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DEPARTMENT OF THE TREASURY

5 CFR Part 3101

RINs 1550-AC03, 3209-AA15

Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury (Department), with the concurrence of the Office of Government Ethics (OGE), is amending the Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury (Treasury Supplemental Ethics Regulations). The final rule revises the circumstances under which covered Office of Thrift Supervision (OTS) employees may obtain credit cards and loans secured by a principal residence from OTS-regulated savings associations or their subsidiaries. This amendment also modifies rules on disqualifications.

DATES: *Effective Date:* August 23, 2007.

FOR FURTHER INFORMATION CONTACT: Ira S. Kaye, Senior Ethics Counsel, Office of the Assistant General Counsel (General Law and Ethics), Department of the Treasury, Room 2023, Washington, DC 20220, (202) 622-1963, or Elizabeth Moore, Ethics Counsel, OTS Litigation Division, 1700 G Street, NW., Washington, DC 20552, (202) 906-7039.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Government Ethics (OGE) has issued rules setting out the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635 (Standards). The Treasury Supplemental Ethics Regulations at 5 CFR part 3101 supplement these Standards, and were issued to minimize potential conflicts of

interest by Department of Treasury employees. The Treasury Supplemental Ethics Regulations set out additional rules for Office of Thrift Supervision (OTS) employees at 5 CFR 3101.109. These rules were designed to prevent employees of OTS from taking actions that violate (or appear to violate) conflict of interest laws or certain criminal statutes, or that create (or may create) an appearance of a loss of impartiality.

The Treasury Supplemental Ethics Regulations generally prohibit covered OTS employees from seeking or obtaining loans or other extensions of credit from any OTS-regulated savings association or from an officer, director, employee or subsidiary of such a savings association. 5 CFR 3101.109(c)(1).¹ This prohibition extends to the spouses and minor children of covered OTS employees, unless the loan or extension of credit meets specified standards.²

The current Treasury Supplemental Ethics Regulations prescribe an exception to this general prohibition for credit card accounts. Except for examiners, a covered OTS employee (or a spouse or minor child of a covered OTS employee), may obtain and hold a credit card from an OTS-regulated savings association (or its subsidiary) if the credit card is issued on terms and conditions no more favorable than those offered to the general public. 5 CFR 3101.109(c)(3)(i) (2006). An examiner (or a spouse or minor child of an examiner) may obtain and hold a credit card from an OTS-regulated savings association (or its subsidiary) only if: (1) The savings association is not headquartered in the examiner's region; (2) the examiner is not assigned to examine the savings association; (3) the terms and conditions are no more favorable than those offered to the

¹ Covered OTS employees include OTS examiners, employees in positions at OTS grade 17 and above, and other designated OTS employees. 5 CFR 3101.109(a).

² A spouse or a minor child may obtain a loan or extension of credit if: (1) The loan is supported only by the income or independent means of the spouse or child; (2) the loan is obtained on terms and conditions no more favorable than those offered to the general public; and (3) the covered OTS employee does not participate in the negotiation of the loan, or serve as co-maker, endorser, or guarantor. 5 CFR 3101.109(c)(2). This final rule makes a clarifying change to the second of these conditions to conform it to the statutory conditions in 18 U.S.C. 212(c)(4)(A) and (B), as amended.

general public; and (4) the examiner submits a written disqualification from examining that savings association. 5 CFR 3101.109(c)(3)(ii) (2006).

The more rigorous credit card rule for examiners was designed to prevent violations of 18 U.S.C. 213, a criminal statute, which prohibits an examiner from accepting a loan or gratuity from a financial institution that he or she examines. Until December 2003, 18 U.S.C. 213 (2000) provided:

Whoever, being an examiner or assistant examiner of * * * financial institutions the deposits of which are insured by the Federal Deposit Insurance Corporation * * * accepts a loan or gratuity from any bank, branch, agency, corporation, association or organization examined by him or from any person connected [t]herewith, shall be fined under this title or imprisoned not more than one year, or both; and may be fined a further sum equal to the money so loaned or gratuity given, and shall be disqualified from holding office as such examiner.

A related criminal statute, 18 U.S.C. 212, prohibits officers, directors, or employees of financial institutions from making or granting such loans or gratuities.

