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FEDERAL DEPOSIT INSURANCE CORPORATION

5 CFR Part 3201

12 CFR Part 336

RINs 3064-AA08, 3209-AA15

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

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

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation, with the concurrence of the Office of Government Ethics (OGE), is issuing a final rule establishing uniform standards of ethical conduct for employees of the Corporation to supplement the Standards of Ethical Conduct for Employees of the Executive Branch (Executive Branch-wide Standards) issued by OGE. The final rule will become effective 30 days after the date of publication, and will 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.

EFFECTIVE DATE: May 25, 1995.

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, in the Office of the Executive Secretary of the FDIC.

SUPPLEMENTARY INFORMATION:

I. Background

On July 12, 1994, with the concurrence of OGE, the Corporation published for comment a proposed rule to establish supplemental standards of ethical conduct for employees of the FDIC (59 FR 35480-35487). The proposed rule was issued to supplement the Standards of Ethical Conduct for Employees of the Executive Branch published by OGE on August 7, 1992, and effective February 3, 1993 (57 FR 35006-35067, as corrected at 57 FR 48557 and 57 FR 52583, with additional grace period extensions for certain existing agency standards of conduct at 59 FR 4779-4780 and 60 FR 6390-6391, which grace period expires on January 3, 1996). The Executive Branch-wide Standards, now codified at 5 CFR part 2635, establish uniform standards of ethical conduct for executive branch employees. The proposed rule was issued pursuant to 5 CFR 2635.105 and the Resolution Trust Corporation Completion Act (P.L. 103-204) which authorize the Corporation to publish agency-specific supplemental regulations necessary to implement its ethics program. The Corporation, with the concurrence of OGE, determined that the supplemental regulations contained in the proposed rule were necessary successfully to continue the Corporation's ethics program in light of the Corporation's unique programs and operations.

The proposed rule prescribed a 60-day comment period and invited comments from all interested parties. The Corporation received nine comment letters and, after careful consideration of each comment, has made appropriate modifications to the rule. Technical changes were made to accommodate the formation, subsequent to the publication of the proposed rule, of a new Division within the Corporation—the Division of Compliance and Consumer Affairs. At the request of the Board of Directors, a provision was added to the credit restrictions in order to retain the current restrictions for certain categories of employees of the Division of Depositor and Asset Services. The Corporation, with the concurrence of OGE, is now publishing as a final rule the Supplemental Standards of Conduct for Employees of the Federal Deposit

Insurance Corporation, to be codified in new part 3201 of 5 CFR chapter XXII.

II. Summary of the Comments

The Corporation received comments from eight employees and one financial institution trade association. The comments from employees contained both requests for substantive changes and for guidance on the application of the rule in general or in specific sections. The comments received from the trade association expressed support for certain specific sections of the rule and suggested substantive changes.

III. Analysis of the Comments

Section 3201.101 General

One commenter requested guidance on the meaning of the term *employee* as defined in § 3201.101(d) as it would be applied to employees of contractors doing business with the Corporation. As required by section 19 of the Resolution Trust Corporation Completion Act and implemented in the final rule, the term *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. All employees of contractors who fall under such definition would be subject to the Executive Branch-wide Standards and specified provisions of part 3201.

Section 3201.102 Extensions of Credit From FDIC-Insured Depository Institutions

One commenter, in reference to the preamble discussion of § 3201.102(c) in the proposed rule, asked whether the prohibition on examiners obtaining extensions of credit from institutions that they have examined carried a time limitation and expressed concern that the restriction, if it did not carry a time limitation, was too severe. The prohibition referred to by the commenter is found at 18 U.S.C. 213, a criminal statute, and was referenced in the preamble to assist the reader in understanding part of the basis for the imposition of the restrictions found at § 3201.102(c). 18 U.S.C. 213 does not carry a time limitation.

