

PART 3100 [RESERVED]

PART 3101—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF THE TREASURY

Sec.

- 3101.101 General.
- 3101.102 Designation of separate agency components.
- 3101.103 Prohibition on purchase of certain assets.
- 3101.104 Outside employment.
- 3101.105 Additional rules for Alcohol and Tobacco Tax and Trade Bureau employees.
- 3101.106 Additional rules for Internal Revenue Service and Treasury Inspector General for Tax Administration employees.
- 3101.107 Additional rules for Legal Division employees.
- 3101.108 Additional rules for Office of the Comptroller of the Currency employees.

AUTHORITY: 5 U.S.C. 301, 7301, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); 18 U.S.C. 212, 213; 26 U.S.C. 7214(b); 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, 2635.203(a), 2635.403(a), 2635.803, 2635.807(a)(2)(ii).

SOURCE: 60 FR 22251, May 5, 1995, unless otherwise noted.

§3101.101 General.

(a) *Purpose.* In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Department of the Treasury and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. Employees are required to comply with 5 CFR part 2635, this part, and bureau guidance and procedures established pursuant to this section. Department employees are also subject to any additional rules of conduct that the Department or their employing bureaus are authorized to issue. See 31 CFR part 0, Department of the Treasury Employee Rules of Conduct.

(b) *Bureau instructions.* With the concurrence of the Designated Agency Ethics Official (DAEO), bureaus of the Department of the Treasury are authorized to issue instructions or manual issuances providing explanatory guidance and establishing procedures

necessary to implement this part and part 2635 of this title. See 5 CFR 2635.105(c).

(c) *Definition of “agency designee”.* As used in this part and in part 2635 of this title, the term “agency designee” refers to any employee who has been delegated authority by an instruction or manual issuance issued by a bureau under paragraph (b) of this section to make a determination, give an approval, or take other action required or permitted by this part or part 2635 of this title with respect to another employee. See 5 CFR 2635.102(b).

§3101.102 Designation of separate agency components.

Pursuant to 5 CFR 2635.203(a), each of the following components of the Department of the Treasury is designated as a separate agency for purposes of the regulations contained in subpart B of 5 CFR part 2635 governing gifts from outside sources and 5 CFR 2635.807 governing teaching, speaking or writing:

- (a) Alcohol and Tobacco Tax and Trade Bureau (TTB);
- (b) Bureau of Engraving and Printing;
- (c) Bureau of the Fiscal Service (BFS);
- (d) Financial Crimes Enforcement Network (FinCEN);
- (e) Internal Revenue Service (IRS);
- (f) Office of the Comptroller of the Currency (OCC);
- (g) Office of the Inspector General;
- (h) Office of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP);
- (i) Office of the Treasury Inspector General for Tax Administration (TIGTA); and
- (j) United States Mint.

NOTE TO §3101.102: As a result of the designations contained in this section, employees of the remaining parts of the Department of the Treasury (e.g., employees in Departmental Offices) will also be treated as employees of an agency that is separate from all of the above listed bureaus and offices for purposes of determining whether the donor of a gift is a prohibited source under 5 CFR 2635.203(d) and for identifying an employee’s “agency” under 5 CFR 2635.807 governing teaching, speaking and writing. For purposes of this section, employees in the Legal Division shall be considered to be part of the bureaus or offices in which they serve.

[79 FR 65877, Nov. 6, 2014]

§ 3101.103

5 CFR Ch. XXI (1–1–21 Edition)

§ 3101.103 Prohibition on purchase of certain assets.

(a) *General prohibition.* Except as provided in paragraph (b) of this section, no employee of the Department of the Treasury shall purchase, directly or indirectly, property:

(1) Owned by the Government and under the control of the employee's bureau (or a bureau over which the employee exercises supervision); or

(2) Sold under the direction or incident to the functions of the employee's bureau.

(b) *Exceptions.* The prohibition in paragraph (a) of this section does not apply to the purchase of Government securities or items sold generally to the public at fixed prices, such as numismatic items produced by the United States Mint or foreign gifts deposited with the Department pursuant to 5 U.S.C. 7342 that an employee may purchase pursuant to 41 CFR part 101-49.

