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FEDERAL RESERVE SYSTEM

5 CFR Chapter LVIII

12 CFR Part 264

[Docket No. R-0900]

RIN 3209-AA15

Supplemental Standards of Ethical Conduct for Employees of the Board of Governors of the Federal Reserve System

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System, with the concurrence of the Office of Government Ethics (OGE), is issuing a final rule establishing uniform standards of ethical conduct for employees of the Board to supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE. The regulation is a necessary supplement to the Executive Branch-wide Standards because it addresses ethical issues unique to the Board, establishing rules relating to: financial interests and transactions; borrowing and extensions of credit; employment relationships of immediate family members; and outside employment. The Board is also replacing its old employee conduct regulation with a residual cross-reference to the new provisions.

EFFECTIVE DATE: November 1, 1996.

FOR FURTHER INFORMATION CONTACT: Cary Williams, Managing Senior Counsel, Legal Division, Board of Governors of the Federal Reserve System, telephone (202) 452-3295, FAX (202) 452-3101. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202) 452-3544.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, OGE published the Standards of Ethical Conduct for Employees in the Executive Branch. See 57 FR 35006-35067, as corrected at 57 FR 48557, 57 FR 52583 and 60 FR 51667, and amended at 61 FR 41162-41164 (as corrected at 61 FR 48733) and 61 FR 50689-50691, with additional grace period extensions at 59 FR 4779-4780, 60 FR 6390-6391, 60 FR 66857-66858, and 61 FR 40950-40952. The Executive Branch-wide Standards are now codified at 5 CFR part 2635. Effective February 3, 1993, they established uniform ethical conduct standards applicable to all executive branch personnel.

With the concurrence of OGE, 5 CFR 2635.105 authorizes executive agencies to publish agency-specific supplemental regulations necessary to implement their respective ethics programs. On December 19, 1995, the Board, with OGE's concurrence, published for comment a proposed rule to establish supplemental standards of ethical conduct for Board employees (60 FR 65249-65254). The Board, with OGE's concurrence determined that the proposed supplemental regulations were necessary to implement the Board's ethics program successfully, in light of the Board's unique programs and operations.

The proposed rule prescribed a 60-day comment period and invited comments from all interested parties. The Board received no comments but has made two modifications to the rule as proposed in adopting this final rule, with OGE concurrence. The first modification affects § 6801.103(d). Section 6801.103(a) prohibits a Board employee and his or her spouse or minor child from owning or controlling any debt or equity interest in a depository institution or its affiliates or of a primary government securities dealer or its affiliates. Sections 6801.103(b) and (c) provide limited exceptions to this prohibition for interests in certain nonbanking holding companies and their affiliates and for interests for which a waiver is issued. Paragraph (d) requires employees to consult with the Designated Agency Ethics Official (DAEO) concerning the need for recusal as a result of retaining an interest held due to an exception or a waiver. The proposed rule provided

that such consultation would be necessary if the interest was in a "holding company." In fact, limiting the scope of the provision in this way was unintentional, as the employee should consult with the DAEO regarding recusal if an otherwise prohibited interest is held in a bank or other entity, not just in a holding company. For this reason, the term "holding company" in § 6801.103(d) of the proposed rule has been replaced with the term "entity" in the final rule.

The second modification affects § 6801.108. Proposed § 6801.108(a) would have required a supervisory employee who had knowledge that a member of his or her immediate family was employed by a depository institution to "report such employment to his or her supervisor and the Ethics Office within thirty days of the commencement of the supervisory employee's employment at the Board or promptly upon learning of the employment relationship." The Board has since concluded that imposing such a reporting requirement on supervisory employees is unnecessary. Supervisory employees will be asked to provide certain information about their credit relationships on an annual disclosure form, and a space will be provided on this form for employees to disclose information about their immediate family members' employment by depository institutions. It is felt that this level of reporting is sufficient to serve the purpose of notifying supervisors of a possible need for disqualification. Section 6801.108(b) in the proposed regulation requiring a supervisory employee's disqualification from a matter involving a depository institution that employs a member of his or her immediate family has been renumbered and is now § 6801.108. Otherwise, it remains unchanged.

II. Repeal of the Board's Regulations on Employee Responsibilities and Conduct

The Board is also repealing its regulations on the Responsibilities and Conduct of Board Employees, 12 CFR part 264, and adding a residual cross-reference to the new provisions.