On December 19, 2003, the President signed the Preserving Independence of Financial Institution Examinations Act of 2003, Public Law 108-198, which amended 18 U.S.C. 212 and 213. The new law preserves the general prohibition against an examiner accepting a loan or gratuity from a financial institution under examination, but creates two exceptions to the criminal bar. Under the new law, it is no longer a crime for an examiner to hold an open-end consumer credit card account or obtain a loan secured by residential real property that is used as the principal residence of the examiner if:

(A) The applicant satisfies any financial requirements for the credit card account or residential real property loan that are generally applicable to all applicants for the same type of credit card account or residential real property loan;

(B) The terms and conditions applicable with respect to such account or residential real property loan, and any credit extended to the examiner under such account or residential real property loan, are no more favorable generally to the examiner than the terms and conditions that are generally applicable to credit card accounts or residential real property loans offered by the same financial institution to other borrowers [or] cardholders in comparable circumstances

under open end consumer credit plans or for residential real property loans; and

(C) with respect to residential real property loans, the loan is with respect to the primary residence of the applicant.³

Other types of loans, such as overdraft protection not secured by a principal residence, vacation home loans, car loans, and personal loans still are subject to the prohibitions in 18 U.S.C. 212 and 213. It remains a crime for an examiner to examine an institution that has extended those types of credit to him or her.

The Department has reexamined the restrictions on credit cards and loans on principal residences for covered OTS employees, and their spouses and minor children, in light of these recent statutory changes and is making several revisions to the Treasury Supplemental Ethics Regulation pursuant to its rulemaking authority under 18 U.S.C. 212(b) and 5 CFR Part 2635. In making these revisions, the Department has consulted with the other financial institution regulatory agencies. To the extent that the revised provisions apply to covered OTS employees, their spouses and minor children, the Department has determined, with OGE concurrence, that the regulations are needed so that a reasonable person would not question the impartiality and objectivity with which agency programs are administered. See 5 CFR 2635.403(a). Further, with respect to the revised restrictions and prohibitions on the holding of financial interests (indebtedness, that is certain loans and extensions of credit) by covered OTS employees' spouses and minor children, the Department has determined that there is a direct and appropriate nexus between such restrictions and prohibitions as applied to the spouses and minor children, and the efficiency of covered employees' service.

II. Rule Changes

A. Credit Card Loans

The Department has reviewed the extent to which credit cards present conflicts of interest for OTS examiners and has concluded that, in most instances, neither obtaining nor holding a credit card creates a conflict of interest or presents the likelihood of a loss of impartiality by an OTS examiner. Individuals usually do not negotiate the terms and conditions of a credit card account. Rather, relevant terms and conditions, including credit limits, fees, and rates, are generally set according to various income and creditworthiness standards.

Moreover, the present regulatory restriction may have a detrimental impact on OTS's ability to supervise certain operations. OTS supervises a small number of thrifts with large credit card portfolios. Due to the scope of these institutions' credit card operations, OTS has experienced some difficulty in fielding and maintaining appropriate examination teams for the institutions. Accordingly, the Department believes that the examiner restriction should be revised to ensure that OTS Regional and Washington offices have more flexibility to assign projects to examiners.⁴

The Department is amending the Treasury Supplemental Ethics Regulations to permit examiners (and their spouses and minor children) to obtain credit cards from OTS-regulated savings associations (or their subsidiaries) on the same basis as other covered OTS employees. Under the final rule, any covered OTS employee (or spouse or minor child of a covered OTS employee) may obtain and hold a credit card account established under an open-end consumer credit plan and issued by an OTS-regulated savings association (or its subsidiary) subject to certain conditions. These conditions were designed to reflect the new statutory exemption at 18 U.S.C. 212.

Specifically, the final rule states at new amended paragraph (c)(3)(i) of § 3101.109 that covered OTS employees, their spouses, and minor children may obtain and hold a credit card established under an open-end consumer credit plan and issued by an OTS-regulated savings association or its subsidiary if: (1) The cardholder satisfies all financial requirements for the credit card account that are generally applicable to all applicants for the same type of credit card account; and (2) 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 that cardholder than the terms and

conditions that are generally applicable to credit card accounts offered by the same savings association (or the same subsidiary) to other cardholders in comparable circumstances under open-end consumer credit plans. These requirements are modeled on the conditions in 18 U.S.C. 212, as amended, and are substantially identical to the condition applicable to credit card accounts permitted under the current rules, which provides that credit cards must be "issued and held on terms and conditions no more favorable than those offered [to] the general public." See 5 CFR 3101.109(c)(3)(i) and (c)(3)(ii)(C) (2006).

