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## FEDERAL DEPOSIT INSURANCE CORPORATION

### 5 CFR Part 3201

RIN 3209-AA15

#### Supplemental Standards of Ethical Conduct for FDIC Employees

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

**ACTION:** Final rule.

**SUMMARY:** The FDIC is finalizing the proposed rule to amend existing FDIC ethics regulations involving extensions of credit, ownership of stock, and definitions. It implements the Preserving Independence of Financial Institution Examinations Act of 2003, which amended sections 212 and 213 of title 18 of the United States Code. These sections continue generally to impose criminal penalties on examiners' borrowing from banks they have examined, and financial institutions' extending a loan to anyone who examines or has authority to examine that institution. The statutory amendment, however, decriminalizes extensions of credit to examiners for credit cards and for primary residential home loans from institutions that they examine or have authority to examine if these loans are made on the same terms and conditions as are available to other cardholders and borrowers and satisfy other criteria contained in the statute as amended. Additionally, the final rule clarifies and makes minor revisions to definitions and restrictions for FDIC employees' acquisition, ownership, or control of securities of FDIC-insured depository institutions and certain holding companies.

**DATES:** The final rule is effective May 18, 2007.

**FOR FURTHER INFORMATION CONTACT:** FDIC: Robert J. Fagan, Ethics Program Manager, Legal Division, (202) 898-

6808; and Michelle Borzillo, Counsel, Legal Division, (202) 898-7400.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On December 4, 2006, the FDIC published a notice of proposed rulemaking to amend 5 CFR part 3201, entitled "Supplemental Standards of Ethical Conduct for FDIC Employees." The FDIC is adopting the proposed rule as final. It addresses issues involving extensions of credit to all FDIC employees, including FDIC employees covered by the amended criminal statutes pertaining to examiners, members of the FDIC Board of Directors, Division and Office Directors, and their direct subordinates, as well as employees in the Corporate Employee Program who perform examiner functions ("covered employees"). This final rule also clarifies and makes minor revisions to the provisions governing employee ownership of stock and the definitions used in the regulation.

On December 19, 2003, the President signed Public Law 108-198, the Preserving Independence of Financial Institution Examinations Act of 2003. The bill amended sections 212 and 213 of title 18 of the United States Code. These sections continue generally to impose criminal penalties on examiners' borrowing from banks they examine, and financial institutions' extending a loan to anyone who examines or has authority to examine that institution. The amendment, however, decriminalizes extensions of credit to examiners for credit cards and for primary residential home loans from institutions that they examine or have authority to examine if these loans are made on the same terms and conditions as are available to other cardholders and borrowers.

The amended statute at 18 U.S.C. 212 provides that, subject to the exception noted above, any officer, director, or employee of a financial institution, who makes or grants any loan or gratuity, to any examiner or assistant examiner who examines or has authority to examine such bank, branch, agency, organization, corporation, association, or institution is subject to criminal penalties.

Under 18 U.S.C. 213, as amended, any examiner or assistant examiner who accepts a loan or gratuity, except for primary residential loans or credit cards described in this final rule, from any

bank, branch, agency, organization, corporation, association, or institution examined by the examiner or from any person connected with it, is subject to criminal penalties and will be disqualified from holding office as an examiner.

On April 7, 2004, based on the statutory amendments, FDIC's Board of Directors adopted the Interim Policy on Credit Cards and Home Mortgages ("Interim Policy") pending revisions to the FDIC's existing regulation on extensions of credit. The Interim Policy permits extensions of credit in the form of home mortgages for primary residences and credit cards under certain conditions. This final rule replaces the Interim Policy and supersedes the current version of 5 CFR 3201.102.<sup>1</sup>

Additionally, the final rule clarifies and makes revisions to 5 CFR 3201.103, which restricts FDIC employees' acquisition, ownership, or control of securities of FDIC-insured depository institutions and certain holding companies. Finally, the final rule makes appropriate revisions to the definitions in 5 CFR 3201.101.