One commenter suggested that, for purposes of § 3201.102(c), an examiner might not be aware of the identity of the person or company from whom or which he or she intended to obtain

credit. The Board believes it is reasonable to expect an employee to make inquiries in order to ascertain the identity of a lender prior to engaging in a credit transaction. Similarly, the same commenter suggested that, for purposes of § 3201.102(c)(ii), the headquarters of a credit card issuer might not be readily apparent. The Board believes it is also reasonable to expect employees of the Division of Supervision and the Division of Compliance and Consumer Affairs to make inquiries to ascertain the location of the headquarters of a credit card issuer.

The Corporation did not adopt the suggestion of one employee, in reference to § 3201.102(d) and § 3201.103(c), to restate in part 3201 the text of certain definitions found in the Executive Branch-wide Standards and referred to in such part. Since part 3201 is a supplement to the Executive Branch-wide Standards, it is appropriate to make references to the text of the primary regulation.

The Corporation did not adopt the suggestions of two employees to narrow or remove the provisions of the regulation found at §§ 3201.102(a), as well as at 3201.103(a) and 3201.104(a), under which the interests of an employee's spouse or minor child are to be considered as if they were the interests of the employee. The Board determined that the application of the prohibitions in §§ 3201.102 to 3201.104 to the interests of a spouse or minor child of an employee is necessary to avoid the appearance of a lack of impartiality by the employee in his or her official dealings and to avoid a significant number of recusals which would hinder program operations. The application of these provisions to the interests of a spouse or minor child is consistent with such application in § 2635.403(a) of the Executive Branch-wide Standards.

The trade association, commenting on the proposed rule, expressed support for the provisions of § 3201.102 but expressed concern that an unreasonable recordkeeping burden might result from the two-year prohibition on acceptance of credit found at § 3201.102(d). The Board does not believe that compliance with the provision would create an unreasonable recordkeeping burden since employees have the responsibility to keep track of matters in which they have participated and since such requirement imposes no greater burden on an employee than is imposed by other ethics provisions, such as the statutory post-employment restrictions found at 18 U.S.C. 207 (a)(1) and (a)(2).

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

One employee and the trade association commented that the exception dealing with the ownership of interests in investment funds set forth at § 3201.103(b)(5) was too restrictive since its practical application would prohibit ownership interests in investment funds which might not hold interests in FDIC-insured depository institutions. Based upon the comments, the reference to a fund "concentrating its investments in the financial services sector" was deleted and replaced with language which prohibits an employee from acquiring an interest in a fund which, at the time an employee acquires an interest, holds more than 30 percent of its investments in FDIC-insured depository institutions or FDIC-insured depository institution holding companies. Under the revised provision, an employee is required to verify the holdings of the investment fund at any time the employee acquires an interest in the fund, unless the acquisition results from the ordinary reinvestment of earnings the employee has accrued from ownership interests in the fund. The revised provision addresses the Corporation's concern over employees holding ownership interests in the institutions that it insures by prohibiting the acquisition of interests in banking sector funds and provides employees with broader investment opportunities than would have been provided by the proposed rule.

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

One commenter asked whether the term "property" as used in § 3201.104(a) includes furniture, fixtures, equipment, securities and other items. The term "property" is intended to include all of the items specified as well as other 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.

One employee suggested that the prohibition on employee purchases of property held by the FDIC or RTC be expanded to prohibit employees of FDIC contractors from purchasing such assets. No change was made to the provision since the application of the rule is limited to FDIC employees. Employees of contractors would only be covered by

the rule when such contractor employees are considered employees of the FDIC as delineated in § 3201.101(d)(4).

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

One employee suggested that the discretionary extension of the one-year disqualification on dealings with former employers, associates, and clients at § 3201.105(c) specify that the discretion to impose the extension would only be applicable after an individual becomes an employee of the Corporation. No change was made to accommodate this suggestion since the rule, as proposed, is only applicable to those who have become Corporation employees.