Under the current Treasury Supplemental Ethics Regulations, an examiner must disqualify himself from examining a savings association if the examiner (or the spouse or minor child of an examiner) has obtained a credit card from that savings association or its subsidiary. 5 CFR 3101.109(c)(3)(ii)(D) (2006). Today's final rule no longer requires such a disqualification every time the OTS examiner, spouse, or minor child obtains a credit card loan from a particular thrift or its subsidiary.⁵ Instead, the final rule in new amended paragraph (c)(3)(i)(C) requires a covered OTS employee to submit a written disqualification if the employee (or his or her spouse or minor child) as cardholder becomes involved in an "adversarial dispute" with the issuer of the credit card account. For the purposes of this rule, a cardholder is involved in an adversarial dispute if he or she is delinquent in payments on the credit card account; the issuer and the cardholder are negotiating to restructure the credit card debt; the issuer garnishes the cardholder's wages; the cardholder disputes the terms and conditions of the account; or the cardholder becomes involved in any disagreement with the issuer that casts doubt on the employee's ability to remain impartial with respect to the savings association or its subsidiaries. Preliminary inquiries regarding the accuracy of billing information or billed items are not, but may become, an adversarial dispute.

Under amended paragraph (c)(3)(i)(C) of the final rule, a written disqualification must state that the covered OTS employee will not participate in any examination, the review of any application, or any other supervisory or regulatory matter directly affecting the savings association or its subsidiaries. This disqualification will

⁴ On December 23, 2003, upon the enactment of the revised statute, the OTS Director granted a blanket waiver of the credit card regulation pursuant to 5 CFR 3101.109(g). Specifically, the OTS Director waived 5 CFR 3101.109(c) to permit examiners, their spouses, and minor children to obtain credit cards subject to the statutory conditions. On March 31, 2006, the Director granted a blanket waiver to permit all covered employees, their spouses and minor children, to obtain loans from OTS-regulated thrifts if the loan is secured by the borrower's principal residence and meets certain other conditions. Covered employees are required to report any such loans and credit cards on their annual OTS supplemental financial disclosure reports and to attest that the card or loan was obtained and is being held on non-preferential terms.

⁵ OTS will, however, continue to require covered OTS employees to disclose their credit cards on their annual OTS supplemental financial disclosure reports, and to attest that their credit cards meet the requirements of this rule.

³ 18 U.S.C. 212(c)(4), as amended.

not, however, prevent a covered OTS employee from participating in formulating OTS policy or writing guidance, policy statements or regulations generally applicable to savings associations or their subsidiaries.⁶

Currently, the rules disqualify an examiner only with respect to activities that affect the savings association or the savings association's subsidiaries. 5 CFR 3101.109(c)(3)(ii) (2006). The disqualification does not extend to the savings association's holding company or to the holding company's other subsidiaries. The final rule takes this same approach. OTS may, of course, require a covered OTS employee to submit a disqualification that also covers the holding company and its other subsidiaries. On a case-by-case basis, OTS may require a disqualification if the relevant facts and circumstances surrounding the examiner's participation in an examination, the review of an application, or any other supervisory or regulatory matter directly affecting the holding company and its other subsidiaries would cause a reasonable person to question the examiner's impartiality. See 5 CFR 2635.502.

B. Loans Secured by Principal Residence

The Department has also reviewed whether it should retain restrictions on loans secured by a principal residence. Typically, home loans, unlike credit card loans, are the subject of negotiation between borrowers and lenders. While such negotiations increase the opportunity for a real or perceived conflict of interest, the Department believes that such conflicts may be minimized by the imposition of appropriate conditions. The Department does not believe that this rule change will unduly interfere with OTS's ability to distribute work assignments among employees, since each covered OTS employee is unlikely to have more than one or two loans secured by a principal residence.

Accordingly, the Department has revised the rule in new amended paragraph (c)(3)(ii) of § 3101.109 to permit a covered OTS employee (or a spouse or minor child of a covered OTS employee) to obtain and hold loans from a savings association or subsidiary of a savings association, subject to several conditions. First, pursuant to new amended paragraph (c)(3)(ii)(A), the loan must be secured primarily by

residential real property that is the borrower's principal residence. This final rule applies to any loan secured primarily by a principal residence including a new mortgage loan, a refinanced loan, and a home equity line of credit. The rule, however, applies only to loans secured primarily by the borrower's principal residence. It does not apply to loans secured by vacation homes, investment properties, or other dwellings. The rule permits the borrower to retain a loan that was permissible when it was made, even though the residential real property has ceased to be the borrower's principal residence. However, any subsequent renewal or renegotiation of the original terms of such a loan must meet the requirements of the prohibited borrowings rule.

