the criminal prohibitions in 18 U.S.C. 213 against examiners accepting gifts or gratuities from the institutions they examine.

III. Removal of FDIC Employees Responsibilities and Conduct Regulations and Related Modifications

On the effective date of the final rule, the Employee Responsibilities and Conduct regulation, 12 CFR part 336, will be amended to remove and reserve subparts A, B, C, E, and F, §§ 336.1-336.23 and 336.29-336.37, and remove the appendix to part 336. As proposed, a new § 336.1 will be added to provide

a cross-reference to the Corporation's supplemental ethical conduct regulation, to be codified at 5 CFR part 3201, the Corporation's supplemental financial disclosure regulation at 5 CFR part 3202, and to the Executive Branch-wide financial disclosure and standards of ethical conduct regulations at 5 CFR parts 2634 and 2635. 12 CFR part 336, subpart D, §§ 336.24 through 336.28, was removed and reserved by action of the Board of Directors of the Corporation dated November 24, 1992, 57 FR 39628.

IV. Matters of Regulatory Procedure

Administrative Procedure Act

This proposed rulemaking is in compliance with the Administrative Procedure Act (5 U.S.C. 553) and allows for a 60-day comment period.

Regulatory Flexibility Act

The Board of Directors has concluded that the proposed rule will not impose a significant economic hardship on small institutions. Therefore, the Board of Directors hereby certifies pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that the proposed rule will not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

The Board of Directors has determined that this proposed regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects

5 CFR Part 3201

Administrative practice and procedure, Conflict of interests, Government employees, Reporting and recordkeeping requirements.

12 CFR Part 336

Conflict of interests, Government employees.

Dated at Washington, D.C. this 14th day of June, 1994.

By Order of the Board of Directors,
Federal Deposit Insurance Corporation.

Robert E. Feldman,
Acting Executive Secretary.

Concurred in this 1st day of July, 1994.

Stephen D. Potts,
Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Federal Deposit Insurance

Corporation, with the concurrence of the Office of Government Ethics, is proposing to amend title 5, Chapter XXII, of the Code of Federal Regulations and title 12, Chapter III, of the Code of Federal Regulations as follows:

5 CFR CHAPTER XXII—FEDERAL DEPOSIT INSURANCE CORPORATION

1. A new part 3201 is added to 5 CFR Chapter XXII to read as follows:

PART 3201—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE FEDERAL DEPOSIT INSURANCE CORPORATION

Sec.

- 3201.101 General.
3201.102 Extensions of credit from FDIC-insured depository institutions.
3201.103 Prohibitions on ownership of securities of FDIC-insured depository institutions.
3201.104 Restrictions concerning the purchase of property held by the Corporation or the RTC as conservator, receiver, or liquidator of the assets of an insured depository institution, or by a bridge bank organized by the Corporation.
3201.105 Prohibition on dealings with former employers, associates, and clients.
3201.106 Employment of family members outside the Corporation.
3201.107 Outside employment and other activities.
3201.108 Related statutory and regulatory authorities.
3201.109 Provisions of 5 CFR part 2635 not applicable to Corporation employees.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 12 U.S.C. 1819(a), 1822; 26 U.S.C. 1043; 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, 2635.502, and 2635.803.

§ 3201.101 General.

(a) *Purpose.* The regulations in this part apply to employees of the Federal Deposit Insurance Corporation (Corporation) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. Where specified, these regulations also apply to the Comptroller of the Currency and the Director of the Office of Thrift Supervision in connection with their activities as members of the Corporation's Board of Directors.

(b) *Corporation ethics officials.* The Executive Secretary of the Corporation shall act as the Corporation's Ethics Counselor and as its Designated Agency Ethics Official under 5 CFR part 2638. The Assistant Executive Secretary (Ethics) shall act as the Corporation's Alternate Ethics Counselor and as the Alternate Agency Ethics Official.

(1) The Ethics Counselor or Alternate Ethics Counselor may delegate authority to one or more employees to serve as Deputy Ethics Counselors.

(2) The delegation to a Deputy Ethics Counselor shall be in writing and cannot be redelegated.

(c) *Agency designees.* The Ethics Counselor and Alternate Ethics Counselor shall serve as the agency designee for purposes of making the determinations, granting the approvals, and taking other actions required by an agency designee under part 2635 and this part. The Ethics Counselor or Alternate Ethics Counselor may delegate authority to Deputy Ethics Counselors or to other employees to serve as agency designees for specified purposes. The delegation to any agency designee shall be in writing and cannot be redelegated.