(c) *Waiver.* An employee may make a purchase otherwise prohibited by this section where a written waiver of the prohibition has been given to the employee by an agency designee with the advice and legal clearance of the DAEO, or the appropriate Office of Chief or Legal Counsel. Such a waiver may be granted only on a determination that the waiver is not otherwise prohibited by law and that, in the mind of a reasonable person with knowledge of the particular circumstances, the purchase of the asset will not raise a question as to whether the employee has used his or her official position or inside information to obtain an advantageous purchase or create an appearance of loss of impartiality in the performance of the employee's duties.

NOTE: Employees of the OCC are subject to additional limitations on the purchase of assets that are set out in the OCC-specific rules contained in § 3101.108.

[60 FR 22251, May 5, 1995, as amended at 80 FR 7797, Feb. 12, 2015]

§ 3101.104 Outside employment.

(a) *General requirement for prior approval.* All Department of the Treasury employees shall obtain prior written approval before engaging in any outside employment or business activities, with or without compensation, except

to the extent that the employing bureau issues an instruction or manual issuance pursuant to paragraph (b) of this section exempting an activity or class of activities from this requirement. Approval shall be granted only on a determination that the employment or activity is not expected to involve conduct prohibited by statute, part 2635 of this title, or any provision of this part.

NOTE: Employees of the IRS, Legal Division, and OCC are subject to additional limitations on outside employment and activities that are set out in bureau-specific rules contained in this part.

(b) *Bureau responsibilities.* Each bureau, which for the purposes of this section includes the Departmental Offices and the Office of the Inspector General, shall issue instructions or manual issuances governing the submission of requests for approval of outside employment or business activities and designating appropriate officials to act on such requests. The instructions or manual issuances may exempt categories of employment or activities from the prior approval requirement based on a determination that employment or activities within those categories would generally be approved and are not likely to involve conduct prohibited by statute, part 2635 of this title or any provision of this part. Bureaus may include in their instructions or issuances examples of outside employment or activities that are permissible or impermissible consistent with this part and part 2635 of this title. Bureaus shall retain in employees' Official Personnel Folders (temporary side) all requests for approval whether granted or denied.

[60 FR 22251, May 5, 1995, as amended at 80 FR 7797, Feb. 12, 2015]

§ 3101.105 Additional rules for Alcohol and Tobacco Tax and Trade Bureau employees.

The following rules apply to the employees of the Alcohol and Tobacco Tax and Trade Bureau and are in addition to §§ 3101.101 through 3101.104.

(a) *Prohibited financial interests.* Except as provided in this section, no employee of TTB, or spouse or minor child of a TTB employee, shall have, directly

Department of the Treasury

§ 3101.107

or indirectly, any financial interest, including compensated employment, in the alcohol, tobacco, firearms or explosives industries. The term financial interest is defined in § 2635.403(c) of this title.

(b) *Waiver.* An agency designee, with the advice and legal clearance of the DAEO or Office of the Chief Counsel, may grant a written waiver of the prohibition in paragraph (a) of this section on a determination that the financial interest is not prohibited by 26 U.S.C. 7214(b) and that, in the mind of a reasonable person with knowledge of the particular circumstances, the financial interest will not create an appearance of misuse of position or loss of impartiality, or call into question the impartiality and objectivity with which TTB's programs are administered. A waiver under this paragraph may require appropriate conditions, such as execution of a written disqualification.

[79 FR 65877, Nov. 6, 2014]

§ 3101.106 Additional rules for Internal Revenue Service and Treasury Inspector General for Tax Administration employees.

The following rules apply to the employees of the Internal Revenue Service and the Treasury Inspector General for Tax Administration and are in addition to §§ 3101.101 through 3101.104.

(a) *Prohibited recommendations.* Employees of the IRS or TIGTA shall not recommend, refer or suggest, specifically or by implication, any attorney, accountant, or firm of attorneys or accountants to any person in connection with any official business which involves or may involve the IRS.