Second, pursuant to amended paragraph (c)(3)(ii)(B), the borrower may not apply for the loan while the covered OTS employee participates, or is scheduled to participate, in any examination, the review of any application, or any other supervisory or regulatory matter directly affecting the savings association or its subsidiaries. OTS believes that a reasonable person might question the employee's impartiality in such an instance.

Third, the final rule incorporates conditions designed to ensure compliance with 18 U.S.C. 212, as amended. Specifically, the rule provides at amended paragraph (c)(3)(ii)(C) that a 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. Also, under amended paragraph (c)(3)(ii)(D), the terms and conditions applicable with respect to the loan and any credit extended to the borrower under the loan may be 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 savings association (or same subsidiary) to other borrowers in comparable circumstances for residential real property loans.

To permit OTS to monitor loans under the principal residence exception, the final rule requires covered employees to provide certain information to OTS. Specifically, pursuant to amended paragraph (c)(3)(ii)(E), a covered OTS employee must inform his or her OTS supervisor and the OTS ethics officer before the borrower applies for a residential real property loan under the principal residence exemption. Immediately after the borrower enters into the loan agreement, amended paragraph

(c)(3)(ii)(F) provides that the covered employee must also: Notify his or her supervisor and the OTS ethics officer of the agreement; certify that the loan meets the requirements for the principal residence exception; and submit a written disqualification stating that he or she will not participate in any examination, the review of any application, or any other supervisory or regulatory matter directly affecting the savings association or its subsidiaries.⁷ Like the credit card disqualification, this disqualification will not prevent the covered OTS employee from participating in formulating OTS policy or writing guidance, policy statements or regulations generally applicable to savings associations; does not generally extend to the savings association's holding company (or other holding company affiliates); and may be waived on a case-by-case basis under 5 CFR 3101.109(g).

C. Pre-Existing and Transferred Loans

The current rules at 5 CFR 3101.109(c)(4) (2006) permit a covered OTS employee (or spouse or minor child of a covered OTS employee) to retain a loan on its original terms if (1) the loan was incurred before April 30, 1991 or before employment with the OTS, whichever date is later; or (2) the loan was acquired by sale or transfer to an OTS-regulated savings association or by conversion or merger of the lender into an OTS-regulated savings association. A renewal or renegotiation of such a pre-existing or transferred loan, however, must comply with loan restrictions in 5 CFR 3101.109(c)(1) and (c)(2) (2006) of the current Treasury Supplemental Ethics Regulations, prior to this final rule amendment.

The final rule makes a few changes to this provision. First, credit card accounts will not be eligible for the pre-existing or transferred loan exception in amended § 3101.109(c)(4). OTS expects all credit card accounts, including pre-existing credit card accounts, to satisfy the "arms-length terms" and other requirements described in the other exceptions under the final rule. The final rule also requires a covered OTS employee to provide the OTS ethics officer with a timely notification when the employee (or his or her spouse or minor child) holds a pre-existing or transferred loan under this section, and to submit a written disqualification stating that the employee will not participate in any examination, the review of any application, or any other

⁶ The disqualification requirement may be waived on a case-by-case basis under the circumstances described at 5 CFR 3101.109(g).

⁷ Covered OTS employees will also be required to disclose these loans on their annual OTS supplemental financial disclosure reports.

supervisory or regulatory matter directly affecting that savings association or its subsidiaries.

D. Loans from Holding Companies

Additionally, OTS has decided to prohibit an OTS examiner from examining a savings and loan holding company (or its subsidiaries), if the holding company (or its subsidiary) owns or holds the examiner's loan. This rule is not based on the criminal provisions at 18 U.S.C. 212 and 213, since these entities usually are not financial institutions. Rather, OTS believes that such arrangements would raise a question about an examiner's impartiality in the mind of a reasonable person with knowledge of the relevant facts and circumstances. See 5 CFR 2635.502.

Specifically, the final rule states at new paragraph (c)(5) of § 3101.109 that an OTS examiner must submit a written disqualification to OTS if the examiner (or his or her spouse or minor child) obtains or holds a loan from a savings and loan holding company or its subsidiary (other than a subsidiary that is an OTS-regulated savings association or its subsidiary). The written disqualification must state that the examiner will not participate in any examination, the review of any application, or any other supervisory or regulatory matter directly affecting that lender.