(d) *Definitions.* For purposes of this part:

(1) *Affiliate*, as defined in 12 U.S.C. 1841(k), means any company that controls, is controlled by, or is under common control with another company.

(2) *Appropriate director* means the head of a Washington office or division or the highest ranking official assigned to a regional office in each division or the Ethics Counselor.

(3) *Covered employee* means an employee of the Corporation required to file a public or confidential financial disclosure report under 5 CFR part 2634 or 5 CFR part 3202.

(4) *Employee* means an officer or employee, other than a special Government employee, of the Corporation including a member of the Board of Directors appointed under the authority of 12 U.S.C. 1812(a)(1)(C), and a liquidation graded employee. For purposes of 5 CFR part 2635 and §§ 3201.103 and 3201.104, *employee* includes any individual who, pursuant to a contract or any other arrangement, performs functions or activities of the Corporation, under the direct supervision of an officer or employee of the Corporation.

(5) *Security* includes an interest in debt or equity instruments. The term includes, without limitation, a secured or unsecured bond, debenture, note, securitized assets, commercial paper, and all types of preferred and common stock. The term includes an interest or right in a security, whether current or contingent, a beneficial or legal interest derived from a trust, the right to acquire or dispose of any long or short position, an interest convertible into a security, and an option, right, warrant, put, or call with respect to a security. The term *security* does not include a deposit account.

(6) *State nonmember bank* means any State bank as defined in 12 U.S.C. 1813(e) which is not a member of the Federal Reserve System.

(7) *Subsidiary*, as defined in 12 U.S.C. 1813(w), means any company which is owned or controlled directly or indirectly by another company.

§ 3201.102 Extensions of credit from FDIC-insured depository institutions.

(a) *Credit subject to this section.* The prohibition, disqualification, and retention provisions of this section apply to a current or contingent financial obligation of the employee. For purposes of this section, a current or contingent financial obligation of an employee's spouse or minor child is considered to be an obligation of the employee.

(b) *Prohibition on acceptance of credit from FDIC-insured State nonmember banks applicable to certain high-level officials.* (1) An employee described in paragraph (b)(2) of this section shall not, directly or indirectly, accept or become obligated on an extension of credit from an FDIC-insured State nonmember bank or its subsidiary, except credit extended through the use of a credit card under the same terms and conditions as are offered to the general public.

(2) The prohibition in paragraph (b)(1) of this section applies to:

(i) An employee who is a member of the Board of Directors, an assistant or deputy to the Board of Directors or to an appointed Board member, and a covered employee who is an assistant to such person; and

(ii) The director of a Washington office or of a division, other than the Division of Supervision, and a covered employee who holds a position immediately subordinate to such director.

(c) *Prohibition on acceptance of credit from FDIC-insured State nonmember banks for employees assigned to the Division of Supervision.* (1) An employee described in paragraph (c)(2) of this section shall not, directly or indirectly, accept or become obligated on an extension of credit from an FDIC-insured State nonmember bank or from an officer, director, employee, or subsidiary of such bank, except:

(i) For an employee assigned to the Washington office, credit extended through the use of a credit card on the same terms and conditions as are offered to the general public; and

(ii) For an employee assigned to other than the Washington office, credit extended by an FDIC-insured State nonmember bank headquartered outside the employee's region of official assignment through the use of a credit

card on the same terms and conditions as are offered to the general public.

(2) The prohibition in paragraph (c)(1) of this section applies to the Executive Director for Supervision and Resolutions, the Director of the Division of Supervision, a covered employee immediately subordinate to the Director of the Division of Supervision and the following employees assigned to the Division of Supervision: an Assistant Director, Regional Director, Deputy Regional Director, Assistant Regional Director, examiner, assistant examiner, review examiner, compliance examiner, assistant compliance examiner, and a covered employee.

(3) Upon accepting credit extended by a credit card in accordance with paragraphs (c)(1)(i) or (c)(1)(ii) of this section, the employee shall be disqualified in accordance with paragraph (e)(1) of this section, and, within 30 days of accepting such credit, shall file with the appropriate director a Statement of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions for Retention—Notice of Disqualification.

