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(6) Qualified profit sharing, retirement or similar plan in which the employee, or spouse or minor child of the employee, has an interest; or

(7) Other entity if the employee, or spouse or minor child of the employee, individually or jointly holds more than a 25 percent equity interest.

(e) *Prohibited recommendations.* Employees of the OTS shall not make recommendations or suggestions, directly or indirectly, concerning the acquisition or sale, or other divestiture of securities of any OTS-regulated savings association or savings association holding company.

(f) *Prohibited purchase of assets.* No covered OTS employee, or spouse or minor child of a covered OTS employee, shall purchase, directly or indirectly, an asset (e.g., real property, automobiles, furniture, or similar items) from a savings association or savings association affiliate, including a savings association holding company, unless it is sold at a public auction or by other means which assure that the selling price is the asset's fair market value.

(g) *Waivers.* An agency designee may grant a written waiver from any provision of this section based on a determination made with the advice and legal clearance of the DAEO or Office of the Chief Counsel 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 agency programs are administered. A waiver under this paragraph may impose appropriate

conditions, such as requiring execution of a written disqualification.

[60 FR 22251, May 5, 1995, as amended at 66 FR 8506, Feb. 1, 2001]

**§3101.110 Additional rules for United States Customs Service employees.**

The following rules apply to the employees of the United States Customs Service and are in addition to §§3101.101 through 3101.104:

(a) *Prohibition on outside employment.* No employee of the USCS shall work for a customs broker, international carrier, bonded warehouse, foreign trade zone, cartman, law firm engaged in the practice of customs law or importation department of a business, nor be employed in any private capacity related to the importation or exportation of merchandise.

(b) *Restrictions arising from employment of relatives.* If the spouse of a USCS employee, or other relative who is dependent on or resides with a USCS employee, is employed in a position that the employee would be prohibited from occupying by paragraph (a) of this section, the employee shall file a report of family member employment with his or her supervisor. Supervisors shall forward such reports to the appropriate Regional Counsel for transmittal to the Chief Counsel. The employee shall be disqualified from participation in any matter involving the relative or the relative's employer unless an agency designee, with the advice and legal clearance of the DAEO or Office of the Chief Counsel, authorizes the employee to participate in the matter using the standard in §2635.502(d) of this title.

**§3101.111 Additional rules for United States Secret Service employees. [Reserved]**

## CHAPTER XXII—FEDERAL DEPOSIT INSURANCE CORPORATION

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

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AUTHORITY: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 12 U.S.C. 1819(a), 1822; 26 U.S.C. 1043; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403, 2635.502, and 2635.803.

SOURCE: 60 FR 20174, Apr. 25, 1995, unless otherwise noted.

**§3201.101 General.**

(a) *Purpose.* The regulations in this part apply to employees of the Federal Deposit Insurance Corporation (Corporation) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. Where specified, these regulations also apply to the Comptroller of the Currency and the Director of the Office of Thrift Supervision in connection with their activities as members of the Corporation's Board of Directors.

(b) *Corporation ethics officials.* The Executive Secretary of the Corporation shall act as the Corporation's Ethics Counselor and as its Designated Agency Ethics Official under 5 CFR part 2638. The Ethics Program Manager shall act as the Corporation's Alter-

nate Ethics Counselor and as the Alternate Agency Ethics Official.

(1) The Ethics Counselor or Alternate Ethics Counselor may delegate authority to one or more employees to serve as Deputy Ethics Counselors.

(2) The delegation to a Deputy Ethics Counselor shall be in writing and cannot be redelegated.

(c) *Agency designees.* The Ethics Counselor and Alternate Ethics Counselor shall serve as the agency designees for purposes of making the determinations, granting the approvals, and taking other actions required by an agency designee under part 2635 and this part. The Ethics Counselor or Alternate Ethics Counselor may delegate authority to Deputy Ethics Counselors or to other employees to serve as agency designees for specified purposes. The delegation to any agency designee shall be in writing and cannot be redelegated.

(d) *Definitions.* For purposes of this part:

(1) *Affiliate*, as defined in 12 U.S.C. 1841(k), means any company that controls, is controlled by, or is under common control with another company.

(2) *Appropriate director* means the head of a Washington office or division or the highest ranking official assigned to a regional office in each division or the Ethics Counselor.

(3)(i) *Assisted entity* means:

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

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

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

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

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

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

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

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

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

(5) *Covered employee* means an employee of the Corporation required to file a public or confidential financial disclosure report under 5 CFR part 2634 or 5 CFR part 3202.