In making these regulatory revisions in part pursuant to its rulemaking authority under 18 U.S.C. 212(b), the FDIC has consulted with the other Federal financial institution regulatory agencies. In addition, the FDIC has determined, with Office of Government Ethics (OGE) concurrence, that, under 5 CFR 2635.403(a) of the executive branch standards of ethical conduct, these

<sup>1</sup> Under the regulation, before being modified by the Interim Policy adopted by the FDIC Board of Directors in April 2004, the staff responsible for examination of FDIC-insured depository institutions were prohibited from obtaining credit from an FDIC-insured State nonmember bank, any subsidiary of such bank, or any person associated with such bank. No exceptions were made for home mortgages. An exception was made for credit cards issued outside the region or field office of assignment. Corporation officials in top management positions were prohibited under the regulation from entering into financial obligations with an institution over which the Corporation had primary Federal supervisory authority and its subsidiaries. An employee in the Division of Finance, Division of Insurance and Research, Division of Resolutions and Receiverships, the Legal Division, or who was a member of a standing committee of the Board of Directors, was prohibited from obtaining credit from an FDIC-insured depository institution or its subsidiary for a period of two years after the employee had participated personally and substantially in certain matters affecting the institution, its predecessor, successor, or affiliate. An exception was made for ordinary credit cards.

revised provisions as to FDIC employees, their spouses and minor children, are needed so that a reasonable person would not question the impartiality and objectivity with which agency programs are administered. Further, with respect to the revised restrictions and prohibitions on the holding of financial interests (including indebtedness, *i.e.*, certain extensions of credit and loans) by the spouses and minor children of FDIC employees and covered FDIC employees, the FDIC has determined that there is a direct and appropriate nexus between such restrictions and prohibitions as applied to spouses and minor children and the efficiency of the service.

## II. Comments on the Proposed Rule

The FDIC received one comment on the proposed rule. The commenter addressed only the use of plain language and did not comment on the substance of the rule. The commenter offered several plain language suggestions which the commenter believes would make the rule easier to read and understand.

The FDIC has considered these comments and opted to finalize the rule as proposed without change for the following reasons. The rule restates and codifies the FDIC's longstanding interim policy that was well-known and understood by FDIC employees and the FDIC's ethics officials. The rule applies only to FDIC employees—it does not apply to non-FDIC employees and therefore has no impact on the public. Additionally, OGE concurred in the proposed rule prior to its publication as required by 5 CFR 2635.105 entitled "Supplemental Agency Regulations", and is also concurring in the final rule.

The commenter found it confusing that the proposed rule used two different terms to refer to FDIC employees: "covered employees" and "FDIC employees." This use of two different terms is intentional. The term "covered employee" is defined in § 3201.101(d)(3) and includes employees occupying certain identified positions within the FDIC, while other provisions of the rule apply to all "FDIC employees." The regulation uses the different terms to distinguish between the provisions that apply only to "covered employees" from the provisions that apply to all "FDIC employees."

For example, the final rule restates the general rule that all "FDIC employees" are prohibited from participating in an examination, audit, visitation, review, or investigation, or any other particular matter involving an FDIC-insured

institution, subsidiary or other person with whom that employee has an outstanding extension of credit. "Covered employees" under the final rule may obtain a waiver from that general prohibition under the conditions and circumstances specified in the final rule. "Covered employees" are more restricted than all "FDIC employees."

## III. The Final Rule

### *Section 3201.102—Extensions of Credit and Loans From FDIC-Insured Institutions*

The revision to 5 CFR 3201.102 retains the existing general prohibitions on borrowings and disqualification provisions for FDIC employees and members of the FDIC Board of Directors. Likewise, a current or contingent financial obligation of an employee's spouse or minor child is considered to be an obligation of the employee. However, the final rule in a new paragraph (e) authorizes the FDIC Ethics Counselor to waive any disqualification under this section based on a determination with the advice of the Legal Division that the waiver is not inconsistent with the standards of ethical conduct for employees of the executive branch as set forth in 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 misuse of position or loss of impartiality and objectivity with which the FDIC programs are administered.

The final rule, in keeping with the amended statutes at 18 U.S.C. 212 and 213, eliminates the current regulatory disqualification for FDIC examiners, FDIC Board members, Division and Office Directors, and their immediate subordinates, and employees in the Corporate Employee Program performing examiner duties (defined as "covered employees" in § 3201.101(d)(3) of the rule), who obtain credit cards on terms and conditions no more favorable than generally available to other borrowers. See new paragraphs (c)(1) and (c)(2) of § 3201.102. Covered employees assigned to a bank from which they hold a credit card must inform their supervisor and ethics official prior to the examination or other participation in a matter involving the bank if any issue exists such as non-current payments, a billing dispute, or if negotiating with the bank concerning the debt. In certain cases, a disqualification will be required. Under paragraph (d)(4) of § 3201.102, covered employees and their spouses and minor

children are prohibited from applying for or receiving a credit card from an institution if the covered employee is assigned or about to be assigned to an examination of that institution.