(d) *Two-year prohibition on acceptance of credit from FDIC-insured depository institutions.* (1) An employee described in paragraph (d)(2) of this section shall not, directly or indirectly, accept or become obligated on an extension of credit from an FDIC-insured depository institution or its subsidiary for a period of two years from the date of the employee's last personal and substantial participation in an audit, resolution, liquidation, supervisory proceeding, or internal agency deliberation affecting that particular institution, its predecessor or successor, or any subsidiary of such institution. This prohibition does not apply to credit obtained through the use of a credit card under the same terms and conditions as are offered to the general public.

(2) The prohibition in paragraph (d)(1) of this section applies to an employee in the Division of Finance, Division of Depositor and Asset Services, Division of Resolutions, Legal Division, or who is a member of a standing committee of the Board of Directors whose official duties include:

(i) Audit of insured depository institutions for deposit insurance assessment purposes;

(ii) Resolution or liquidation of failed or failing insured depository institutions;

(iii) Participation in the supervision of insured depository institutions or enforcement proceedings under the Federal Deposit Insurance Act; or

(iv) Internal agency deliberations affecting a particular insured depository institution, its predecessor or successor, or a subsidiary of such institution.

(e) *Employee disqualification.* (1) An employee described in paragraph (c)(2) of this section shall not participate in an examination, audit, visitation, review, or investigation, or other particular matter involving an FDIC-insured depository institution or other person with whom the employee has an outstanding extension of credit.

(2) A covered employee, other than an employee who is described in paragraph (c)(2) of this section, shall not participate in any particular matter involving an FDIC-insured depository institution or other person with whom the employee has an outstanding extension of credit.

(3) Disqualification is not required under paragraph (e)(2) of this section:

(i) If the credit was extended through the use of a credit card on the same terms and conditions as are offered to the general public; or

(ii) When the agency designee, with the concurrence of the appropriate director, has authorized the employee to participate in the matter using the standard set forth in 5 CFR 2635.502(d).

(4) The Comptroller of the Currency and the Director of the Office of Thrift Supervision shall be disqualified from matters pending before the Board of Directors to the same extent as a covered employee subject to paragraph (e)(2) of this section.

(f) *Retention and renegotiation of pre-existing extensions of credit.* (1) Nothing in this section prohibits the retention of a pre-existing extension of credit that an employee would be prohibited from accepting by § 3201.102 (b) or (c) if the extension of credit was permitted to be retained under 12 CFR part 336 prior to the adoption of this regulation or if the employee's acceptance of the extension of credit was proper at the time the obligation was incurred, as in the case of an extension of credit incurred prior to commencement of employment or reassignment to another division or location. Subsequent action affecting the status of the creditor, such as merger, acquisition, or transaction under 12 U.S.C. 1823, does not change the character of an extension of credit that was proper when incurred. An employee who retains a pre-existing extension that he or she would be prohibited from accepting by § 3201.102 (b) or (c) shall report the pre-existing extension of credit to the appropriate director or agency designee within 30 days from the following event, as appropriate:

(i) Adoption of this part;

(ii) Commencement of employment;

(iii) Assignment to another division or location; or

(iv) Action affecting the status of the creditor.

(2) Any renegotiation of a pre-existing extension of credit shall be treated as a new extension of credit that is subject to the prohibitions contained in § 3201.102 (b) through (d). An employee may request that an exception be made to the prohibitions to permit renegotiation of a pre-existing extension of credit. Any such request shall be made in writing to the appropriate director and agency designee, or in the case of an employee described in paragraph (b)(2) (i) and (ii) of this section, to the Ethics Counselor, stating:

(i) The purpose of the renegotiation;

(ii) The terms and conditions of the original extension of credit;

(iii) The terms and conditions now available to the general public;

(iv) The terms and conditions now offered to the employee;

(v) The action the employee has taken to move the loan to an institution from which an employee would not be prohibited from accepting an extension of credit; and

(vi) The financial hardship, if any, denial of the request will cause.

(3) After submission of the request, the appropriate director and agency designee, or the Ethics Counselor, may grant the employee's request based upon a written determination that the request 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 the misuse of position or loss of impartiality, or otherwise to ensure confidence in the impartiality and objectivity with which agency programs are administered.

§ 3201.103 Prohibitions on ownership of securities of FDIC-insured depository institutions.