In response to the suggestion of the trade association that, in the case of an employee who was unemployed for the one-year period immediately preceding entry on duty with the Corporation, the prohibition on dealings with former employers be extended to include a one-year prohibition on dealings with the last employer of the employee regardless of when the employee was last employed, § 3201.105(c) was modified to provide the Corporation with discretion to extend the one-year period preceding an employee's entrance on duty with the Corporation, during which extended period employment will trigger disqualification from matters affecting that former employer. The interests of the Corporation in avoiding the appearance of a lack of impartiality by an employee in his or her official dealings is better served by extending the rule on a case-by-case basis as circumstances warrant.

Section 3201.106 Employment of Family Members Outside the Corporation

The Board did not adopt the suggestion of one employee to define separately the terms "family" and "household." The term "family" is used only in the title of § 3201.106 with specific classifications of family members set forth in that section. The phrase "member of the employee's household" is generally understood, and is used without specific regulatory definition in the Executive Branch-wide Standards at § 2635.502. The same employee also commented that an undue burden would be created by requiring employees to report the employment of family members not residing with the employee by FDIC-insured depository institutions. Because the reporting requirement applies only to the employment of spouses, children, parents, and siblings, the Board does not

share the commenter's view that the requirement could be onerous and unreasonable. Moreover, the Corporation's prior regulation at 12 CFR 336.23, containing a substantially identical reporting requirement, appears to have been implemented without unduly burdening employees.

Section 3201.107 Outside Employment and Other Activities

The Corporation did not adopt the suggestions of one employee and the trade association to tailor the application of the prohibition on outside employment with FDIC-insured depository institutions to the various positions held by Corporation employees within the Corporation or to positions held by employees in FDIC-insured depository institutions. The Corporation's sensitive relationships with FDIC-insured depository institutions would invariably raise, at a minimum, the appearance of preferential dealings or treatment whenever an FDIC employee is provided compensation by such institution. In order to avoid an adverse public perception and recusals in the operation of the Corporation's programs, the Board determined that it was appropriate to prohibit employees from engaging in compensated outside employment with FDIC-insured depository institutions.

The Board did not adopt the suggestion of one commenter that the restriction at § 3201.107(b) on the use of real estate licenses by employees whose duties with the Corporation require involvement in matters related to real estate be eliminated for purposes of the purchase and sale of an employee's personal residence or the purchase and sale of real estate for the employee's personal investment portfolio. The rule, as proposed and now as being adopted in final, is intended to balance an employee's right to engage in outside activities against the interests of the Corporation in protecting against questions regarding the impartiality and objectivity of employees and the administration of the Corporation's programs. It would hinder the Corporation in meeting its missions if members of the public were to question whether Corporation employees are using their public positions or official contacts for private gain, including advancing their personal real estate careers. It is important to note that the restriction on the use of such licenses specifies that the prohibition applies only to those situations involving the production of income, thus targeting those situations most likely to raise questions by members of the public. The

use of a real estate license for the purchase of a personal residence or vacation home would not ordinarily be restricted since such transaction normally does not result in the production of income.

The same commenter also suggested that § 3201.107(b) was vague and uncertain as written and that it should be re-written to provide detailed procedural rules and an appeals procedure. The Board did not share the view of the commenter. As written, the rule clearly prohibits the use of professional licenses by employees and sets forth a standard of review for requests for exceptions to the application of the prohibition.

