

Proposed Rules

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

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 336

RIN 3064-AB43

Minimum Standards of Fitness for Employment With the Federal Deposit Insurance Corporation

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is proposing for public comment regulations to implement the requirements contained in section 19 of the Resolution Trust Corporation Completion Act, which amended the Federal Deposit Insurance Act to prohibit certain persons from becoming employed or providing services to the FDIC.

DATES: Written comments must be received on or before March 15, 1996.

ADDRESSES: Written comments should be addressed to Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be hand delivered to Room F-402, 1776 F Street NW., Washington, DC 20429, on business days between 8:30 a.m. and 5:00 p.m. [Fax number: (202) 898-3838; Internet address: comments@fdic.gov]. Comments will be available for inspection and photocopying at the FDIC's Reading Room, Room 7118, 550 17th Street NW., Washington, DC between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Joy Crosser, Personnel Management Specialist, Division of Administration, (202) 942-3314; Michelle Borzillo, Counsel, Legal Division, (202) 898-7400; or Gladys C. Gallagher, Counsel, Legal Division, (202) 898-3833.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this proposed rule has been submitted to the Office of Management and Budget (OMB) for review and approval pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Comments regarding the accuracy of the burden estimate, and suggestions for reducing the burden, should be addressed to the Office of Management and Budget, Paperwork Reduction Project (3064-0117), Washington, D.C. 20503, with copies of such documents sent to Steven F. Hanft, Assistant Executive Secretary (Administration), FDIC, Room F-400, 550 17th Street NW., Washington, D.C. 20429.

The collection of information in this proposed rule is found in § 336.4(b) and takes the form of a certification of compliance. However, in addition to the certification, the person applying for employment must provide an attachment to the certification describing any instance in the preceding five years in which the applicant, or a company under the applicant's control, has defaulted on a material obligation to an insured depository institution. The information will be used by the FDIC to identify those persons prohibited from becoming employed by or providing services to the FDIC.

The estimated annual reporting burden for the collection of information requirement in this proposed rule is summarized as follows:

Number of Respondents	200
Number of Responses per Respondent	1
Total Annual Responses	200
Hours per Response	¹ 20
Total Annual Burden Hours	66.6

¹ Minutes.

Regulatory Flexibility Act

The Board hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). These regulations affect only those individuals who are employed or will become employed by the FDIC. Therefore, the provisions of that Act relating to an initial and final regulatory

analysis (5 U.S.C. 603 and 604) do not apply here.

Background

The Resolution Trust Corporation Completion Act (hereafter referred to as the Completion Act), Pub. L. 103-204, enacted on December 17, 1993, amended section 12 of the Federal Deposit Insurance Act, 12 U.S.C. 1822, to prohibit any person from becoming employed or providing service to or on behalf of the FDIC who does not meet minimum standards of competence, experience, integrity, and fitness.

The Completion Act provides that FDIC employees are subject to title 18 of the U.S. Code, and are subject to the ethics and conflict of interest rules and regulations issued by the Office of Government Ethics, including those concerning employee conduct, financial disclosure, and post-employment activities. The statute also provides that the Corporation shall issue regulations implementing provisions that prohibit any person from becoming employed who: has been convicted of any felony; has been removed from, or prohibited from participating in the affairs of any insured depository institution pursuant to any final enforcement action by any appropriate federal banking agency; demonstrated a pattern or practice of defalcation regarding obligations to insured depository institutions; or caused a substantial loss to federal deposit insurance funds. The statute requires the collection from applicants for employment information describing any instance during the preceding 5 years in which the applicant or a company under the applicant's control defaulted on a material obligation to an insured depository institution, along with other information the Corporation may require by regulation. The Completion Act gives the Corporation sole discretion over any issues that arise as a result of these prohibitions, and any decisions made by the Corporation shall not be subject to review.

A. Scope of the Proposed Regulation

FDIC operates in a number of separate and distinct capacities and situations. This part will apply to all FDIC employees performing duties for or on behalf of the FDIC in any capacity.

This regulation is directed towards the implementation of the mandatory bars contained in section 19 of the Completion Act which amends 12

U.S.C. 1822(f)(4)(E). This part does not in any way modify other applicable rules and regulations governing employee conduct, ethics, or qualification standards. Further, there is no need to further augment in FDIC regulations the existing education and experience requirements defined in the U.S. Office of Personnel Management's (U.S. OPM) Operating Manual for General Schedule Qualification Standards.

