

§ 3201.103

5 CFR Ch. XXII (1–1–22 Edition)

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 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 employees 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.

(b) *Exceptions.* Notwithstanding the prohibitions of paragraph (a) of this section, but subject to the limitations of paragraph (c) of this section, an employee, or the spouse or minor child of an employee, may do any or all of the following:

(1) Acquire, own, or control the securities of a unitary thrift holding company (*i.e.*, a savings and loan holding company that is subject to OTS supervision but whose principal business is neither banking nor activities closely related to banking);

(2) Own or control a security of an entity described in paragraph (a) of this section if the security was permitted to be retained by the employee under 12 CFR part 336 prior to May 25, 1995, was obtained prior to commencement of employment with the Corporation, or was acquired by a spouse prior to marriage to the employee;

(3) Own, or control a security of an entity described in paragraph (a) of this section if:

(i) 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, or, by an employee's spouse or minor child as part of a compensation package in connection with his or her employment;

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

(iii) 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;

(4) Acquire, own, or control an interest in a publicly traded or publicly available investment fund provided that, upon initial or subsequent invest-

ment by the employee (excluding ordinary dividend reinvestment), the fund does not have invested, or indicate in its prospectus the intent to invest, more than 30 percent of its assets in the securities of one or more entities described in paragraph (a) of this section and the employee neither exercises control nor has the ability to exercise control over the financial interests held in the fund; and

(5) Use 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 acquire, own, control, or use under paragraph (b) of this section.

(d) *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 19380, Apr. 18, 2007]

§ 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