III. Matters of Regulatory Procedure *Administrative Procedure Act*

The Board has found good cause pursuant to 5 U.S.C. 553(d)(3) for waiving, as unnecessary and contrary to

the public interest, the 30-day delayed effective date requirement as to this final rule. The reason for this determination is that the Board's old ethics rules regarding outside employment and prohibited financial interests will no longer be effective after November 1, 1996 under OGE's latest grace period extension. It is important to the Board's ethics program that the new part 6801 supplemental standards regulation take effect before that expiration date. In addition, this rulemaking is related to Board management and personnel.

Regulatory Flexibility Act

The Board has determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant economic impact on a substantial number of small entities because it primarily affects Board employees and their families.

Paperwork Reduction Act

The Board has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects

5 CFR Part 6801

Conflict of interests, Government employees.

12 CFR Part 264

Conflict of interests, Federal Reserve System.

Dated: October 4, 1996.

William W. Wiles,

Secretary, Board of Governors of the Federal Reserve System.

Approved: October 4, 1996.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Board, with the concurrence with the Office of Government Ethics, is amending title 5 and chapter II of title 12 of the Code of Federal Regulations as follows:

TITLE 5—[AMENDED]

1. A new chapter LVIII, consisting of part 6801, is added to title 5 of the Code of Federal Regulations to read as follows:

CHAPTER LVIII—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

PART 6801—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Sec.

- 6801.101 Purpose.
- 6801.102 Definitions.
- 6801.103 Prohibited financial interests.
- 6801.104 Speculative dealings. [Reserved]
- 6801.105 Prohibition on preferential terms from regulated institutions.
- 6801.106 Prohibition on supervisory employees' seeking credit from institutions involved in work assignments.
- 6801.107 Disqualification of supervisory employees from matters involving lenders.
- 6801.108 Restrictions resulting from employment of family members.
- 6801.109 Prior approval for compensated outside employment.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 12 U.S.C. 244, 248; 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(a), 2635.502, 2635.803.

§ 6801.101 Purpose.

In accordance with 5 CFR 2635.105, the regulations in this part supplement the Standards of Ethical Conduct for Employees of the Executive Branch found at 5 CFR part 2635. They apply to members and other employees of the Board of Governors of the Federal Reserve System ("Board").

§ 6801.102 Definitions.

For purposes of this part:

(a) *Affiliate* means any company that controls, is controlled by, or is under common corporate control with another company.

(b) (1) *Debt or equity interest* includes secured and unsecured bonds, debentures, notes, securitized assets, commercial paper, and preferred and common stock. The term encompasses both current and contingent ownership interests therein; any such beneficial or legal interest derived from a trust; any right to acquire or dispose of any long or short position in debt or equity interests; any interests convertible into debt or equity interests; and any options, rights, warrants, puts, calls, straddles, and derivatives with respect thereto.

(2) *Debt or equity interest* does not include deposits; credit union shares; any future interest created by someone other than the employee, his or her spouse, or dependent; or any right as a

beneficiary of an estate that has not been settled.

(c) *Dependent child* means an employee's son, daughter, stepson, or stepdaughter if:

(1) Unmarried, under the age of 21, and living in the employee's household; or

(2) Claimed as a "dependent" on the employee's income tax return.

(d) *Depository institution* means a bank, trust company, thrift institution, or any institution that accepts deposits, including a bank chartered under the laws of a foreign country.

(e) *Employee* means an officer or employee of the Board, including a Board member. It does not include a special Government employee.

(f) *Primary government securities dealer* means a firm with which the Federal Reserve conducts its open market operations.

(g) *Supervisory employee* means an employee who is a member of the professional staff at the Board with responsibilities in the area of banking supervision and regulation.

§ 6801.103 Prohibited financial interests.

(a) *Prohibited interests.* Except as permitted by this section, an employee, or an employee's spouse or minor child, shall not own or control, directly or indirectly, any debt or equity interest in:

(1) A depository institution or any of its affiliates; or

(2) A primary government securities dealer or any of its affiliates.

(b) *Exceptions.* The prohibition in paragraph (a) of this section does not apply to the ownership or control of a debt or equity interest in the following:

(1) *Nonbanking holding companies.* A publicly traded holding company that:

(i) Owns a bank and either the holding company or the bank is exempt under the Bank Holding Company Act of 1956, 12 U.S.C. 1841 *et seq.*, (for example, a credit card bank, a nonbank bank or a grandfathered bank holding company), and the holding company's predominant activity is not the ownership or operation of banks and thrifts;

(ii) Owns a thrift and its predominant activity is not the ownership or operation of banks and thrifts; or

(iii) Owns a primary government securities dealer and its predominant activity is not the ownership or operation of banks, thrifts or securities firms.