B. Definitions

Section 336.3 contains definitions of terms used throughout this regulation.

Company: The proposed definition of company expands on that used in section 2(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(b)) to include firms, societies and joint ventures. These entities were included to amplify the original definition and for consistency with the application of the Completion Act to contractors providing services to the FDIC.

Default on a Material Obligation: The FDIC proposes to define this term to mean a delinquency of 90 or more days as to payment of principal or interest, or a combination thereof, on a loan or advance from an insured depository institution in any amount. As prescribed by the statute, this regulation requires that all applicants for employment submit a list and description of defaults on material obligations incurred by themselves or a company under their control during the 5 years preceding the submission. All defaults are to be listed regardless of whether or not they have been cured. The Corporation has set no minimum dollar value to this definition; information regarding the candidate's conduct in meeting obligations to insured depository institutions is significant in assessing the fitness and integrity of an individual for employment with the FDIC. Therefore, all defaults which meet this definition, regardless of outstanding balances, shall be reported, but are not automatic bars to employment in themselves.

Pattern or Practice of Defalcation Regarding Obligations: This proposed definition addresses two situations. The first concerns individuals who have a history of financial irresponsibility with regard to an open insured depository institution to such an extent that the FDIC's employment of such an individual reflects adversely on the FDIC's integrity and credibility. The second situation concerns individuals who have wrongfully refused to fulfill obligations to an insured depository institution.

In the first situation involving financial irresponsibility, a pattern or practice of defalcation regarding obligations exists when an employee has defaulted on obligations totalling in excess of \$50,000 in the aggregate. Defaults caused by catastrophic events such as death, disability or illness, or loss of financial support will not be considered a violation of this standard. Examples are provided in the regulation's definition to clarify the meaning of "financial irresponsibility", including the example of failing to pay debts which were secured by uninsured property that was destroyed. Another example of such financial irresponsibility would be an abuse of credit cards or incurring excessive debt well beyond the individual's ability to repay.

The second part of this definition addresses individuals who wrongfully refuse to fulfill duties and obligations to insured depository institutions. Again, examples are provided, which illustrate the full scope of "wrongful refusal to fulfill duties and obligations". The examples include misconduct on the part of a borrower, such as use of false financial statements, misrepresentation of ability to repay a debt, or concealing assets. Additional examples focus on findings of misconduct on the part of officers, employees, contractors or others providing service to an insured depository institution, or who have committed fraud, embezzlement or similar misconduct.

Substantial Loss to Federal Deposit Insurance Funds: This proposed definition incorporates \$50,000 as the threshold amount for establishing a substantial loss. This loss must have inured to one of the Federal Deposit Insurance Funds (Insurance Funds) maintained by the FDIC, the Resolution Trust Corporation (RTC), Federal Savings & Loan Insurance Corporation, or their successors. Two types of losses are addressed, which are: 1) debts in default for which there remain a legal obligation to pay; and 2) final judgments, regardless of whether forgiven in whole or in part in a bankruptcy proceeding.

C. Minimum Standards for Appointment to a Position With the FDIC

All applicants, including former employees of the FDIC who are reemployed after a break in service of more than 3 days, will be subject to this regulation for any noncompliance with the prohibitions which occurred either before or after the enactment of the Completion Act. Applicants will be required to submit a certification prior

to employment which addresses each of the statutory prohibitions and further will be required to submit information regarding any default during the previous five years. Extending the statute's five-year reporting requirement by applicants was considered but was dismissed because investigations will be conducted on all new appointees to ascertain all relevant information regarding the individual's history of defaults. Regardless of the number of years for which an applicant is required to submit a written report regarding defaults, any pattern or practice of defalcation regarding obligations or substantial loss, as defined in this regulation, will be subject to these minimum standards. Similarly, any felony conviction and any removal from, or prohibition from participation in the affairs of, any insured depository institution by a federal banking agency will be subject to the prohibitions of this regulation without time limitation. A felony conviction that has been pardoned, as opposed to being overturned on appeal, remains a conviction and is therefore subject to the prohibition mandated by the Completion Act.

