

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

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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).

SOURCE: 60 FR 22251, May 5, 1995, unless otherwise noted.

§ 3101.101 General.

(a) *Purpose.* In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Department of the Treasury and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. Employees are required to comply with 5 CFR part 2635, this part, and bureau guidance and procedures established pursuant to this section. Department employees are also subject to any additional rules of conduct that the Department or their employing bureaus are authorized to issue. See 31 CFR part 0, Department of the Treasury Employee Rules of Conduct.

(b) *Bureau instructions.* With the concurrence of the Designated Agency Ethics Official (DAEO), bureaus of the Department of the Treasury are authorized to issue instructions or manual issuances providing explanatory guidance and establishing procedures

necessary to implement this part and part 2635 of this title. See 5 CFR 2635.105(c).

(c) *Definition of "agency designee".* As used in this part and in part 2635 of this title, the term "agency designee" refers to any employee who has been delegated authority by an instruction or manual issuance issued by a bureau under paragraph (b) of this section to make a determination, give an approval, or take other action required or permitted by this part or part 2635 of this title with respect to another employee. See 5 CFR 2635.102(b).

§ 3101.102 Designation of separate agency components.

Pursuant to 5 CFR 2635.203(a), each of the following components of the Department of the Treasury is designated as a separate agency for purposes of the regulations contained in subpart B of 5 CFR part 2635 governing gifts from outside sources and 5 CFR 2635.807 governing teaching, speaking or writing:

- (a) Bureau of Alcohol, Tobacco and Firearms (ATF);
- (b) Bureau of Engraving and Printing;
- (c) Bureau of the Public Debt;
- (d) Federal Law Enforcement Training Center;
- (e) Financial Management Service;
- (f) Internal Revenue Service (IRS);
- (g) Office of the Comptroller of the Currency (OCC);
- (h) Office of the Inspector General;
- (i) Office of Thrift Supervision (OTS);
- (j) United States Customs Service (USCS);
- (k) United States Mint; and
- (l) United States Secret Service.

For purposes of this section, employees in the Legal Division shall be considered to be part of the bureaus or offices in which they serve.

NOTE: As a result of the designations contained in this section, employees of the remaining parts of the Department of the Treasury (e.g., employees in Departmental Offices, including the Financial Crimes Enforcement Network) will also be treated as employees of an agency that is separate from all of the above listed bureaus and offices for purposes of determining whether the donor of a gift is a prohibited source under 5 CFR 2635.203(d) and for identifying an employee's "agency" under 5 CFR 2635.807 governing teaching, speaking and writing.

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5 CFR Ch. XXI (1–1–12 Edition)

§ 3101.103 Prohibition on purchase of certain assets.

(a) *General prohibition.* Except as provided in paragraph (b) of this section, no employee of the Department of the Treasury shall purchase, directly or indirectly, property:

(1) Owned by the Government and under the control of the employee's bureau (or a bureau over which the employee exercises supervision); or

(2) Sold under the direction or incident to the functions of the employee's bureau.

(b) *Exceptions.* The prohibition in paragraph (a) of this section does not apply to the purchase of Government securities or items sold generally to the public at fixed prices, such as numismatic items produced by the United States Mint or foreign gifts deposited with the Department pursuant to 5 U.S.C. 7342 that an employee may purchase pursuant to 41 CFR part 101–49.

(c) *Waiver.* An employee may make a purchase otherwise prohibited by this section where a written waiver of the prohibition has been given to the employee by an agency designee with the advice and legal clearance of the DAEO, or the appropriate Office of Chief or Legal Counsel. Such a waiver may be granted only on a determination that the waiver is not otherwise prohibited by law and that, in the mind of a reasonable person with knowledge of the particular circumstances, the purchase of the asset will not raise a question as to whether the employee has used his or her official position or inside information to obtain an advantageous purchase or create an appearance of loss of impartiality in the performance of the employee's duties.

NOTE: Employees of the OCC and OTS are subject to additional limitations on the purchase of assets that are set out in bureau-specific rules contained in §§ 3101.108 and 3101.109.