(b) *Prohibited outside employment.* Involvement by an employee of the IRS or TIGTA in the following types of outside employment or business activities is prohibited and shall constitute a conflict with the employee's official duties pursuant to 5 CFR 2635.802:

(1) Performance of legal services involving Federal, State or local tax matters;

(2) Appearing on behalf of any taxpayer as a representative before any Federal, State, or local government agency, in an action involving a tax matter except on written authorization of the Commissioner of Internal Revenue

or the Treasury Inspector General for Tax Administration;

(3) Engaging in accounting, or the use, analysis, and interpretation of financial records when such activity involves tax matters;

(4) Engaging in bookkeeping, the recording of transactions, or the record-making phase of accounting, when such activity is directly related to a tax determination; and

(5) Engaging in the preparation of tax returns for compensation, gift, or favor.

(c) *Seasonal employees.* Seasonal employees of the IRS while in non-duty status may engage in outside employment or activities other than those prohibited by paragraph (b) of this section without obtaining prior written permission.

[79 FR 65877, Nov. 6, 2014]

§ 3101.107 Additional rules for Legal Division employees.

The following rules apply to the employees of the Legal Division and are in addition to §§ 3101.101 through 3101.104:

(a) *Application of rules of other bureaus.* In addition to the rule contained in paragraph (b) of this section, employees in the Legal Division shall be covered by the rules contained in this part that are applicable to employees of the bureaus or offices in which the Legal Division employees serve, subject to any instructions which the General Counsel or appropriate Chief or Legal Counsel may issue in accordance with § 3101.101(b).

(b) *Prohibited outside employment.* Pursuant to 5 CFR 2635.802, it is prohibited and shall constitute a conflict with the employee's official duties for an attorney employed in the Legal Division to engage in the outside practice of law that might require the attorney to:

(1) Take a position that is or appears to be in conflict with the interests of the Department of the Treasury which is the client to whom the attorney owes a professional responsibility; or

(2) Interpret any statute, regulation or rule administered or issued by the Department.

§ 3101.108 Additional rules for Office of the Comptroller of the Currency employees.

The following rules apply to the employees of the Office of the Comptroller of the Currency and are in addition to §§ 3101.101–3101.104:

(a) *Prohibited financial interests—*

(1) *Prohibition.* Except as provided in paragraphs (a)(3) and (g) of this section, no OCC employee, or spouse or minor child of an OCC employee, shall own, directly or indirectly, securities of any commercial bank (including both national and state-chartered banks), Federal savings association, state savings association, or of any affiliate of these institutions (including bank holding companies, savings and loan holding companies, and non-bank subsidiaries of either type of holding company), or of any foreign bank.

(2) *Definition of “securities”.* For purposes of paragraphs (a)(1) and (a)(3) of this section, the term “securities” includes all interests in debt or equity instruments. The term includes, without limitation, secured and unsecured bonds, debentures, notes, securitized assets and commercial paper, as well as all types of preferred and common stock. The term encompasses both current and contingent ownership interests, including any beneficial or legal interest derived from a trust. It extends to any right to acquire or dispose of any long or short position in such securities and includes, without limitation, interests convertible into such securities, as well as options, rights, warrants, puts, calls, and straddles with respect thereto.

(3) *Exceptions.* Nothing in this section prohibits an OCC employee, or spouse or minor child of an OCC employee, from:

(i) Owning an interest in a publicly traded or publicly available mutual fund, other collective investment fund or pooled investment product, or a widely-held pension or other similar fund if the fund does not have a stated policy of concentration in the financial services industry and neither the employee nor the employee’s spouse exercises or has the ability to exercise control over the financial interests held by the fund or the selection of fund holdings;

(ii) Owning securities in a publicly traded company owning banks or savings associations if—

(A) By virtue of the limited activities of the banks or savings associations, the ownership of banks or savings associations does not cause their parent holding company to become a bank holding company under the Bank Holding Company Act of 1956, 12 U.S.C. 1841 et seq. (for example, a bank engaged only in credit card activities);

(B) For savings and loan holding companies, the ownership or operation of savings associations is not a significant activity (generally less than 15% of the assets) of the holding company;

(C) The company is identified as meeting the requirements of (A) or (B) above on a list maintained by the OCC Ethics Counsel; and

(D) The employee owning or seeking to purchase the securities does not participate in the regulation or supervision of any bank or savings association owned or operated by the company;

(iii) Owning the securities of a foreign bank that does not own a commercial bank or savings association in the United States provided that the employee owning the securities does not participate in the regulation or supervision of any Federal branch or agency operated by the foreign bank;

(iv) Using a commercial bank, a savings association or an affiliate of a commercial bank or savings association as custodian or trustee of accounts containing tax-deferred retirement funds; or

(v) Owning any security pursuant to a waiver granted under paragraph (g) of this section.