However, the last sentence of new paragraph (c)(5) states that an examiner is not required to submit a disqualification for any loan that would have been permitted and would not have required a disqualification under the rules if a savings association had made the loan. For example, an OTS examiner would not be required to submit a disqualification for a credit card loan from a holding company if the examiner satisfies all financial requirements for the credit card account that are generally applicable to all applicants for the same kind of account, and the terms and conditions applicable to 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 holding company. Of course, the examiner would be required to submit a written disqualification to OTS if he or she became involved in an adversarial dispute with the holding company that issued the credit card account.

E. Clarifications

In addition to the changes discussed above, the Department has made technical changes to the prohibition on

borrowing by a spouse or minor child to conform the provisions addressing permissible terms and conditions to the related standard contained in the statute at 18 U.S.C. 212(c)(4)(A) and (B), as amended, and to use plain language in the final rule consistent with 12 U.S.C. 4809.

III. Regulatory Findings

A. Administrative Procedure Act

Pursuant to 5 U.S.C. 553(a)(2), notice of proposed rulemaking, opportunity for public comment, and a 30-day delayed effective date are not applicable to this final rule amendment.

B. Regulatory Flexibility Act Analysis

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply.

C. Executive Order 12866

The Department has determined that this final rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

List of Subjects in 5 CFR Part 3101

Conflict of interests, Ethics, Extensions of credit, Government employees, OTS employees.

■ For the reasons set forth in the preamble, the Department, with the concurrence of OGE, amends 5 CFR part 3101 as follows:

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

■ 1. The authority citation for part 3101 continues to read as follows:

Authority: 5 U.S.C. 301, 7301, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); 18 U.S.C. 212, 213; 26 U.S.C. 7214(b); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.203(a), 2635.403(a), 2635.803, 2635.807(a)(2)(ii).

■ 2. In § 3101.109, revise paragraphs (c)(2), (c)(3), and (c)(4) and add a new paragraph (c)(5) to read as follows:

§ 3101.109 Additional rules for Office of Thrift Supervision employees.

* * * * *

(c) * * *

(2) *Prohibition on borrowing by a spouse or minor child.* The prohibition in paragraph (c)(1) of this section applies to the spouse and minor child of a covered OTS employee, except that a spouse or minor child may obtain and hold a loan or extension of credit from an OTS-regulated savings association (or its subsidiary) if:

(i) The loan or extension of credit is supported only by the income or independent means of the spouse or minor child;

(ii) The spouse or minor child satisfies all financial requirements for the loan or extension of credit that are generally applicable to all applicants for the same type of loan or extension of credit;

(iii) The terms and conditions applicable with respect to the loan or extension of credit and any credit extended to the borrower under the loan or extension of credit are no more favorable generally to the borrower than the terms and conditions that are generally applicable to loans or extensions of credit offered by the same savings association (or same subsidiary) to other borrowers in comparable circumstances for the same type of loan or extension of credit; and

(iv) The covered OTS employee does not participate in the negotiation for the loan or serve as a co-maker, endorser, or guarantor of the loan or extension of credit.

(3) *Exceptions*—(i) *Credit cards.* A covered OTS employee (or a spouse or minor child of a covered OTS employee) may obtain and hold a credit card account established under an open-end consumer credit plan and issued by an OTS-regulated savings association (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;

(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 that cardholder than the terms and conditions that are generally applicable to credit card accounts offered by the same savings association (or the same subsidiary) to other cardholders in comparable circumstances under open-end consumer credit plans; and

(C) The covered OTS employee must submit a written disqualification to OTS if the cardholder becomes involved in an adversarial dispute with the issuer of the credit card account. The written disqualification must state that the covered OTS employee will not participate in any examination, the review of any application, or any other supervisory or regulatory matter directly affecting the savings association or its subsidiaries. For the purposes of this paragraph (c)(3)(i), a cardholder is involved in an adversarial dispute if he or she is delinquent in payments on the

credit card account; the issuer and the cardholder are negotiating to restructure the credit card debt; the issuer garnishes the cardholder's wages; the cardholder disputes the terms and conditions of the account; or the cardholder becomes involved in any disagreement with the issuer that may cast doubt on the covered OTS employee's ability to remain impartial with respect to the savings association or its subsidiaries. Preliminary inquiries to the issuer regarding the accuracy of billing information or billed items are not, but may become, an adversarial dispute.