Under § 3201.102(c)(3)(ii), disqualification will continue to be generally required for residential real property loans on a primary residence. However, such loans are permitted in accordance with paragraph (c)(2)(ii) of § 3201.102, if the terms and conditions are no more favorable than the terms and conditions of loans generally available to other similarly situated creditworthy borrowers. Thus, covered FDIC employees can obtain such permitted loans, but will need to be recused from official participation in any particular matters involving the lending institution or person. The final rule also covers limitations, restrictions, and the mechanism for waiver of the disqualification from participation in an examination or other matter in appropriate circumstances, under paragraphs (c)(4), (c)(5), (d) and (e) of § 3201.102, as amended.

As previously noted above, a new general waiver will be available under the final rule in certain circumstances. Specifically, paragraph (e) of § 3201.102 authorizes the Ethics Counselor to waive any provision based on a determination with the advice of the Legal Division that the waiver is not inconsistent with the standards of ethical conduct for employees of the executive branch as set forth in 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 misuse of position or loss of impartiality and objectivity with which the FDIC programs are administered. A waiver under paragraph (e) of § 3201.102 could impose appropriate conditions, such as requiring the execution of a written disqualification.

Under paragraph (c)(5)(i) of § 3201.102, a covered FDIC employee is not prohibited from retaining a loan or extension of credit from a State nonmember bank or its subsidiary on its original terms if it was obtained prior to FDIC employment or reassignment to a covered employee position, or a result of the sale, or transfer of the loan or credit extension to, or the conversion or merger of the lender into, such a bank (or subsidiary). However, any renewal or renegotiation of such a pre-existing loan or credit extension is subject to the prohibitions in paragraphs (c)(3) and (c)(4) of § 3201.102, subject to an exception noted in the following sentence. Under paragraph (c)(5)(ii) of

§ 3201.102, a covered employee who experiences financial or other hardship unless allowed to renegotiate credit incurred prior to FDIC employment or reassignment of duties could submit a request for a waiver to his or her supervisor and the Ethics Counselor setting forth the reasons for the desired renegotiation and other details. After consideration, the employee's supervisor and the Ethics Counselor could jointly grant a written waiver of the prohibition based on a finding that the renegotiation would not be prohibited by law and that the waiver would not result in a loss of impartiality or objectivity or misuse of the employee's position.

Paragraph (d) of § 3201.102 of the final rule also prohibits an FDIC employee (other than examiners who are covered by the statutory prohibition under 18 U.S.C. 212 and 213) from directly or indirectly accepting or becoming 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 transaction, 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 § 3201.102.

*Section 3201.103—Prohibition on Acquisition, Ownership or Control of Securities of FDIC-Insured Depository Institutions and Certain Holding Companies*

In addition, this final rule amends 5 CFR 3201.103, which generally provides in paragraph (a), with certain exceptions set forth in paragraph (b), that no FDIC employee, spouse of an employee, or minor child of an employee may acquire, own, or control, directly or indirectly, a security of an FDIC-insured depository institution or its affiliate. The existing regulation at 5 CFR 3201.103(b) provides six exceptions to that general prohibition: (1) Acquiring, owning, or controlling securities of certain bank holding companies or their nonbank subsidiaries that are publicly traded, not primarily engaged in banking, and exempt from the Bank Holding Company Act; (2) acquiring, owning, or controlling securities of

certain nonfinancial savings association holding companies; (3) retaining securities of an FDIC-insured depository institution or affiliate if retention was permitted under 12 CFR part 336 prior to a certain date, prior to employment with the FDIC, or when the securities were acquired by a spouse prior to his or her marriage to the employee; (4) acquiring, owning, or controlling securities of an FDIC-insured depository institution or affiliate if 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 it, or if acquired by a spouse or minor child as part of a compensation package from their employer, subject to certain disclosure and disqualification requirements; (5) acquiring, owning, or controlling an interest in certain publicly traded or publicly available investment funds; and (6) using an FDIC-insured depository institution or affiliate as a custodian or trustee of accounts containing tax-deferred retirement funds. The final rule narrows the scope of these prohibitions and generally clarifies the prohibitions of this section.