§ 3101.104 Outside employment.

(a) *General requirement for prior approval.* All Department of the Treasury employees shall obtain prior written approval before engaging in any outside employment or business activities, with or without compensation, except to the extent that the employing bureau issues an instruction or manual

issuance pursuant to paragraph (b) of this section exempting an activity or class of activities from this requirement. Approval shall be granted only on a determination that the employment or activity is not expected to involve conduct prohibited by statute, part 2635 of this title, or any provision of this part.

NOTE: Employees of the ATF, IRS, Legal Division, OCC, USCS and United States Secret Service are subject to additional limitations on outside employment and activities that are set out in bureau-specific rules contained in this part.

(b) *Bureau responsibilities.* Each bureau, which for the purposes of this section includes the Departmental Offices and the Office of the Inspector General, shall issue instructions or manual issuances governing the submission of requests for approval of outside employment or business activities and designating appropriate officials to act on such requests. The instructions or manual issuances may exempt categories of employment or activities from the prior approval requirement based on a determination that employment or activities within those categories would generally be approved and are not likely to involve conduct prohibited by statute, part 2635 of this title or any provision of this part. Bureaus may include in their instructions or issuances examples of outside employment or activities that are permissible or impermissible consistent with this part and part 2635 of this title. Bureaus shall retain in employees' Official Personnel Folders (temporary side) all requests for approval whether granted or denied.

§ 3101.105 Additional rules for Bureau of Alcohol, Tobacco and Firearms employees.

The following rules apply to the employees of the Bureau of Alcohol, Tobacco and Firearms and are in addition to §§ 3101.101 through 3101.104:

(a) *Prohibited financial interests.* Except as provided in this section, no employee of the ATF, or spouse or minor child of an ATF employee, shall have, directly or indirectly, any financial interest, including compensated employment, in the alcohol, tobacco, firearms

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or explosives industries. The term financial interest is defined in § 2635.403(c) of this title.

(b) *Waiver.* An agency designee, with the advice and legal clearance of the DAEO or Office of the Chief Counsel, may grant a written waiver of the prohibition in paragraph (a) of this section on a determination that the financial interest is not prohibited by 26 U.S.C. 7214(b) and that, in the mind of a reasonable person with knowledge of the particular circumstances, the financial interest will not create an appearance of misuse of position or loss of impartiality, or call into question the impartiality and objectivity with which the ATF's programs are administered. A waiver under this paragraph may require appropriate conditions, such as execution of a written disqualification.

§ 3101.106 Additional rules for Internal Revenue Service employees.

The following rules apply to the employees of the Internal Revenue Service and are in addition to §§ 3101.101 through 3101.104:

(a) *Prohibited recommendations.* Employees of the IRS shall not recommend, refer or suggest, specifically or by implication, any attorney, accountant, or firm of attorneys or accountants to any person in connection with any official business which involves or may involve the IRS.

(b) *Prohibited outside employment.* Involvement by an employee of the IRS in the following types of outside employment or business activities is prohibited and shall constitute a conflict with the employee's official duties pursuant to 5 CFR 2635.802:

(1) Performance of legal services involving Federal, State or local tax matters;

(2) Appearing on behalf of any taxpayer as a representative before any Federal, State, or local government agency, in an action involving a tax matter except on written authorization of the Commissioner of Internal Revenue;

(3) Engaging in accounting, or the use, analysis, and interpretation of financial records when such activity involves tax matters;

(4) Engaging in bookkeeping, the recording of transactions, or the record-

making phase of accounting, when such activity is directly related to a tax determination; and

(5) Engaging in the preparation of tax returns for compensation, gift, or favor.

(c) *Seasonal employees.* Seasonal employees of the IRS while in non-duty status may engage in outside employment or activities other than those prohibited by paragraph (b) of this section without obtaining prior written permission.

§ 3101.107 Additional rules for Legal Division employees.