D. Minimum Standards for Employment With the FDIC

The Corporation finds sufficient support in the text of the statute for applying the terms of the Completion Act prospectively, and therefore will not require the enforcement of these minimum standards against incumbent employees of the FDIC under an appointment authorized by title 5 of the United States Code on or before June 17, 1994, for noncompliance which occurred prior to that date. However, any final enforcement action by any appropriate federal banking agency, any final judgment or any felony conviction which is finalized on or after June 18, 1994, even though the act or omission which is the basis of the action or judgment occurred prior to June 18, 1994, will be subject to the standards of this regulation. Additionally, eligibility for employment with the FDIC continues to be based on suitability standards for federal employment as measured from past and present conduct which determines whether or not an employee can perform his or her duties with efficiency and effectiveness.

All employees, regardless of date of first appointment or tenure, will be subject to this regulation for any noncompliance with the standards that occurs on or after June 18, 1994. Further, any noncompliance with the standards that first occurred prior to June 18, 1994, which meets the

definitions of causing a substantial loss to the Insurance Funds or a pattern or practice of defalcation regarding obligations to an insured depository institution based on financial irresponsibility and which resulted in indebtedness that remains uncured after June 18, 1994, cannot be excused.

Employees appointed prior to the June 18, 1994 effective date for section 19 of the Completion Act and who continue without a break in service of more than 3 days from one type of appointment with the FDIC to another will not be subject to the prohibitions for noncompliance prior to June 18, 1994. For example, an employee serving on an excepted-service temporary appointment who may be selected for a competitive-service time-limited or permanent appointment without a break in service would not be considered a new applicant for purposes of this regulation. This proposed regulation shall apply to all appointments, including co-operative student hires, experts and consultants, detailees from other agencies and any other individual appointed to provide service to or on behalf of the FDIC.

Employees assigned to the RTC were held to comparable minimum standards of fitness for employment in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. 101-73, as implemented by regulation in 12 CFR Part 1605, which were applied retroactively by statute. Therefore, unlike incumbent FDIC employees who were not covered by Pub. L. 101-73 minimum standards, any noncompliance with the standards by incumbent employees assigned to RTC prior to June 18, 1994, remain subject to the Pub. L. 101-73 minimum standards, and will not be excused.

Noncompliance occurring on or after June 18, 1994, with the standards contained in this regulation will be a basis for removal of the employee under the authority of the Completion Act.

E. Verification of Compliance

Under the authority provided by 12 U.S.C. 1819 and 1822, the FDIC will conduct background investigations to verify the information certified by applicants and to determine suitability for employment with the FDIC. In addition, the FDIC will screen the Financial Institutions Investigative and Enforcement Records System maintained internally by the FDIC's Division of Supervision regarding records of federal banking agency enforcement actions. The FDIC will also examine its own and other regulatory records systems for findings of a pattern or practice of defalcation regarding

obligations and/or a substantial loss to the Insurance Funds as defined in this regulation.

F. Employee Responsibility, Counseling and Distribution of Regulation

Employees are required to familiarize themselves with the provisions of this regulation. Within ten days of the action or the discovery of the noncompliance, an employee shall report in writing to the Ethics Counselor regarding noncompliance with any of the prohibitions contained in § 336.5(a) (1) through (4) of this regulation. Also, if the employee receives a letter from the FDIC demanding payment on an obligation that was initially owed to an insured depository institution and is now owed to the FDIC, the employee must notify the Ethics Counselor within 10 days of receipt of such letter. Employees shall consult with the Ethics Counselor regarding the impact of this regulation on their continued employment. The Ethics Counselor shall provide counseling and guidance to employees regarding the statutes, regulations and Corporation's policies under this part. The Ethics Counselor will review all information presented by the employee and/or the employee's representative relevant to establishing responsibility for the debt and corrective actions taken. The employee has a duty to cooperate with the Ethics Counselor in providing the information that is necessary to the Ethics Counselor's determination of compliance or noncompliance.