(b) *Prohibited borrowing—*

(1) *Prohibition on employee borrowing.* Except as provided in this section, no covered OCC employee shall seek or obtain credit from any national bank or Federal savings association or from any officer, director, employee or subsidiary of a national bank or Federal savings association.

(2) *Prohibition on borrowing by a spouse or minor child.* The prohibition in paragraph (b)(1) of this section shall apply to the spouse or minor child of a covered OCC employee unless the loan or extension of credit:

(i) Is supported only by the income or independent means of the spouse or minor child;

(ii) Is obtained on terms and conditions no more favorable than those offered to the general public; and

(iii) The covered OCC employee does not participate in the negotiation for the loan or serve as co-maker, endorser, or guarantor of the loan.

(3) *Covered OCC employee.* For purposes of the prohibitions on borrowing contained in paragraphs (b)(1) and (b)(2) of this section, “covered OCC employee” means:

(i) An OCC examiner; and

(ii) Any other OCC employee specified in an OCC instruction or manual issuance whose duties and responsibilities, as determined by the Comptroller of the Currency or his or her designee, require application of the prohibition on borrowing contained in this section to ensure public confidence that the OCC’s programs are conducted impartially and objectively.

(4) *Exceptions—(i) Credit cards.* A covered OCC employee or the spouse or minor child of such a covered OCC employee may seek, obtain or hold a credit card from a national bank, a Federal savings association or a subsidiary of a national bank or Federal savings association if—

(A) The applicant satisfies all financial requirements set by the lender that are generally applicable to all applicants for the same type of credit card account;

(B) The terms and conditions applicable with respect to the credit card account and any credit extended under the account are no more favorable generally to the applicant than the terms and conditions that are generally applicable to credit card accounts offered by the same lender to other cardholders in comparable circumstances;

(C) An employee who holds a credit card (or whose spouse or minor child holds a credit card) must submit a written recusal notice to his or her supervisor and ethics official if the cardholder becomes involved in an adversarial dispute with the issuer of the credit card account. A cardholder is involved in an adversarial dispute if he or she is delinquent in payments on the credit card account; the issuer and the

cardholder are negotiating to restructure the credit card debt; the cardholder disputes the terms and conditions of the account; or the cardholder becomes involved in any disagreement with the issuer that may cast doubt on the employee’s ability to remain impartial with respect to the issuer.

(ii) *Loans secured by principal residence.* A covered OCC employee or the spouse or minor child of a covered OCC employee may seek and obtain a loan from a national bank, a Federal savings association or a subsidiary of a national bank or Federal savings association subject to the following conditions:

(A) The loan is secured by residential real property that is the applicant’s principal residence;

(B) The applicant must satisfy all financial requirements set by the lender for the residential real property loan that are generally applicable to borrowers for the same type of residential real property loan; and

(C) The terms and conditions applicable with respect to the residential real property loan and any credit extended under the loan must be no more favorable generally to the applicant than the terms and conditions that are generally applicable to residential real property loans offered by the same lender to other borrowers in comparable circumstances.

(iii) A covered employee who seeks or obtains a real property loan from a national bank, Federal savings association or a subsidiary of a national bank or Federal savings association or whose spouse or minor child obtains a real property loan under the requirements of paragraph (b)(4)(ii) above must observe from the time of the initial application any recusal established under OCC ethics policy.