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

(7) *Security* includes an interest in debt or equity instruments. The term includes, without limitation, a secured or unsecured bond, debenture, note, securitized assets, commercial paper, and all types of preferred and common stock. The term includes an interest or right in a security, whether current or contingent, a beneficial or legal interest derived from a trust, the right to acquire or dispose of any long or short position, an interest convertible into a security, and an option, right, warrant, put, or call with respect to a security. The term *security* does not include a deposit account.

(8) *State nonmember bank* means any State bank as defined in 12 U.S.C.

1813(e) which is not a member of the Federal Reserve System.

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

[60 FR 20174, Apr. 25, 1995, as amended at 67 FR 71070, Nov. 29, 2002]

**§ 3201.102 Extensions of credit from FDIC-insured depository institutions.**

(a) *Credit subject to this section.* The prohibition, disqualification, and retention provisions of this section apply to a current or contingent financial obligation of the employee. For purposes of this section, a current or contingent financial obligation of an employee's spouse or minor child is considered to be an obligation of the employee.

(b) *Prohibition on acceptance of credit from FDIC-insured State nonmember banks applicable to certain high-level officials.* (1) An employee described in paragraph (b)(2) of this section shall not, directly or indirectly, accept or become obligated on an extension of credit from an FDIC-insured State nonmember bank or its subsidiary, except credit extended through the use of a credit card under the same terms and conditions as are offered to the general public.

(2) The prohibition in paragraph (b)(1) of this section applies to:

(i) An employee who is a member of the Board of Directors, an assistant or deputy to the Board of Directors or to an appointed Board member, and a covered employee who is an assistant to such person; and

(ii) The director of a Washington office or of a division, other than the Division of Supervision and Consumer Protection, and a covered employee who holds a position immediately subordinate to such director.

(c) *Prohibition on acceptance of credit from FDIC-insured State nonmember banks for employees assigned to the Division of Supervision and Consumer Protection.* (1) An employee described in paragraph (c)(2) of this section shall not, directly or indirectly, accept or become obligated on an extension of credit

from an FDIC-insured State nonmember bank or from an officer, director, employee, or subsidiary of such bank, except:

(i) For an employee assigned to the Washington office, credit extended through the use of a credit card on the same terms and conditions as are offered to the general public;

(ii) For an employee assigned to a regional or area office, credit extended by an FDIC-insured State nonmember bank headquartered outside the employee's region or area of official assignment through the use of a credit card on the same terms and conditions as are offered to the general public;

(iii) For an employee assigned to a field office, credit extended by an FDIC-insured State nonmember bank headquartered outside the employee's field office of official assignment through the use of a credit card on the same terms and conditions as are offered to the general public; and

(iv) For a field office supervisor and supervisory examiner, credit extended by an FDIC-insured State nonmember bank headquartered outside the field office supervisor's and supervisory examiner's respective official territories of assignment through the use of a credit card on the same terms and conditions as are offered to the general public.

(2) The prohibition in paragraph (c)(1) of this section applies to the Director of the Division of Supervision and Consumer Protection, a covered employee immediately subordinate to the Director of the Division of Supervision and Consumer Protection, and the following employees assigned to the Division of Supervision and Consumer Protection: an Assistant Director, Regional Director, Deputy Regional Director, Assistant Regional Director, examiner, assistant examiner, review examiner, compliance examiner, assistant compliance examiner, and a covered employee.

(3) Upon accepting credit extended by a credit card in accordance with paragraph (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this section, the employee shall be disqualified in accordance with paragraph (f)(1) of this section, and, within 30 days of accepting such credit, shall file with the appropriate director a State-

ment of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions for Retention—Notice of Disqualification.

(d) *Two-year prohibition on acceptance of credit from FDIC-insured depository institutions.* (1) An employee described in paragraph (d)(2) of this section shall not, directly or indirectly, accept or become obligated on an extension of credit from an FDIC-insured depository institution or its subsidiary for a period of two years from the date of the employee's last personal and substantial participation in an audit, resolution, liquidation, supervisory proceeding, or internal agency deliberation affecting that particular institution, its predecessor or successor, or any subsidiary of such institution. This prohibition does not apply to credit obtained through the use of a credit card under the same terms and conditions as are offered to the general public.