G. Sanctions and Remedial Actions

There is no remedial action for an employee found in noncompliance with the standards at § 336.5(a) (1) and (2), for felony convictions and enforcement actions, as an employee is afforded the opportunity to remedy those findings through other proceedings. Also, there is no remedial action for an employee found in noncompliance with the standards of § 336.4(a)(4), as the Corporation's Division of Depositor and Asset Services provides the opportunity to work out debts owed to the Insurance Funds. Further, noncompliance with § 336.5(a)(3) based on wrongful refusal to fulfill duties on obligations to insured depository institutions cannot be remedied. However, employees will be provided a reasonable opportunity to remedy following notification of noncompliance with the prohibitions at § 336.5(a)(3) based on financial irresponsibility as defined in 336.3(i)(1). Such employees may establish an agreement to resolve the outstanding indebtedness that satisfies both the insured depository institution and the

FDIC, or otherwise resolve the matter to the satisfaction of the FDIC. This remedial action provided employees will not be extended to applicants for employment. Filling a vacancy will not be delayed in order for an applicant to cure his or her debts that are deemed not in compliance with § 336.4(a) (3) through (4).

Individuals appointed by the President with the advice and consent of the Senate, which include both the appointed and *ex officio* members of the Board of Directors and the Inspector General, cannot be removed from their positions under the authority of the FDIC. Therefore, this regulation does not apply to individuals appointed to or serving on an acting basis in positions designated by Title 5 of the U.S. Code as officials of the Federal Executive Schedule. Federal employees who are serving the FDIC, but are employed by another agency, such as detailees or employees of the Office of Thrift Supervision or the Office of the Comptroller of the Currency, may be returned to the employing agency if found not to be in compliance with the minimum standards.

H. Finality of Determination

Section 336.9 of this proposed regulation tracks the language of the Federal Deposit Insurance Act, 12 U.S.C. 1822(f)(4)(D)(ii).

List of Subjects in 12 CFR Part 336

Conflict of interests.

For the reasons set out in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation proposes to revise part 336 of chapter III of title 12 of the Code of Federal Regulations as follows:

PART 336—FDIC EMPLOYEES

Subpart A—Employee Responsibilities and Conduct

Sec.

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

Subpart B—Minimum Standards of Fitness for Employment With the Federal Deposit Insurance Corporation

336.2 Authority, purpose and scope.

336.3 Definitions.

336.4 Minimum standards for appointment to a position with the FDIC.

336.5 Minimum standards for employment with the FDIC.

336.6 Verification of compliance.

336.7 Employee responsibility, counseling and distribution of regulation.

336.8 Sanctions and remedial actions.

336.9 Finality of determination.

Subpart A—Employee Responsibilities and Conduct

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

§ 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.

Subpart B—Minimum Standards of Fitness for Employment With the Federal Deposit Insurance Corporation

Authority: 12 U.S.C. 1819(Tenth), 1822(f).

§ 336.2 Authority, purpose and scope.

(a) *Authority.* This part is adopted pursuant to section 12(f) of the Federal Deposit Insurance Act, 12 U.S.C. 1822, and the rulemaking authority of the Federal Deposit Insurance Corporation (FDIC) found at 12 U.S.C. 1819. This part is in addition to, and not in lieu of, any other statutes or regulations which may apply to standards for ethical conduct or fitness for employment with the FDIC and is consistent with the goals and purposes of 18 U.S.C. 201, 203, 205, 208, and 209.

(b) *Purpose.* The purpose of this part is to state the minimum standards of fitness and integrity required of individuals who provide service to or on behalf of the FDIC and provide procedures for implementing these requirements.

(c) *Scope.* (1) This part applies to applicants for employment with the FDIC under title 5 of the U.S. Code appointing authority in either the excepted or competitive service, including Special Government Employees. This part applies to all appointments, regardless of tenure, including intermittent, temporary, time-limited and permanent appointments.

(2) In addition, this part applies to all employees of the FDIC who serve under an appointing authority under chapter 21 of title 5 of the U.S. Code.

(3) Further, this part applies to 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.

§ 336.3 Definitions.

For the purposes of this part:

(a) *Company* means any corporation, firm, partnership, society, joint venture, business trust, association or similar organization, or any other trust unless by its terms it must terminate within twenty-five years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust, or any other organization or institution, but shall not include any corporation the majority of the shares of which are owned by the United States, any state, or the District of Columbia.