(5) *Pre-existing credit.* (i) This section does not prohibit a covered OCC employee, or spouse or minor child of a covered OCC employee from retaining a loan or extension of credit from a national bank or Federal savings association on its original terms, and subject to any recusal established under OCC ethics policy, if the loan or extension of credit:

(A) Was incurred prior to employment by the OCC;

(B) Was obtained from a lender that was not supervised by the OCC at the time it was obtained; or

(C) Is held by a national bank or Federal savings association or subsidiary thereof as the result of the sale or transfer of a loan to the national bank or Federal savings association or the conversion or merger of the lender into a national bank or Federal savings association.

(ii) Any renewal or renegotiation of a pre-existing loan or extension of credit will be treated as a new loan subject to the prohibitions in paragraph (b)(1) of this section.

(c) *Restrictions arising from third party relationships.* If any of the entities listed in paragraphs (c)(1) through (c)(7) of this section have securities that an OCC employee would be prohibited from having by paragraph (a) of this section, or loans or extensions of credit that a covered OCC employee would be prohibited from obtaining under paragraph (b) of this section, the employee shall promptly report such interests to the Chief Counsel or designee. The Chief Counsel or designee may require the employee to terminate the third party relationship, undertake an appropriate disqualification, or take other appropriate action necessary, under the particular circumstances, to avoid a statutory violation or a violation of part 2635 of this title, or this part, including an appearance of misuse of position or loss of impartiality. This paragraph applies to any:

(1) Partnership in which the employee, or spouse or minor child of the employee, is a general partner;

(2) Partnership in which the employee, or spouse or minor child of the employee, individually or jointly holds more than a 10 percent limited partnership interest;

(3) Closely held corporation in which the employee, or spouse or minor child of the employee, individually or jointly holds more than a 10 percent equity interest;

(4) Trust in which the employee, or spouse or minor child of the employee, has a legal or beneficial interest;

(5) Investment club or similar informal investment arrangement between the employee, or spouse or minor child of the employee, and others;

(6) Qualified profit sharing, retirement or similar plan in which the employee, or spouse or minor child of the employee, has an interest; or

(7) Other entity if the employee, or spouse or minor child of the employee, individually or jointly holds more than a 25 percent equity interest.

(d) *Prohibited recommendations.* Employees of the OCC shall not make recommendations or suggestions, directly or indirectly, concerning the acquisition or sale or other divestiture of securities of any commercial bank (including both national and state-chartered banks), Federal savings association, state savings association, affiliate of these institutions (including bank holding companies, savings and loan holding companies, and any non-bank subsidiaries of either type of holding company), or foreign bank that owns a commercial bank or savings association in the United States.

(e) *Prohibited purchase of assets.* No employee of the OCC, or spouse or minor child of an OCC employee, shall purchase, directly or indirectly, an asset (*i.e.*, real property, automobiles, furniture, or similar items) from a national bank or Federal savings association or an affiliate of a national bank or a Federal savings association, including a bank or savings and loan holding company, unless it is sold at a public auction or by other means which ensure that the selling price is the asset's fair market value.

(f) *Outside employment—(1) Prohibition on outside employment.* No covered OCC employee shall perform services for compensation for any bank, savings association or a bank or savings association affiliate, or for any officer, director or employee of, or for any person connected in any capacity with a bank, savings association or bank or savings association affiliate.

(2) *Covered OCC employee.* For purposes of the prohibitions on outside employment contained in paragraph (f)(1) of this section, “covered OCC employee” means:

(i) An OCC examiner; and

(ii) Any other OCC employee specified in an OCC instruction or manual issuance whose duties and responsibilities, as determined by the Comptroller of the Currency or his or her designee,

Department of the Treasury

§ 3101.108

require application of the prohibition on outside employment contained in this section to ensure public confidence that the OCC's programs are conducted impartially and objectively.

(g) *Waivers.* An agency designee may grant a written waiver from any provision of this section based on a determination made with the advice and legal clearance of the DAEO or Office of the Chief Counsel 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 prohibi-

tion 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 agency programs are administered. A waiver under this paragraph may impose appropriate conditions, such as requiring execution of a written disqualification.

[60 FR 22251, May 5, 1995, as amended at 67 FR 46841, July 17, 2002; 79 FR 65878, Nov. 6, 2014]

PARTS 3102–3199 [RESERVED]