(ii) *Loans secured primarily by principal residence.* A covered OTS employee (or a spouse or minor child of a covered OTS employee) may obtain and hold a residential real property loan from an OTS-regulated savings association (or its subsidiary) subject to the following conditions:

(A) The loan must be secured primarily by residential real property that is the borrower's principal residence. The borrower may retain the loan if the residential real property ceases to be that borrower's principal residence. However, any subsequent renewal or renegotiation of the original terms of such a loan must meet the requirements of this paragraph (c)(3)(ii);

(B) The borrower may not apply for the loan while the covered OTS employee participates, or is scheduled to participate, in any examination, the review of any application, or any other supervisory or regulatory matter directly affecting the savings association 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;

(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 that borrower than the terms and conditions that are generally applicable to residential real property loans offered by the same savings association (or same subsidiary) to other borrowers in comparable circumstances for residential real property loans;

(E) The covered OTS employee must inform his or her OTS supervisor and the OTS ethics officer before the borrower applies for a residential real property loan under this paragraph (c)(3)(ii); and

(F) Immediately after the borrower enters into the loan agreement, the covered OTS employee must:

(1) Notify his or her supervisor and the OTS ethics officer of the loan agreement;

(2) Certify that the loan meets the requirements of this paragraph (c)(3)(ii); and

(3) Submit a written disqualification stating that the covered OTS employee will not participate in any examination, the review of any application, or any other supervisory or regulatory matter directly affecting the savings association or its subsidiaries.

(4) *Pre-existing loans.* (i) Other than a credit card account, which must comply with paragraph (c)(3)(i) of this section, a covered OTS employee (or spouse or minor child of a covered OTS employee) may retain a loan from an OTS-regulated savings association (or its subsidiary) on its original terms if:

(A) The loan was incurred before April 30, 1991 or the date that the individual became a covered OTS employee, whichever date is later; or

(B) The savings association (or its subsidiary) acquired the loan in a purchase or other transfer, or acquired the loan in a conversion or merger of the lender.

(ii) A covered OTS employee must notify the OTS ethics officer, in a timely manner, of any loan that meets the requirements of paragraph (c)(4)(i) of this section, and must submit a written disqualification stating that the covered OTS employee will not participate in any examination, the review of any application, or any other supervisory or regulatory matter directly affecting the savings association or its subsidiaries.

(iii) If a covered OTS employee (or his or her spouse or minor child) renews or renegotiates the original terms of a pre-existing loan described in this paragraph (c)(4), the renewed or renegotiated loan will become subject to paragraphs (c)(1) through (c)(3) of this section.

(5) *Loans from holding companies.* An OTS examiner must submit to OTS a written disqualification if the OTS examiner (or a spouse or minor child of an OTS examiner) obtains or holds a loan from a savings and loan holding company or its subsidiary (other than a subsidiary that is an OTS-regulated savings association or its subsidiary, loans from which are covered by paragraph (c)(3) of this section). The written disqualification must state that the examiner will not participate in any examination, the review of any application, or any other supervisory or regulatory matter directly affecting that lender. A disqualification is not required for a loan that would have been permitted and would not have required a disqualification under this paragraph (c), if a savings association (or its subsidiary) had made the loan.

* * * * *

Dated: July 9, 2007.

Robert F. Hoyt,
General Counsel, Department of the Treasury.

Approved: August 14, 2007.

Robert I. Cusick,
Director, Office of Government Ethics.
[FR Doc. E7-16711 Filed 8-22-07; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS-2007-0005]

Emerald Ash Borer; Additions to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the emerald ash borer regulations by designating the States of Illinois, Indiana, and Ohio, in their entirety, as quarantined areas. The interim rule was necessary to prevent the artificial spread of the emerald ash borer into noninfested areas of the United States. As a result of the interim rule, the interstate movement of regulated articles from those States is restricted.

DATES: Effective on August 23, 2007, we are adopting as a final rule the interim rule published at 72 FR 15597-15598 on April 2, 2007.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah McPartlan, National Emerald Ash Borer Program Manager, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737-1236; (301) 734-5356.

SUPPLEMENTARY INFORMATION:

Background

The emerald ash borer (EAB) (*Agrilus planipennis*) is a destructive woodboring insect that attacks ash trees (*Fraxinus* spp., including green ash, white ash, black ash, and several horticultural varieties of ash). The insect, which is indigenous to Asia and known to occur in China, Korea, Japan, Mongolia, the Russian Far East, Taiwan, and Canada, eventually kills healthy ash trees after it bores beneath their bark and disrupts their vascular tissues.

The EAB regulations in 7 CFR 301.53-1 through 301.53-9 (referred to below as the regulations) restrict the interstate