(b) *Control* means the power to vote, directly or indirectly, 25 percent or more of any class of the voting stock of a company, the ability to direct in any manner the election of a majority of a company's directors or trustees, or the ability to exercise a controlling influence over the company's management and policies. For purposes of this definition, a general partner of a limited partnership is presumed to be in control of that partnership. For purposes of this part, an entity or individual shall be presumed to have control of a company if the entity or individual directly or indirectly, or acting in concert with one or more entities or individuals, or through one or more subsidiaries, owns or controls 25 percent or more of its equity, or otherwise controls or has power to control its management or policies.

(c) *Default on a material obligation* means a loan or advance from an insured depository institution which is or was delinquent for 90 or more days as to payment of principal or interest, or any combination thereof.

(d) *Employee* means any officer or employee, including a liquidation graded or temporary employee, providing service to or on behalf of the FDIC who has been appointed to a position under an authority contained in title 5 of the U.S. Code. This definition excludes those individuals designated by title 5 of the U.S. Code as officials in the Federal Executive Schedule.

(e) *Federal banking agency* means the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation, or their successors.

(f) *Federal deposit insurance fund* means the Bank Insurance Fund, the Savings Association Insurance Fund, the Federal Savings and Loan Insurance

Corporation (FSLIC) Resolution Fund, or the funds that were formerly maintained by the Resolution Trust Corporation (RTC) for the benefit of insured depositors.

(g) *FDIC* means the Federal Deposit Insurance Corporation, in its receivership and corporate capacities.

(h) *Insured depository institution* means any bank or savings association the deposits of which are insured by the FDIC.

(i) *Pattern or practice of defalcation regarding obligations* means:

(1) A history of financial irresponsibility with regard to debts owed to insured depository institutions which are in default in excess of \$50,000 in the aggregate. Examples of such financial irresponsibility include, without limitation:

(i) Failure to pay a debt or debts totalling more than \$50,000 secured by an uninsured property which is destroyed; or

(ii) Abuse of credit cards or incurring excessive debt well beyond the individual's ability to repay resulting in default(s) in excess of \$50,000 in the aggregate.

(2) Wrongful refusal to fulfill duties and obligations to insured depository institutions. Examples of such wrongful refusal to fulfill duties and obligations include, without limitation:

(i) Any use of false financial statements;

(ii) Misrepresentation as to the individual's ability to repay debts;

(iii) Concealing assets from the insured depository institution;

(iv) Any instance of fraud, embezzlement or similar misconduct in connection with an obligation to the insured depository institution; and

(v) Any conduct described in any civil or criminal judgment against an individual for breach of any obligation, contractual or otherwise, or any duty of loyalty or care that the individual owed to an insured depository institution.

(3) Defaults shall not be considered a pattern or practice of defalcation where the defaults are caused by catastrophic events beyond the control of the employee such as death, disability, illness or loss of financial support.

(j) *Substantial loss to federal deposit insurance funds.* (1) *Substantial loss to federal deposit insurance funds* means:

(i) A loan or advance from an insured depository institution, which is now owed to the FDIC, RTC, FSLIC or their successors, or any federal deposit insurance fund, that is delinquent for ninety (90) or more days as to payment of principal, interest, or a combination thereof and on which there remains a

legal obligation to pay an amount in excess of \$50,000; or

(ii) A final judgment in excess of \$50,000 in favor of any federal deposit insurance fund, the FDIC, RTC, FSLIC, or their successors regardless of whether it becomes forgiven in whole or in part in a bankruptcy proceeding.

(2) For purposes of computing the \$50,000 ceiling in paragraphs (j)(1)(i) and (ii) of this section, all delinquent judgments, loans, or advances currently owed to the FDIC, RTC, FSLIC or their successors, or any federal deposit insurance fund, shall be aggregated. In no event shall delinquent loans or advances from different insured depository institutions be separately considered.

§ 336.4 Minimum standards for appointment to a position with the FDIC.

(a) No person shall become employed on or after June 18, 1994, by the FDIC or otherwise perform any service for or on behalf of the FDIC who has:

(1) Been convicted of any felony;
 (2) Been removed from, or prohibited from participating in the affairs of, any insured depository institution pursuant to any final enforcement action by any appropriate federal banking agency;
 (3) Demonstrated a pattern or practice of defalcation regarding obligations to insured depository institutions; or
 (4) Caused a substantial loss to federal deposit insurance funds.