(a) *Prohibition on ownership.* Except as permitted by this section, an employee or the spouse or minor child of an employee, shall not acquire, own, or control, directly or indirectly, a security of an FDIC-insured depository institution, or an affiliate of an FDIC-insured depository institution.

(b) *Exception to prohibition for certain interests.* Nothing in this section prohibits an employee, or the spouse or minor child of an employee, from:

(1) Acquiring, owning or controlling the securities of certain publicly traded bank holding companies or their nonbank subsidiaries where the bank holding company is not primarily

engaged in banking and either the bank holding company or the bank it holds is exempt under the provisions of the Bank Holding Company Act of 1956 and which are identified as such by the Board of Governors of the Federal Reserve System (a list of exempt institutions can be obtained from the Corporation's Ethics Section);

(2) Acquiring, owning, or controlling the securities of certain nonfinancial savings association holding companies whose principal business is unrelated to the financial services industry and which are identified as such by the Office of Thrift Supervision pursuant to 5 CFR 3101.109(b)(3)(ii) (a list of such institutions can be obtained from the Corporation's Ethics Section);

(3) Retaining a security of an FDIC-insured depository institution or an affiliate of an FDIC-insured depository institution if the security was permitted to be retained by the employee under 12 CFR part 336 prior to the adoption of this regulation, was obtained prior to commencement of employment with the Corporation, or was acquired by a spouse prior to marriage to the employee;

(4) Acquiring, owning, or controlling a security of an FDIC-insured depository institution or the affiliate of an FDIC-insured depository institution where the security was acquired by inheritance, gift, stock split, involuntary stock dividend, merger, acquisition, or other change in corporate ownership, exercise of preemptive right, or otherwise without specific intent to acquire the security. This provision permits the retention of any such interest only where:

(i) The employee makes full, written disclosure on FDIC form 2410/07 to the Ethics Counselor within 30 days of commencing employment or acquiring the interest; and

(ii) The employee is disqualified in accordance with 5 CFR part 2635, subpart D, from participating in any particular matter that affects his or her financial interests, or that of his or her spouse or minor child;

(5) Acquiring, owning, or controlling an interest in a publicly traded or publicly available investment fund which, in its prospectus, does not indicate the objective or practice of concentrating its investments in the financial services sector and the employee neither exercises control nor has the ability to exercise control over the financial interests held in the fund; or

(6) Using an FDIC-insured depository institution or an affiliate of an FDIC-insured depository institution as custodian or trustee of accounts

containing tax-deferred retirement funds.

(c) *Divestiture.* Based upon a determination of substantial conflict under 5 CFR 2635.403(b), the Ethics Counselor may require an employee, or the spouse or minor child of an employee, to divest a security he or she is otherwise authorized to retain under paragraph (b) of this section.

§ 3201.104 Restrictions concerning the purchase of property held by the Corporation or the RTC as conservator, receiver, or liquidator of the assets of an insured depository institution, or by a bridge bank organized by the Corporation.

(a) *Prohibition on purchase of property.* An employee, and an employee's spouse or minor child shall not, directly or indirectly, purchase or acquire any property held or managed by the Corporation or the Resolution Trust Corporation (RTC) as conservator, receiver, or liquidator of the assets of an insured depository institution, or by a bridge bank organized by the Corporation, regardless of the method of disposition of the property.

(b) *Disqualification.* An employee who is involved in the disposition of assets held by the Corporation or the RTC as conservator, receiver, or liquidator of the assets of an insured depository institution, or by a bridge bank organized by the Corporation shall not participate in the disposition of assets held in such capacities when the employee knows that any party with whom the employee has a covered relationship, as defined in 5 CFR 2635.502(b)(1), is or will be attempting to acquire such assets. The employee shall provide written notification of the disqualification to his or her immediate supervisor and the agency designee.

§ 3201.105 Prohibition on dealings with former employers, associates, and clients.

(a) An employee is prohibited for one year from the date of entry on duty with the Corporation from participating in a particular matter when an employer, or the successor to the employer, for whom the employee worked at any time during the one year preceding the employee's entrance on duty is a party or represents a party to the matter.

(b) For purposes of this section, the term *employer* means a person with whom the employee served as officer, director, trustee, general partner, agent, attorney, accountant, consultant, contractor, or employee.