IV. Other Changes

The Board of Directors, upon reconsideration of the existing FDIC standards set forth at 12 CFR part 336, requested that the existing restriction on extensions of credit for field employees of the Division of Depositor and Asset Services, formerly the Division of Liquidation, be retained in the final rule in order to eliminate the possibility that employees who participate in asset disposition activities will be able to obtain favored treatment from assisted or assuming entities located in their region of assignment. Therefore, a new § 3201.102(e) was added which continues to apply the existing standard as set forth at 12 CFR 336.16(b)(3) to field employees of the Division of Depositor and Asset Services. To accommodate the added provision, definitions for *assisted entity* and *assuming entity* were taken from part 336 and added at § 3201.101(d)(3) and § 3201.101(d)(4), respectively. The existing standard, as set forth in the final rule, provides that a covered employee in the Division of Depositor and Asset Services assigned to a service center or other field office is prohibited from obtaining credit from an assisted or assuming entity, except for credit extended through the use of a credit card under the same terms and conditions as are offered to the general public. An *assisted entity* is generally defined as an FDIC-insured depository institution which has received financial assistance from the FDIC in order to prevent its failure, any FDIC-insured depository institution resulting from a merger or consolidation with an institution that has received such assistance, and a holding company of an institution that has received assistance or has resulted from a merger or consolidation with such institution. An assisted entity retains its status as an assisted entity for such time as there is

an ongoing financial relationship with the FDIC.

An *assuming entity* is generally defined as an FDIC-insured depository institution which has entered into a transaction to purchase some or all of the assets and some or all of the liabilities of a failed FDIC-insured depository institution, any holding company of such institution, any FDIC-insured depository institution resulting from such transaction and its wholly owned subsidiaries, and any branches or wholly owned subsidiaries of the purchaser or its holding company. An assuming entity retains its status as an assuming entity for a period of one year after the failure of the FDIC-insured depository institution.

V. Removal of FDIC Employee 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. Additionally, 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.

VI. Matters of Regulatory Procedure

Regulatory Flexibility Act

The Board of Directors has concluded that the final 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 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 final rule 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 11th day of April, 1995.

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

Patti C. Fox,

Acting Deputy Executive Secretary.
(SEAL)

Concurred in this 14th day of April, 1995.

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 amending 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 designees 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)(i) *Assisted entity* means:

(A) Any FDIC-insured depository institution which has received financial assistance from the FDIC to prevent its failure;

(B) Any FDIC-insured depository institution resulting from a merger or consolidation with any institution described in paragraph (d)(3)(i) of this section; and

(C) Any holding company of an FDIC-insured depository institution described in paragraphs (d)(3)(i) or (d)(3)(ii) of this section.

(ii) An assisted entity retains its status as an assisted entity for such time as there is an ongoing financial relationship with the FDIC including, but not limited to, a loan repayment obligation, the servicing of assets on behalf of the FDIC, or the retention by the FDIC of stock or stock warrants in the assisted entity.

(4)(i) *Assuming entity* means:

(A) Any FDIC-insured depository institution or FDIC-insured depository institution holding company which has entered into a transaction with the FDIC to purchase some or all of the assets and assume some or all of the liabilities of a failed FDIC-insured depository institution;

(B) Any FDIC-insured depository institution resulting from the transaction described in paragraph (d)(4)(i) of this section and its wholly owned subsidiaries; and

(C) Any branches and the wholly owned subsidiaries of the institutions described in paragraph (d)(4)(i) of this section.

(ii) An assuming entity retains its status as an assuming entity for a period of one year after the failure of the FDIC-insured depository institution.

(5) *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.

(6) *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.

(7) *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.

(8) *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.

(9) *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 the Division of Compliance and Consumer Affairs, 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 and employees assigned to the Division of Compliance and Consumer Affairs.* (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, Resolutions, and Compliance, the Director of the Division of Supervision, the Director of the Division of Compliance and Consumer Affairs, a covered employee immediately subordinate to the Executive Director for Supervision, Resolutions, and Compliance, the Director of the Division of Supervision, or the Director of the Division of Compliance and Consumer Affairs, and the following employees assigned to the Division of Supervision and the Division of Compliance and Consumer Affairs: an Assistant Director, Regional Director, Deputy Regional Director, Assistant Regional Director, Regional Manager, 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 paragraph (c)(1)(i) or (c)(1)(ii) of this section, the employee shall be disqualified in accordance with paragraph (f)(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) *Prohibition on acceptance of credit from an assisted or assuming entity for employees of the Division of Depositor and Asset Services.* (1) An employee described in paragraph (e)(2) of this section shall not, directly or indirectly, accept or become obligated on any extension of credit from an assisted or assuming entity located in the employee's region of official assignment. 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 (e)(1) of this section applies to a regional director, deputy regional director, and any other covered employee in the Division of Depositor and Asset Services assigned to a service center or other field office.