The following rules apply to the employees of the Legal Division and are in addition to §§ 3101.101 through 3101.104:

(a) *Application of rules of other bureaus.* In addition to the rule contained in paragraph (b) of this section, employees in the Legal Division shall be covered by the rules contained in this part that are applicable to employees of the bureaus or offices in which the Legal Division employees serve, subject to any instructions which the General Counsel or appropriate Chief or Legal Counsel may issue in accordance with § 3101.101(b).

(b) *Prohibited outside employment.* Pursuant to 5 CFR 2635.802, it is prohibited and shall constitute a conflict with the employee's official duties for an attorney employed in the Legal Division to engage in the outside practice of law that might require the attorney to:

(1) Take a position that is or appears to be in conflict with the interests of the Department of the Treasury which is the client to whom the attorney owes a professional responsibility; or

(2) Interpret any statute, regulation or rule administered or issued by the Department.

§ 3101.108 Additional rules for Office of the Comptroller of the Currency employees.

The following rules apply to the employees of the Office of the Comptroller of the Currency and are in addition to §§ 3101.101–3101.104:

(a) *Prohibited financial interests—(1) Prohibition.* Except as provided in paragraphs (a)(3) and (g) of this section, no OCC employee, or spouse or minor child of an OCC employee, shall own,

directly or indirectly, securities of any commercial bank (including both national and State-chartered banks) or commercial bank affiliate, including a bank holding company.

(2) *Definition of “securities”*. For purposes of paragraphs (a)(1) and (a)(3) of this section, the term “securities” includes all interests in debt or equity instruments. The term includes, without limitation, secured and unsecured bonds, debentures, notes, securitized assets and commercial paper, as well as all types of preferred and common stock. The term encompasses both current and contingent ownership interests, including any beneficial or legal interest derived from a trust. It extends to any right to acquire or dispose of any long or short position in such securities and includes, without limitation, interests convertible into such securities, as well as options, rights, warrants, puts, calls, and straddles with respect thereto.

(3) *Exceptions*. Nothing in this section prohibits an OCC employee, or spouse or minor child of an OCC employee, from:

(i) Investing in a publicly traded or publicly available mutual fund or other collective investment fund or in a widely held pension or similar fund provided that the fund does not invest more than 25 percent of its assets in securities of one or more commercial banks (including both national and State-chartered banks) and commercial bank affiliates (including bank holding companies) and the employee neither exercises control over nor has the ability to exercise control over the financial interests held in the fund;

(ii) Investing in the publicly traded securities of a holding company of a nonbank bank or of a retailing firm that owns or sponsors a credit card bank as defined by the Competitive Equality Banking Act of 1987, except that an employee who owns such an interest must be disqualified from participating in the regulation or supervision of the nonbank bank or the credit card bank;

(iii) Using a commercial bank or commercial bank affiliate as custodian or trustee of accounts containing tax-deferred retirement funds; or

(iv) Owning any security pursuant to a waiver granted under paragraph (g) of this section.

(b) *Prohibited borrowing*—(1) *Prohibition on employee borrowing*. Except as provided in this section, no covered OCC employee shall seek or obtain credit from any national bank or from an officer, director, employee, or subsidiary of any national bank.

(2) *Prohibition on borrowing by a spouse or minor child*. The prohibition in paragraph (b)(1) of this section shall apply to the spouse or minor child of a covered OCC employee unless the loan or extension of credit:

(i) Is supported only by the income or independent means of the spouse or minor child;

(ii) Is obtained on terms and conditions no more favorable than those offered to the general public; and

(iii) The covered OCC employee does not participate in the negotiation for the loan or serve as co-maker, endorser, or guarantor of the loan.

(3) *Covered OCC employee*. For purposes of the prohibitions on borrowing contained in paragraphs (b)(1) and (b)(2) of this section, “covered OCC employee” means:

(i) An OCC bank examiner; and

(ii) Any other OCC employee specified in an OCC instruction or manual issuance whose duties and responsibilities, as determined by the Comptroller of the Currency or his or her designee, require application of the prohibition on borrowing contained in this section to ensure public confidence that the OCC’s programs are conducted impartially and objectively.