(c) The one-year period of disqualification imposed by paragraph (a) of this section may be extended in an individual case based on a written determination by the agency designee that, under the particular circumstances,

the employee's participation in the particular matter would cause a reasonable person with knowledge of the facts to question his or her impartiality.

§ 3201.106 Employment of family members outside the Corporation.

(a) *Disqualification of employees.* An employee shall not participate in an examination, audit, investigation, application, contract, or other particular matter if the employer of the employee's spouse, child, parent, brother, sister, or a member of the employee's household is a party or represents a party to the matter, unless an agency designee authorizes the employee to participate using the standard in 5 CFR 2635.502(d).

(b) *Reporting certain relationships.* A covered employee shall make a written report to an agency designee within 30 days of the employment of the employee's spouse, child, parent, brother, sister, or a member of the employee's household by:

- (1) An FDIC-insured depository institution or its affiliate;
- (2) A firm or business with which, to the employee's knowledge, the Corporation has a contractual or other business or financial relationship; or
- (3) A firm or business which, to the employee's knowledge, is seeking a business or contractual relationship with the Corporation.

§ 3201.107 Outside employment and other activities.

(a) *Prohibition on employment with FDIC-insured depository institutions.* An employee shall not provide service for compensation, in any capacity, to an FDIC-insured depository institution or an employee or person employed by or connected with such institution.

(b) *Use of professional licenses.* A covered employee who holds a license related to real estate, appraisals, securities, or insurance and whose official duties with the Corporation require personal and substantial involvement in matters related to, respectively, real estate, appraisal, securities, or insurance is prohibited from using such license, other than in the performance of his or her official duties, for the production of income. The appropriate director, in consultation with an agency designee, may grant exceptions to this prohibition based on a finding that the specific transactions which require use of the license will not create an appearance of loss of impartiality or use of public office for private gain.

(c) *Responsibility to consult with agency designee.* An employee who

engages in, or intends to engage in, any outside employment or other activity that may require disqualification from the employee's official duties shall consult with an agency designee prior to engaging in or continuing to engage in the activity.

§ 3201.108 Related statutory and regulatory authorities.

(a) 18 U.S.C. 213, which prohibits an examiner from accepting a loan or gratuity from an FDIC-insured depository institution examined by him or her or from any person connected with such institution.

(b) 18 U.S.C. 1906, which prohibits disclosure of information from a bank examination report except as authorized by law.

(c) 17 CFR 240.10b-5 which prohibits the use of manipulative or deceptive devices in connection with the purchase or sale of any security.

(d) 18 U.S.C. 1909, which prohibits examiners from providing any service for compensation for any bank or person connected therewith.

§ 3201.109 Provisions of 5 CFR part 2635 not applicable to Corporation employees.

The following provisions of 5 CFR part 2635 are not applicable to employees of the Corporation:

(a) Because of the restrictions imposed by 18 U.S.C. 213 on examiners accepting loans or gratuities, an examiner in the Division of Supervision may not use any of the gift exceptions at 5 CFR 2635.204 to accept a gift from an FDIC-insured depository institution examined by him or her or from any person connected with such institution.

(b) Provisions of 41 U.S.C. 423 (Procurement integrity) and the implementing regulations at 48 CFR 3.104 (of the Federal Acquisition Regulation) applicable to procurement officials referred to in:

- (1) 5 CFR 2635.202(c)(4)(iii);
- (2) The note following 5 CFR 2635.203(b)(7);
- (3) Example 5 following 5 CFR 2635.204(a);
- (4) Examples 2 and 3 following 5 CFR 2635.703(b)(3);
- (5) 5 CFR 2635.902(f), (h), (l), and (bb);

(c) Provisions of 31 U.S.C. 1353 (Acceptance of travel and related expenses from non-Federal sources) and the implementing regulations at 41 CFR part 304-1 (Acceptance of payment from a non-Federal source for travel expenses) referred to in 5 CFR 2635.203(b)(8)(i).

(d) Provisions of 41 CFR Chapter 101 (Federal Property Management Regulations) referred to in 5 CFR 2635.205(a)(4).

(e) Provisions of 41 CFR Chapter 201 (Federal Information Resources Management Regulation) referred to in Example 1 following 5 CFR 2635.704(b)(2).

12 CFR CHAPTER III—FEDERAL DEPOSIT INSURANCE CORPORATION

PART 336—EMPLOYEE RESPONSIBILITIES AND CONDUCT

2. The authority citation for part 336 is revised to read as follows:

Authority: 5 U.S.C. 7301; 12 U.S.C. 1819(a).