(f) *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 (f)(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 (f)(2) of this section.

(g) *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 provided that, upon initial or subsequent investment 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 FDIC-insured depository institutions or FDIC-insured depository institution holding companies 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 prohibition imposed by paragraph (a) of this section, and the one-year period preceding the employee's entrance on duty specified in paragraph (a) of this section, may each 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 or Division of Compliance and Consumer Affairs 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 [Removed]

§§ 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 reserved and the appendix to part 336 is removed.

[FR Doc. 95–9733 Filed 4–24–95; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[DA–91–010A]

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; United States Standards for Grades of Colby Cheese; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Correction to final rule.

SUMMARY: This document corrects the final rule [DA–91–010A], published Wednesday, March 1, 1995 [60 FR 11246]. The regulations related to changes in the United States Standards for Grades of Colby Cheese.

EFFECTIVE DATE: April 25, 1995.

FOR FURTHER INFORMATION CONTACT: Roland S. Golden, Dairy Products Marketing Specialist, Dairy Standardization Branch, USDA/AMS/Dairy Division, Room 2750–S, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–7473.

SUPPLEMENTARY INFORMATION:

Background

The final rule that is the subject of these corrections inadvertently omitted the word “not” in the third sentence of 7 CFR 58.2475. This omission created

an error in the maximum moisture content for colby cheese.

Need for Corrections

As published, the final rule contained an error which needs to be corrected to provide accuracy.

§ 58.2475 Colby cheese. [Corrected]

On page 11247, at the top of the third column, in § 58.2475, in sentence three of the paragraph, after “common salt and” and before “more than 40 percent moisture” add the word “not”.

Dated: April 19, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–10154 Filed 4–25–95; 8:45 am]

BILLING CODE 3410–02–M

Food and Consumer Service

7 CFR Parts 272 and 274

[Amendment No. 333]

RIN 0584–AB32

Food Stamp Program: Benefit Delivery Rule

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule.

SUMMARY: This rulemaking finalizes three Food Stamp Program provisions relating to benefit delivery. These regulations relate to the staggered issuance of benefits on Indian reservations, combined or aggregate allotments, and the issuance of benefits in rural areas where households may experience difficulty in obtaining program benefits.

In addition to the regulatory changes described above, this rule makes final three minor technical changes in current regulatory issuance provisions which are deemed appropriate by the Department to improve benefit issuance.

DATES: The amendments to §§ 272.2(a)(2) and (d)(1)(xi), and §§ 274.2(a), (c), and (g) are effective February 1, 1992. State agencies were instructed through an agency directive dated May 20, 1992, to implement these provisions on that date. The amendment to § 274.2(d)(2) is effective March 25, 1994. State agencies were instructed through an agency directive dated March 31, 1994, to implement this provision on that date. All remaining amendments are effective September 1, 1995.

FOR FURTHER INFORMATION CONTACT: James I. Porter, Supervisor, Issuance and Accountability Section, State Administration Branch, Program

Accountability Division, Food Stamp Program, Food and Consumer Service, USDA, 3101 Park Center Drive, Room 904, Alexandria, Virginia 22302, telephone (703) 305–2383.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

This action has also been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Ellen Haas, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this final rule will not have a significant impact on a substantial number of small entities. The requirements of the rule will affect State and local agencies which administer the Food Stamp Program, as well as food stamp applicants and recipients.

Paperwork Reduction Act

The provisions of this final rule do not contain record-keeping or reporting requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the “Effective Date” section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) for program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and set out at 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 and set out at 7 CFR 276.7; and (3) for program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 and set out at 7 CFR 278.8.