Revised § 3201.103(a) as revised narrows the scope of the general prohibition concerning ownership and control of a security by FDIC employees, spouses and their minor children by removing the prohibitions on ownership of securities with respect to insured depository institution affiliates, other than certain holding companies. The reason for eliminating other affiliates from the prohibition is that the potential for a conflict of interest is generally only present when there is ownership or control of a company that in turn has control of an insured depository institution. Affiliates other than holding companies do not own, and generally do not control, an insured depository institution that is their parent or sister organization.

Section 3201.103 as revised generally prohibits ownership of a security of, in addition to an FDIC-insured bank or savings association; a bank holding company that is subject to supervision by the Federal Reserve Board (FRB); a savings and loan holding company that is subject to supervision by the Office of Thrift Supervision (OTS); a financial holding company that is subject to supervision by the FRB; and a company that (i) owns or controls an FDIC-insured bank or savings association, (ii) is not an FRB-supervised bank holding company, an OTS-supervised savings and loan holding company, nor an FRB-supervised financial holding company,

and (iii) either is primarily engaged in banking or is not publicly traded on a U.S. securities exchange. These categories, in appropriate cases, cover companies that control industrial banks.

Section 3201.103 as revised also creates in paragraph (b)(1), a specific exception for acquisition, ownership, or control of securities of a unitary thrift holding company. In addition, the final rule reorganizes the descriptions of the prohibited securities and exceptions. The intent of the reorganization is to make this section clearer and more useable. The final rule retains in revised paragraphs (b) and (c) the other existing exceptions, limitations, and divestiture requirements of § 3201.103. Moreover, in a new paragraph (d) of this section, the final rule adds a provision for written waiver in appropriate circumstances by the Ethics Counselor, with Legal Division advice and legal clearance, of any provision of the section that is identical to the § 3201.102(e) waiver provision discussed above.

*Section 3201.101(d)—General Section; Definitions*

Finally, the definitional section at paragraph (d) of § 3201.101 is amended to add and revise certain useful definitions and delete others (“assisted entity” and “assuming entity”) that are no longer used.

The term “covered employees” is expanded to include employees whose duties and responsibilities include the examination of a financial institution or participation in the examination of any financial institution. The FDIC is republishing all the definitions in the paragraph, including those not being revised, for ease of reference.

**Regulatory Flexibility Act Analysis**

The Regulatory Flexibility Act (RFA) requires that each Federal agency either certify that a final rule would not have a significant impact on a substantial number of small entities. See 5 U.S.C. 603, 605. The Small Business Administration (SBA) defines small banks as those with less than \$165 million in assets. The final rule implements the statutory decriminalization under certain circumstances of extensions of credit to FDIC examiners for credit cards and for primary residential home loans from institutions that they examine and clarifies certain restrictions on the acquisition, ownership, or control of securities of FDIC-insured depository institutions and certain holding companies on the part of FDIC employees. The final rule does not impose any obligations or restrictions

on depository institutions, including small depository institutions. On this basis, the FDIC certifies pursuant to 5 U.S.C. 605(b) that this final rule will not have a significant impact on a substantial number of small entities.

#### Paperwork Reduction Act

The FDIC has determined that the final rule does not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

#### Small Business Regulatory Enforcement Fairness Act

The final rule relates to agency management or personnel, and the final rule is therefore not covered by the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”) (5 U.S.C. 801 *et seq.*). 5 U.S.C. 804(3)(B).

#### List of Subjects in 5 CFR Part 3201

Conflict of interests, Ethical conduct, Extensions of credit and loans from FDIC-insured depository institutions, Government employees, Prohibitions on ownership of securities of FDIC-insured depository institutions.

■ For the reasons set forth in the preamble, the Board of Directors of the FDIC, with the concurrence of OGE, amends part 3201 of title 5 of the Code of Federal Regulations as follows:

#### PART 3201—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE FEDERAL DEPOSIT INSURANCE CORPORATION

■ 1. The authority citation for 5 CFR part 3201 is revised to read as follows:

**Authority:** 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 12 U.S.C. 1819(a), 1822; 18 U.S.C. 212, 213; 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, 2635.803.