3. Section 336.1 is revised to read as follows:

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

Employees of the Federal Deposit Insurance Corporation (Corporation) are subject to the Executive Branch-wide Standards of Ethical Conduct at 5 CFR part 2635, the Corporation regulation at 5 CFR part 3201 which supplements the Executive Branch-wide Standards, the Executive Branch-wide financial disclosure regulations at 5 CFR part 2634, and the Corporation regulation at 5 CFR part 3202 which supplements the Executive Branch-wide financial disclosure regulations.

§§ 336.2–336.23, 336.29–336.37 [Removed]

Appendix to Part 336—[Removed]

4. Sections 336.2 through 336.23 and 336.29 through 336.37 and all subpart headings are removed and the appendix to part 336 is removed.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 46

RIN 0581-AB28

[Docket No. FV93-353]

Regulations (Other Than Rules of Practice) Under the Perishable Agricultural Commodities Act, 1930 (PACA)

AGENCY: Agricultural Marketing Service (USDA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would invite comments extending PACA coverage to include fresh and frozen fruits and vegetables that are oil-blanching, including frozen french fried

potato products. Under previous regulations, suppliers of these commodities suffered considerable financial losses because oil-blanching products were excluded from the PACA. This proposed rule would grant dealers in frozen oil-blanching products the same rights afforded dealers whose frozen product is water blanching.

DATES: Comments must be received on or before August 11, 1994.

ADDRESSES: All comments concerning this proposed rule should be addressed to USDA, AMS, F&V DIVISION, PACA BRANCH, Room 2095-S, Building, P.O. Box 96456, 14th & Independence Avenue, S.W., Washington, D.C. 20090-6456.

FOR FURTHER INFORMATION CONTACT: J.R. Frazier, Assistant Chief, PACA Branch, at 202-720-4180.

SUPPLEMENTARY INFORMATION: The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulation, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 1650 of the Act, a person subject to the Plan may file a petition with the Secretary stating that the Plan or any provision of the Plan, or any obligation imposed in connection with the Plan, is not in accordance with law and requesting a modification of the Plan or an exemption from the Plan. The petitioner is afforded the opportunity for a hearing on the petition. After such hearing, the Secretary will make a ruling on the petition. The Act provides that the district courts of the United States in any district in which a person who is a petitioner resides or carries on business are vested with jurisdiction to review the Secretary's ruling on the petition, if a complaint for that purpose is filed within 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

The proposed rule would extend PACA coverage to include frozen fruits and vegetables that are oil-blanching, especially frozen french fried potato products. Under previous regulations, suppliers of these commodities suffered considerable financial losses because oil-blanching products were excluded from the PACA. This proposed rule would grant dealers in frozen oil-blanching products the same rights afforded dealers whose frozen product is water blanching.

The PACA establishes a code of fair trading by prohibiting certain unfair practices in the marketing of fresh or frozen fruits and vegetables. The law requires that parties fulfill their contractual obligations, and provides a forum wherein persons who suffer damages can recover their losses.

The PACA also impresses a statutory trust, for the benefit of unpaid sellers or suppliers, on all perishable agricultural commodities received by a commission merchant, dealer or broker and all inventories of food or other products derived from the sale of such commodities or products. Sellers who preserve their eligibility are entitled to payment ahead of other creditors, from trust assets of money owed on past due accounts.

As indicated in documents submitted to this Agency by the Frozen Potato Products Institute, frozen potato products represent the largest single frozen commodity shipped in the United States. These documents further state that potatoes cannot be economically frozen and shipped long distances unless they first undergo oil blanching. To exclude such a substantial portion of the frozen food industry is inconsistent with the intent of the PACA to protect dealers in fresh or frozen fruits and vegetables.

List of Subjects in 7 CFR Part 46

Agricultural commodities, Brokers, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 46 of the Code of Federal Regulations is proposed to be amended as follows:

PART 46—REGULATIONS (OTHER THAN RULES OF PRACTICE) UNDER THE PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930

1. The authority citation for Part 46 continues to read as follows:

Authority: Sec. 15, 46 Stat. 537; 7 U.S.C. 499o.

2. Section 46.2, paragraph (u) is revised to read as follows: