

§ 3201.102

5 CFR Ch. XXII (1–1–10 Edition)

require application of the prohibition on borrowing contained in § 3201.102 to ensure public confidence that the FDIC's programs are conducted impartially and objectively.

(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). 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) *Ethics Counselor* means an officer or employee who is designated by the head of the agency to coordinate and manage the agency's ethics program, and includes the Corporation's Alternate Ethics Counselor.

(6) *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.

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

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

[60 FR 20174, Apr. 25, 1995, as amended at 67 FR 71070, Nov. 29, 2002; 72 FR 19378, Apr. 18, 2007]

§ 3201.102 Extensions of credit and loans from FDIC-insured institutions.

(a) *Credit subject to this section.* The prohibition, disqualification, and re- tention provisions of this section apply to a current or contingent financial ob-

ligation 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) *Disqualification applicable to FDIC employees generally.* Except as provided in this section:

(1) No FDIC employee may participate in an examination, audit, visitation, review, or investigation, or any other particular matter involving an FDIC-insured institution, subsidiary or other person with whom the employee has an outstanding extension of credit.

(2) For employees, other than covered employees as defined in § 3201.101(d)(3), disqualification is not required 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.

(3) The Comptroller of the Currency and the Director of the Office of Thrift Supervision shall be disqualified from any matter pending before the FDIC Board of Directors to the same extent as an FDIC employee subject to paragraph (c) of this section.

(c) *Prohibited borrowing by covered employees*—(1) *Prohibition on covered employee borrowing.* Except as provided below, no covered employee shall, directly or indirectly, accept or become obligated on a loan or extension of credit, whether current or contingent, from any FDIC-insured State nonmember bank or its subsidiary or from an officer, director, or employee, of any FDIC-insured State nonmember bank or its subsidiary.

(2) *Exceptions:* (i) *Credit cards.* A covered employee (or spouse or minor child of a covered employee) may obtain and hold a credit card account established under an open end consumer credit plan and issued by an FDIC-insured State nonmember bank or its subsidiary subject to the following conditions:

(A) The cardholder must satisfy all financial requirements for the credit card account that are generally applicable to all applicants for the same type of credit card account; and

(B) The terms and conditions applicable with respect to the account and any credit extended to the cardholder under

the account are no more favorable generally to the cardholder than the terms and conditions that are generally applicable to credit card accounts offered by the same bank (or the same subsidiary) to other cardholders in comparable circumstances under open end consumer credit plans.

(ii) *Loans secured primarily by principal residence.* A covered employee (or a spouse or minor child of a covered employee) may obtain and hold a loan from an FDIC-insured State nonmember bank or its subsidiary subject to the following conditions:

(A) The loan is secured by residential real property that is the principal residence of the borrower. The borrower may retain the loan if the residential real property ceases to be the principal residence. However, any subsequent renewal or renegotiation of the original terms of such a loan must meet the requirements of this paragraph;

(B) The borrower may not apply for the loan while the covered employee participates in any examination, the review of any application, or any other supervisory or regulatory or other particular matter directly affecting the State nonmember bank or its subsidiaries;

(C) The borrower must satisfy all financial requirements for the loan that are generally applicable to all applicants for the same type of residential real property loan; and

(D) The terms and conditions applicable with respect to the loan and any credit extended to the borrower under the loan are no more favorable generally to the borrower than the terms and conditions that are generally applicable to residential real property loans offered by the same State nonmember bank or the same subsidiary to other borrowers in comparable circumstances for residential real property loans.

(3) *Disqualification of covered employees.* A covered employee 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 covered employee has an outstanding extension of credit, or with whom the covered

employee is negotiating an extension of credit.

(i) *Payment dispute, delinquency, or other significant matter concerning credit card debt.* Disqualification is not required if the credit is extended through the use of a credit card. However, disqualification will be required when a covered employee is delinquent on payments, has a billing dispute, is negotiating with the institution, or has any other significant issue regarding the credit card debt. The covered employee must notify his or her supervisor and deputy ethics counselor of a dispute in writing.

(ii) *Primary residence mortgage loan.* Disqualification will be required if the covered employee is negotiating for, has an application pending for, or enters into a primary residence mortgage loan. This disqualification will cease when the loan is sold, even if the loan originator retains the loan servicing.

(4) *Other limitations on covered employees.* (i) A covered employee shall not accept or become obligated on an otherwise permissible loan if the disqualification arising from the credit relationship would materially impair the covered employee's ability to participate in matters that are central to the performance of the covered employee's official duties, or if the covered employee has been advised of an assignment to handle a matter involving that institution.

(ii) Covered employees to whom the prohibitions in this section apply may not apply for a credit card or primary residence mortgage loan from a State nonmember bank or subsidiary that the covered employee is assigned to examine or participate in a matter involving that institution, or if such an assignment is imminent.

(5) *Pre-existing credit.* (i) This section does not prohibit a covered employee, or any FDIC employee who becomes a covered employee as a result of any reassignment of duties or position, from retaining a loan or extension of credit from a State nonmember bank or its subsidiary on its original terms if the loan or extension of credit was incurred prior to employment by the FDIC or as a result of the sale or transfer of a loan or credit to a State nonmember bank or its subsidiary or the

§ 3201.103

5 CFR Ch. XXII (1–1–10 Edition)

conversion or merger of the lender into a State nonmember bank or its subsidiary. Any renewal or renegotiation of a pre-existing loan or extension of credit will be treated as a new loan or extension of credit subject to the prohibitions at paragraphs (c)(3) and (c)(4) of this section.

(ii) A covered employee may request that an exception be made to the prohibitions to permit renegotiation of a pre-existing loan or extension of credit. If a covered employee would experience financial or other hardship unless allowed to renegotiate a pre-existing loan or extension of credit, the covered employee may submit a written request to his or her supervisor and to the Ethics Counselor, describing the reasons for renegotiation, the original and the proposed terms and conditions, including whether the financial institution makes such terms generally available to the public, and any attempts by the covered employee to move the loan to a non-prohibited source. After consideration of the request, the covered employee's supervisor and the Ethics Counselor jointly may grant the waiver upon a finding that renegotiation is not prohibited by law, and that the waiver does not result in a loss of impartiality or objectivity or in misuse of the employee's position. To be effective, the waiver must be in writing.

(d) *Two-year prohibition on acceptance of credit from an FDIC-insured depository institution.* An FDIC employee shall not, directly or indirectly, accept or become obligated on any 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, assistance transactions, 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 or a residential real property loan secured by the principal residence of the employee, subject to the same conditions, limitations, disqualification, and waiver procedures applicable to covered em-

ployees under paragraphs (c) and (e) of this section.

(e) *Waiver.* The Ethics Counselor may grant a written waiver from any provision of this section based on a determination made with the advice and legal clearance of the Legal Division that the waiver is not inconsistent with part 2635 of this title 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 the FDIC's programs are administered. A waiver under this paragraph may impose appropriate conditions, such as requiring execution of a written disqualification.

[72 FR 19378, Apr. 18, 2007]

§ 3201.103 Prohibition on acquisition, ownership, or control of securities of FDIC-insured depository institutions and certain holding companies.

(a) *Prohibition on acquisition, ownership, or control.* Except as provided in paragraph (b) of this section, no employee, spouse of an employee, or minor child of an employee may acquire, own, or control, directly or indirectly, a security of any of the following:

(1) A bank or savings association that is insured by the Federal Deposit Insurance Corporation (FDIC);

(2) A bank holding company that is subject to supervision by the Federal Reserve Board (FRB);

(3) A savings and loan holding company that is subject to supervision by the Office of Thrift Supervision (OTS);

(4) A financial holding company that is subject to FRB supervision; or

(5) A company that:

(i) Owns or controls an FDIC-insured bank or savings association;

(ii) Is neither an FRB-supervised bank holding company, an OTS-supervised savings and loan holding company, nor an FRB-supervised financial holding company; and

(iii) Is either primarily engaged in banking or not publicly traded on a U.S. securities exchange.