■ 2. Paragraph (d) of § 3201.101 is revised to read as follows:

#### § 3201.101 General.

\* \* \* \* \*

(d) *Definitions.* For purposes of this part, the following definitions apply:

(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) *Covered employee* means:

(i) Members of the FDIC Board of Directors and any employee required to file a public or confidential financial disclosure under 5 CFR part 2634 who holds a position immediately subordinate to such Board member;

(ii) The director of any Washington division or office and the director of any regional office, and any employee required to file a public or confidential financial disclosure report under 5 CFR part 2634 who holds a position immediately subordinate to such director;

(iii) An FDIC examiner;

(iv) Any other FDIC employee whose duties and responsibilities include the examination of or the participation in the examination of any financial institution;

(v) Any other FDIC employee whose duties and responsibilities are determined by the Chairman or Ethics Counselor after notice to the employee, require application of the prohibition on borrowing contained in § 3201.102 to ensure public confidence that the FDIC’s programs are conducted impartially and objectively.

(4) *Employee* means an officer or employee, other than a special Government employee, of the Corporation, including a member of the Board of Directors appointed under the authority of 12 U.S.C. 1812(a)(1)(C). For purposes of 5 CFR part 2635 and §§ 3201.103 and 3201.104, employee includes any individual who, pursuant to a contract or any other arrangement, performs functions or activities of the Corporation, under the direct supervision of an officer or employee of the Corporation.

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

(6) *Security* includes an interest in debt or equity instruments. The term includes, without limitation, a secured or unsecured bond, debenture, note, securitized assets, commercial paper, and all types of preferred and common

stock. The term includes an interest or right in a security, whether current or contingent, a beneficial or legal interest derived from a trust, the right to acquire or dispose of any long or short position, an interest convertible into a security, and an option, right, warrant, put, or call with respect to a security. The term security does not include a deposit account.

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

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

■ 3. Section 3201.102 is revised to read as follows:

#### § 3201.102 Extensions of credit and loans from FDIC-insured 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) *Disqualification applicable to FDIC employees generally.* Except as provided in this section:

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

(2) For employees, other than covered employees as defined in § 3201.101(d)(3), disqualification is not required if the credit was extended through the use of a credit card on the same terms and conditions as are offered to the general public.

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

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

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

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

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

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

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

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

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

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

(3) *Disqualification of covered employees.* A covered employee shall

not participate in an examination, audit, visitation, review, or investigation, or other particular matter involving an FDIC-insured depository institution or other person with whom the covered employee has an outstanding extension of credit, or with whom the covered employee is negotiating an extension of credit.

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

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

(4) *Other limitations on covered employees.* (i) A covered employee shall not accept or become obligated on an otherwise permissible loan if the disqualification arising from the credit relationship would materially impair the covered employee's ability to participate in matters that are central to the performance of the covered employee's official duties, or if the covered employee has been advised of an assignment to handle a matter involving that institution. (ii) Covered employees to whom the prohibitions in this section apply may not apply for a credit card or primary residence mortgage loan from a State nonmember bank or subsidiary that the covered employee is assigned to examine or participate in a matter involving that institution, or if such an assignment is imminent.

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

■ 4. Section 3201.103 is revised to read as follows:

**§ 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 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 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.

By order of the Board of Directors.

Dated at Washington, DC, this 20th day of March, 2007.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

Approved: April 10, 2007.

**Robert I. Cusick,**

*Director, Office of Government Ethics.*

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA-2007-27898; Directorate Identifier 2007-NM-078-AD; Amendment 39-15029; AD 2007-07-05 R1]**

**RIN 2120-AA64**

**Airworthiness Directives; Boeing Model 777 Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule; request for comments.

**SUMMARY:** The FAA is revising an existing airworthiness directive (AD), which applies to all Boeing Model 777 airplanes. That AD currently requires a one-time inspection to determine the part number of the left and right air supply and cabin pressure controllers (ASCPCs), and installation of new ASCPC software if necessary. This AD requires those same actions. This AD also revises the existing AD to allow installation of an ASCPC with additional versions of software installed and to correct a part number reference. This AD results from a report of an ASCPC failure during flight. We are issuing this AD to prevent an ASCPC failure that could stop airflow into the airplane, inhibit the cabin altitude warning message, and cause an incorrect display of cabin altitude. These failures could result in depressurization of the airplane without warning.

**DATES:** The effective date of this AD is April 18, 2007.

On April 18, 2007 (72 FR 15820, April 3, 2007), the Director of the Federal Register approved the incorporation by reference of Boeing Service Bulletin 777-36A0026, Revision 1, dated February 8, 2007.