(2) The prohibition in paragraph (d)(1) of this section applies to an employee in the Division of Finance, Division of Resolutions and Receiverships, Division of Insurance and Research, Legal Division, or who is a member of a standing committee of the Board of Directors whose official duties include:

(i) Audit of insured depository institutions for deposit insurance assessment purposes;

(ii) Resolution or liquidation of failed or failing insured depository institutions;

(iii) Participation in the supervision of insured depository institutions or enforcement proceedings under the Federal Deposit Insurance Act; or

(iv) Internal agency deliberations affecting a particular insured depository institution, its predecessor or successor, or a subsidiary of such institution.

(e) *Prohibition on acceptance of credit from an assisted or assuming entity for employees of the Division of Resolutions and Receiverships.* (1) An employee described in paragraph (e)(2) of this section shall not, directly or indirectly, accept or become obligated on any extension of credit from an assisted or assuming entity located in the employee's region of official assignment. This prohibition does not apply to credit obtained through the use of a credit card

under the same terms and conditions as are offered to the general public.

(2) The prohibition in paragraph (e)(1) of this section applies to a regional director, deputy regional director, and any other covered employee in the Division of Resolutions and Receiverships assigned to a service center or other field office.

(f) *Employee disqualification.* (1) An employee described in paragraph (c)(2) of this section shall not participate in an examination, audit, visitation, review, or investigation, or other particular matter involving an FDIC-insured depository institution or other person with whom the employee has an outstanding extension of credit.

(2) A covered employee, other than an employee who is described in paragraph (c)(2) of this section, shall not participate in any particular matter involving an FDIC-insured depository institution or other person with whom the employee has an outstanding extension of credit.

(3) Disqualification is not required under paragraph (f)(2) of this section:

(i) If the credit was extended through the use of a credit card on the same terms and conditions as are offered to the general public; or

(ii) When the agency designee, with the concurrence of the appropriate director, has authorized the employee to participate in the matter using the standard set forth in 5 CFR 2635.502(d).

(4) The Comptroller of the Currency and the Director of the Office of Thrift Supervision shall be disqualified from matters pending before the Board of Directors to the same extent as a covered employee subject to paragraph (f)(2) of this section.

(g) *Retention and renegotiation of pre-existing extensions of credit.* (1) Nothing in this section prohibits the retention of a pre-existing extension of credit that an employee would be prohibited from accepting by §3201.102(b) or (c) if the extension of credit was permitted to be retained under 12 CFR part 336 prior to the adoption of this regulation or if the employee's acceptance of the extension of credit was proper at the time the obligation was incurred, as in the case of an extension of credit incurred prior to commencement of employment or reassignment to another

division or location. Subsequent action affecting the status of the creditor, such as merger, acquisition, or transaction under 12 U.S.C. 1823, does not change the character of an extension of credit that was proper when incurred. An employee who retains a pre-existing extension that he or she would be prohibited from accepting by §3201.102(b) or (c) shall report the pre-existing extension of credit to the appropriate director or agency designee within 30 days from the following event, as appropriate:

- (i) Adoption of this part;
- (ii) Commencement of employment;
- (iii) Assignment to another division or location; or
- (iv) Action affecting the status of the creditor.

(2) Any renegotiation of a pre-existing extension of credit shall be treated as a new extension of credit that is subject to the prohibitions contained in §3201.102(b) through (d). An employee may request that an exception be made to the prohibitions to permit renegotiation of a pre-existing extension of credit. Any such request shall be made in writing to the appropriate director and agency designee, or in the case of an employee described in paragraph (b)(2)(i) and (ii) of this section, to the Ethics Counselor, stating:

- (i) The purpose of the renegotiation;
- (ii) The terms and conditions of the original extension of credit;
- (iii) The terms and conditions now available to the general public;
- (iv) The terms and conditions now offered to the employee;
- (v) The action the employee has taken to move the loan to an institution from which an employee would not be prohibited from accepting an extension of credit; and
- (vi) The financial hardship, if any, denial of the request will cause.

(3) After submission of the request, the appropriate director and agency designee, or the Ethics Counselor, may grant the employee's request based upon a written determination that the request is not inconsistent with 5 CFR part 2635 or otherwise prohibited by law and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of the misuse of position or

loss of impartiality, or otherwise to ensure confidence in the impartiality and objectivity with which agency programs are administered.

[60 FR 20174, Apr. 25, 1995, as amended at 62 FR 3772, Jan. 27, 1997; 67 FR 71070, Nov. 29, 2002]

**§ 3201.103 Prohibitions on ownership of securities of FDIC-insured depository institutions.**

(a) *Prohibition on ownership.* Except as permitted by this section, an employee or the spouse or minor child of an employee, shall not acquire, own, or control, directly or indirectly, a security of an FDIC-insured depository institution, or an affiliate of an FDIC-insured depository institution.