(b) Prior to an offer of employment, any person applying for employment with the FDIC shall sign a certification of compliance with the minimum standards listed in paragraphs (a) (1) through (4) of this section. In addition, any person applying for employment with the FDIC shall provide as an attachment to the certification any instance in which the applicant, or a company under the applicant's control, defaulted on a material obligation to an insured depository institution within the preceding five years.

(c) Incumbent employees who separate from the FDIC and are subsequently reappointed after a break in service of more than three days are subject to the minimum standards listed in paragraphs (a) (1) through (4) of this section. The former employee is required to submit a new certification statement including attachments, as provided in paragraph (b) of this section, prior to appointment to the new position.

§ 336.5 Minimum standards for employment with the FDIC.

(a) No person who is employed by the FDIC shall continue in employment in any manner whatsoever or perform any

service for or on behalf of the FDIC who, beginning June 18, 1994 and thereafter:

(1) Is convicted of any felony;
 (2) Is prohibited from participating in the affairs of any insured depository institution pursuant to any final enforcement action by any appropriate federal banking agency;
 (3) Demonstrates a pattern or practice of defalcation regarding obligations to insured depository institution(s); or
 (4) Causes a substantial loss to federal deposit insurance funds.

(b) Any noncompliance with the standards listed in paragraphs (a) (1) through (4) of this section is a basis for removal from employment with the FDIC.

§ 336.6 Verification of compliance.

The FDIC's Division of Administration shall order appropriate investigations as authorized by 12 U.S.C. 1819 and 1822 on newly appointed employees, either prior to or following appointment, to verify compliance with the minimum standards listed under § 336.4(a) (1) through (4).

§ 336.7 Employee responsibility, counseling and distribution of regulation.

(a) Each employee is responsible for being familiar with and complying with the provisions of this part.

(b) The Ethics Counselor shall provide a copy of this part to each new employee within 30 days of initial appointment.

(c) An employee who believes that he or she may not be in compliance with the minimum standards provided under § 336.5(a) (1) through (4), or who receives a demand letter from the FDIC for any reason, shall make a written report of all relevant facts to the Ethics Counselor within ten (10) business days after the employee discovers the possible noncompliance, or after the receipt of a demand letter from the FDIC.

(d) The Ethics Counselor shall provide guidance to employees regarding the appropriate statutes, regulations and corporate policies affecting employee's ethical responsibilities and conduct under this part.

(e) The Ethics Counselor shall provide the Personnel Services Branch with notice of an employee's noncompliance.

§ 336.8 Sanctions and remedial actions.

(a) Any employee found not in compliance with the minimum standards except as provided in paragraph (b) of this section shall be terminated and prohibited from providing further service for or on

behalf of the FDIC in any capacity. No other remedial action is authorized for sanctions for noncompliance.

(b) Any employee found not in compliance with the minimum standards under § 336.5(a)(3) based on financial irresponsibility as defined in § 336.3(i)(1) shall be terminated consistent with applicable procedures and prohibited from providing future services for or on behalf of the FDIC in any capacity, unless the employee brings him or herself into compliance with the minimum standards as provided in paragraphs (b) (1) and (2) of this section.

(1) Upon written notification by the Corporation of financial irresponsibility, the employee will be allowed a reasonable period of time to establish an agreement that satisfies the creditor and the FDIC as to resolution of outstanding indebtedness or otherwise resolves the matter to the satisfaction of the FDIC prior to the initiation of a termination action.

(2) As part of the agreement described in paragraph (b)(1) of this section, the employee shall provide authority to the creditor to report any violation by the employee of the terms of the agreement directly to the FDIC Ethics Counselor.

§ 336.9 Finality of determination.

Any determination made by the FDIC pursuant to this part shall be at the FDIC's sole discretion and shall not be subject to further review.

By Order of the Board of Directors.

Dated at Washington, D.C. this 6th day of February 1996.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 96-3272 Filed 2-14-96; 8:45 am]

BILLING CODE 6714-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95-AEA-17]

Proposed Amendment of Class D Airspace; Utica, NY, and Proposed Amendment of Class D Airspace and Class E4 Airspace, Rome, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would modify Class D airspace designated as a surface area for Oneida County Airport, Utica, New York and Griffiss AFB,