(4) *Exceptions*—(i) *Non-examiners*. A covered OCC employee, other than an examiner, or the spouse or minor child of such a covered OCC employee, may seek or obtain a credit card from a national bank if the credit card is sought or obtained on terms and conditions no more favorable than those offered to the general public.

(ii) *Examiners*. (A) An examiner, or the spouse or minor child of an examiner to whom the prohibition in paragraph (b)(1) of this section applies, may seek or obtain a credit card from a national bank the examiner is not assigned to examine so long as the credit

card is obtained on terms and conditions no more favorable than those offered to the general public and the examiner submits to the Chief Counsel or designee a written disqualification from the examination of that bank. Such a recusal would not prevent an examiner from participating in other bank supervision matters outside the scope of an examination, such as licensing or supervisory policy decisions.

(B) For purposes of this section, examiners are assigned to examine a bank if they work:

(1) In a district, and the bank is one they examine or that is assigned to their Assistant Deputy Comptroller or rating official; or

(2) In Large Bank Supervision or Washington, D.C. Headquarters, and the bank is one to which they are regularly or otherwise assigned.

(5) *Pre-existing credit.* This section does not prohibit a covered OCC employee, or spouse or minor child of a covered OCC employee, from retaining a loan from a national bank on its original terms if the loan was incurred prior to employment by the OCC or as a result of the sale or transfer of a loan to a national bank or the conversion or merger of the lender into a national bank. Any renewal or renegotiation of a pre-existing loan or extension of credit will be treated as a new loan subject to the prohibitions in paragraphs (b)(1) and (b)(2) of this section.

(c) *Restrictions arising from third party relationships.* If any of the entities listed in paragraphs (c)(1) through (c)(7) of this section have securities that an OCC employee would be prohibited from having by paragraph (a) of this section, or loans or extensions of credit that a covered OCC employee would be prohibited from obtaining under paragraph (b) of this section, the employee shall promptly report such interests to the Chief Counsel or designee. The Chief Counsel or designee may require the employee to terminate the third party relationship, undertake an appropriate disqualification, or take other appropriate action necessary, under the particular circumstances, to avoid a statutory violation or a violation of part 2635 of this title, or this part, including an appearance of mis-

use of position or loss of impartiality. This paragraph applies to any:

(1) Partnership in which the employee, or spouse or minor child of the employee, is a general partner;

(2) Partnership in which the employee, or spouse or minor child of the employee, individually or jointly holds more than a 10 percent limited partnership interest;

(3) Closely held corporation in which the employee, or spouse or minor child of the employee, individually or jointly holds more than a 10 percent equity interest;

(4) Trust in which the employee, or spouse or minor child of the employee, has a legal or beneficial interest;

(5) Investment club or similar informal investment arrangement between the employee, or spouse or minor child of the employee, and others;

(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.

(d) *Prohibited recommendations.* Employees of the OCC shall not make recommendations or suggestions, directly or indirectly, concerning the acquisition or sale or other divestiture of securities of any commercial bank or commercial bank affiliate, including a bank holding company.

(e) *Prohibited purchase of assets.* No employee of the OCC, or spouse or minor child of an OCC employee, shall purchase, directly or indirectly, an asset (e.g., real property, automobiles, furniture, or similar items) from a national bank or national bank affiliate, including a bank 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.

(f) *Outside employment—(1) Prohibition on outside employment.* No covered OCC employee shall perform services for compensation for any bank, banking or loan association, or national bank affiliate, or for any officer, director or employee of, or for any person connected in any capacity with a bank,

banking or loan association or national bank affiliate.

(2) *Covered OCC employee.* For purposes of the prohibitions on outside employment contained in paragraph (f)(1) of this section, “covered OCC employee” means:

- (i) An OCC bank examiner; and
- (ii) Any other OCC employee specified in an OCC instruction or manual issuance whose duties and responsibilities, as determined by the Comptroller of the Currency or his or her designee, require application of the prohibition on outside employment contained in this section to ensure public confidence that the OCC’s programs are conducted impartially and objectively.