(b) *Exception to prohibition for certain interests.* Nothing in this section prohibits an employee, or the spouse or minor child of an employee, from:

(1) Acquiring, owning or controlling the securities of certain publicly traded bank holding companies or their nonbank subsidiaries where the bank holding company is not primarily engaged in banking and either the bank holding company or the bank it holds is exempt under the provisions of the Bank Holding Company Act of 1956 and which are identified as such by the Board of Governors of the Federal Reserve System (a list of exempt institutions can be obtained from the Corporation's Ethics Section);

(2) Acquiring, owning, or controlling the securities of certain nonfinancial savings association holding companies whose principal business is unrelated to the financial services industry and which are identified as such by the Office of Thrift Supervision pursuant to 5 CFR 3101.109(b)(3)(ii) (a list of such institutions can be obtained from the Corporation's Ethics Section);

(3) Retaining a security of an FDIC-insured depository institution or an affiliate of an FDIC-insured depository institution if the security was permitted to be retained by the employee under 12 CFR part 336 prior to the adoption of this regulation, was obtained prior to commencement of employment with the Corporation, or was acquired by a spouse prior to marriage to the employee;

(4) Acquiring, owning, or controlling a security of an FDIC-insured depository institution or the affiliate of an FDIC-insured depository institution where the security was acquired by inheritance, gift, stock split, involuntary stock dividend, merger, acquisition, or other change in corporate ownership, exercise of preemptive right, or otherwise without specific intent to acquire the security, or, by an employee's spouse or minor child as part of a compensation package in connection with his or her employment. This provision permits the retention of any such interest only where:

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

(ii) The employee is disqualified in accordance with 5 CFR part 2635, subpart D, from participating in any particular matter that affects his or her financial interests, or that of his or her spouse or minor child;

(5) Acquiring, owning, or controlling an interest in a publicly traded or publicly available investment fund provided that, upon initial or subsequent investment by the employee (excluding ordinary dividend reinvestment), the fund does not have invested, or indicate in its prospectus the intent to invest, more than 30 percent of its assets in the securities of one or more FDIC-insured depository institutions or FDIC-insured depository institution holding companies and the employee neither exercises control nor has the ability to exercise control over the financial interests held in the fund; or

(6) Using an FDIC-insured depository institution or an affiliate of an FDIC-insured depository institution as custodian or trustee of accounts containing tax-deferred retirement funds.

(c) *Divestiture.* Based upon a determination of substantial conflict under 5 CFR 2635.403(b), the Ethics Counselor may require an employee, or the spouse or minor child of an employee, to divest a security he or she is otherwise authorized to retain under paragraph (b) of this section.

[60 FR 20174, Apr. 25, 1995, as amended at 61 FR 35915, July 9, 1996]

**§ 3201.104 Restrictions concerning the purchase of property held by the Corporation or the RTC as conservator, receiver, or liquidator of the assets of an insured depository institution, or by a bridge bank organized by the Corporation.**

(a) *Prohibition on purchase of property.* An employee, and an employee's spouse or minor child shall not, directly or indirectly, purchase or acquire any property held or managed by the Corporation or the Resolution Trust Corporation (RTC) as conservator, receiver, or liquidator of the assets of an insured depository institution, or by a bridge bank organized by the Corporation, regardless of the method of disposition of the property.

(b) *Disqualification.* An employee who is involved in the disposition of assets held by the Corporation or the RTC as conservator, receiver, or liquidator of the assets of an insured depository institution, or by a bridge bank organized by the Corporation shall not participate in the disposition of assets held in such capacities when the employee knows that any party with whom the employee has a covered relationship, as defined in 5 CFR 2635.502(b)(1), is or will be attempting to acquire such assets. The employee shall provide written notification of the disqualification to his or her immediate supervisor and the agency designee.

**§ 3201.105 Prohibition on dealings with former employers, associates, and clients.**

(a) An employee is prohibited for one year from the date of entry on duty with the Corporation from participating in a particular matter when an employer, or the successor to the employer, for whom the employee worked at any time during the one year preceding the employee's entrance on duty is a party or represents a party to the matter.

(b) For purposes of this section, the term *employer* means a person with whom the employee served as officer, director, trustee, general partner, agent, attorney, accountant, consultant, contractor, or employee.