(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 67 FR 46841, July 17, 2002]

§3101.109 Additional rules for Office of Thrift Supervision employees.

The following rules apply to the employees of the Office of Thrift Supervision and are in addition to §§3101.101 through 3101.104:

(a) *Covered OTS employee.* For purposes of this section, the term “covered OTS employee” means:

- (1) An OTS examiner;
- (2) An employee in a position at OTS grade 17 or above; and
- (3) Any other OTS employee specified in an OTS instruction or manual issuance whose duties and responsibilities, as determined by the Director of the OTS or his or her designee, require application of the prohibitions contained in this section to ensure public

confidence that the OTS’s programs are conducted impartially and objectively.

(b) *Prohibited financial interests—(1) Prohibition.* Except as provided in paragraphs (b)(3) and (g) of this section, no covered OTS employee, or spouse or minor child of a covered OTS employee, shall own, directly or indirectly, securities of any OTS-regulated savings association or savings association holding company.

(2) *Definition of “securities”.* For purposes of paragraphs (b)(1) and (b)(3) of this section, the term “securities” includes all interests in debt or equity instruments. The term includes, without limitation, secured and unsecured bonds, debentures, notes, securitized assets and commercial paper, as well as all types of preferred and common stock. The term encompasses both current and contingent ownership interests, including any beneficial or legal interest derived from a trust. It extends to any right to acquire or dispose of any long or short position in such securities and includes, without limitation, interests convertible into such securities, as well as options, rights, warrants, puts, calls, and straddles with respect thereto.

(3) *Exceptions.* Nothing in this section prohibits a covered OTS employee, or spouse or minor child of a covered OTS employee, from:

(i) Investing in a publicly traded or publicly available mutual fund or other collective investment fund or in a widely held pension or similar fund provided that the fund does not invest more than 25 percent of its assets in securities of one or more OTS-regulated savings associations or savings association holding companies and the employee neither exercises control over nor has the ability to exercise control over the financial interests held in the fund;

(ii) Investing in certain non-financial holding companies whose principal business is unrelated to the financial services industry and which are identified as such on a list maintained by the Chief Counsel of the OTS;

(iii) Using a savings association as custodian or trustee of accounts containing tax-deferred retirement funds; or

(iv) Owning any security pursuant to a waiver granted under paragraph (g) of this section.

(c) *Prohibited borrowing*—(1) *Prohibition on employee borrowing.* Except as provided in this section, no covered OTS employee shall seek or obtain any loan or extension of credit from any OTS-regulated savings association or from an officer, director, employee, or subsidiary of any such association.

(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.

(d) *Restrictions arising from third party relationships.* If any of the entities listed in paragraphs (d)(1) through (d)(7) of this section have securities that a covered OTS employee would be prohibited from having by paragraph (b) of this

section, or loans or extensions of credit that a covered OTS employee would be prohibited from obtaining under paragraph (c) of this section, the employee shall promptly report such interests to the Chief Counsel or designee. The Chief Counsel or designee may require the employee to terminate the third party relationship, undertake an appropriate disqualification, or take other appropriate action necessary, under the particular circumstances, to avoid a statutory violation or a violation of part 2635 of this title or this part, including an appearance of misuse of position or loss of impartiality. This paragraph (d) applies to any:

(1) Partnership in which the employee, or spouse or minor child of the employee, is a general partner;

(2) Partnership in which the employee, or spouse or minor child of the employee, individually or jointly holds more than a 10 percent limited partnership interest;

(3) Closely held corporation in which the employee, or spouse or minor child of the employee, individually or jointly holds more than a 10 percent equity interest;

(4) Trust in which the employee, or spouse or minor child of the employee, has a legal or beneficial interest;

(5) Investment club or similar informal investment arrangement between the employee, or spouse or minor child of the employee, and others;

(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; 72 FR 48224, Aug. 23, 2007]

§ 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

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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

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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]