(c) The one-year prohibition imposed by paragraph (a) of this section, and the one-year period preceding the em-

ployee's entrance on duty specified in paragraph (a) of this section, may each be extended in an individual case based on a written determination by the agency designee that, under the particular circumstances, the employee's participation in the particular matter would cause a reasonable person with knowledge of the facts to question his or her impartiality.

**§ 3201.106 Employment of family members outside the Corporation.**

(a) *Disqualification of employees.* An employee shall not participate in an examination, audit, investigation, application, contract, or other particular matter if the employer of the employee's spouse, child, parent, brother, sister, or a member of the employee's household is a party or represents a party to the matter, unless an agency designee authorizes the employee to participate using the standard in 5 CFR 2635.502(d).

(b) *Reporting certain relationships.* A covered employee shall make a written report to an agency designee within 30 days of the employment of the employee's spouse, child, parent, brother, sister, or a member of the employee's household by:

- (1) An FDIC-insured depository institution or its affiliate;
- (2) A firm or business with which, to the employee's knowledge, the Corporation has a contractual or other business or financial relationship;
- (3) A firm or business which, to the employee's knowledge, is seeking a business or contractual relationship with the Corporation.

**§ 3201.107 Outside employment and other activities.**

(a) *Prohibition on employment with FDIC-insured depository institutions.* An employee shall not provide service for compensation, in any capacity, to an FDIC-insured depository institution or an employee or person employed by or connected with such institution.

(b) *Use of professional licenses.* A covered employee who holds a license related to real estate, appraisals, securities, or insurance and whose official duties with the Corporation require personal and substantial involvement in matters related to, respectively, real

estate, appraisal, securities, or insurance is prohibited from using such license, other than in the performance of his or her official duties, for the production of income. The appropriate director, in consultation with an agency designee, may grant exceptions to this prohibition based on a finding that the specific transactions which require use of the license will not create an appearance of loss of impartiality or use of public office for private gain.

(c) *Responsibility to consult with agency designee.* An employee who engages in, or intends to engage in, any outside employment or other activity that may require disqualification from the employee's official duties shall consult with an agency designee prior to engaging in or continuing to engage in the activity.

**§ 3201.108 Related statutory and regulatory authorities.**

(a) 18 U.S.C. 213, which prohibits an examiner from accepting a loan or gratuity from an FDIC-insured depository institution examined by him or her or from any person connected with such institution.

(b) 18 U.S.C. 1906, which prohibits disclosure of information from a bank examination report except as authorized by law.

(c) 17 CFR 240.10b-5 which prohibits the use of manipulative or deceptive devices in connection with the purchase or sale of any security.

(d) 18 U.S.C. 1909, which prohibits examiners from providing any service for compensation for any bank or person connected therewith.

**§ 3201.109 Provisions of 5 CFR part 2635 not applicable to Corporation employees.**

The following provisions of 5 CFR part 2635 are not applicable to employees of the Corporation:

(a) Because of the restrictions imposed by 18 U.S.C. 213 on examiners accepting loans or gratuities, an examiner in the Division of Supervision and Consumer Protection may not use any of the gift exceptions at 5 CFR 2635.204 to accept a gift from an FDIC-insured depository institution examined by him or her or from any person connected with such institution.

(b) Provisions of 41 U.S.C. 423 (Procurement integrity) and the implementing regulations at 48 CFR 3.104 (of the Federal Acquisition Regulation) applicable to procurement officials referred to in:

(1) 5 CFR 2635.202(c)(4)(iii);

(2) The note following 5 CFR 2635.203(b)(7);

(3) Example 5 following 5 CFR 2635.204(a);

(4) Examples 2 and 3 following 5 CFR 2635.703(b)(3);

(5) 5 CFR 2635.902(f), (h), (l), and (bb);

(c) Provisions of 31 U.S.C. 1353 (Acceptance of travel and related expenses from non-Federal sources) and the implementing regulations at 41 CFR part 304-1 (Acceptance of payment from a non-Federal source for travel expenses) referred to in 5 CFR 2635.203(b)(8)(i).

(d) Provisions of 41 CFR Chapter 101 (Federal Property Management Regulations) referred to in 5 CFR 2635.205(a)(4).

(e) Provisions of 41 CFR Chapter 201 (Federal Information Resources Management Regulation) referred to in Example 1 following 5 CFR 2635.704(b)(2).

[60 FR 20174, Apr. 25, 1995, as amended at 67 FR 71070, Nov. 29, 2002]