(2) *Mutual funds.* A publicly traded or publicly available mutual fund or other collective investment fund if:

(i) The fund does not have a stated policy of concentration in the financial services industry; and

(ii) Neither the employee nor the employee's spouse exercises or has the ability to exercise control over the financial interests held by the fund or their selection.

(3) *Pension plans.* A widely held, diversified pension or other retirement fund that is administered by an independent trustee.

(c) *Waivers.* The Board's Designated Agency Ethics Official, in consultation with Division management, may grant a written waiver permitting the employee to own or control a debt or equity interest prohibited by paragraph (a) of this section if:

(1) Extenuating circumstances exist, such as that ownership or control was acquired:

(i) Through inheritance, gift, merger, acquisition, or other change in corporate structure, or otherwise without specific intent on the part of the employee, spouse, or minor child to acquire the debt or equity interest; or

(ii) By an employee's spouse as part of a compensation package in connection with the spouse's employment or prior to marriage to the employee;

(2) The employee makes a prompt and complete written disclosure of the interest;

(3) The employee's disqualification from participating in any particular matter having a direct and predictable effect on the institution or any of its affiliates does not unduly interfere with the full performance of the employee's duties; and

(4) Granting the waiver would be consistent with Division policy.

(d) *Disqualification.* If an employee or an employee's spouse or minor child holds an interest in an entity under paragraph (b)(1) or (c) of this section, the employee must consult the Designated Agency Ethics Official in order to determine whether the employee must be disqualified from participating in any particular matter involving that entity or affiliate under the conflicts of interest rules of the Office of Government Ethics.

§ 6801.104 Speculative dealings.
[Reserved]

§ 6801.105 Prohibition on preferential terms from regulated institutions.

An employee may not accept a loan from, or enter into any other financial relationship with, an institution regulated by the Board, if the loan or financial relationship is governed by terms more favorable than would be available in like circumstances to members of the public.

§ 6801.106 Prohibition on supervisory employees' seeking credit from institutions involved in work assignments.

(a) *Prohibition on supervisory employee's seeking credit.* (1) A supervisory employee may not, on his or her own behalf, or on behalf of his or her spouse or child or anyone else (including any business or nonprofit organization), seek or accept credit from, or renew or renegotiate credit with, a depository institution or any of its affiliates if the institution or affiliate is a party to an application, enforcement action, investigation, or other particular matter involving specific parties pending before the Board and:

(i) The supervisory employee is assigned to the matter; or

(ii) The supervisory employee is aware of the pendency of the matter and knows that he or she will participate in the matter by action, advice or recommendation.

(2) The prohibition in paragraph (a)(1) of this section also applies for three months after the supervisory employee's participation in the matter has ended.

(b) *Credit sought by spouse and other related persons.* A supervisory employee must disqualify himself or herself from participating (by action, advice or recommendation) in any application, enforcement action, investigation or other particular matter involving specific parties to which a depository institution or any of its affiliates is a party as soon as the supervisory employee learns that any of the following related persons are seeking or have sought or accepted credit from, or have renewed or renegotiated credit with, the depository institution or any of its affiliates while the matter is pending before the Board:

(1) The employee's spouse or dependent child;

(2) A company or business if the employee or the employee's spouse or dependent child owns or controls more than 10 percent of its equity; or

(3) A partnership if the employee, or the employee's spouse or dependent child is a general partner.

(c) *Exception.* The prohibition in paragraph (a) of this section and the disqualification requirement in paragraph (b) of this section do not apply with respect to credit obtained through the use of a credit card or overdraft protection on terms and conditions available to the public.

(d) *Waivers.* The Board's Designated Agency Ethics Official, after consulting with the relevant division director, may grant a written waiver from the prohibition in paragraph (a) of this section, or the disqualification requirement in paragraph (b) of this

section, based on a determination that participation in matters otherwise prohibited by this section would not create an appearance of loss of impartiality or use of public office for private gain, and would not otherwise be inconsistent with the Office of Government Ethics' Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2635) or prohibited by law.

§ 6801.107 Disqualification of supervisory employees from matters involving lenders.

(a) *Disqualification required.* A supervisory employee may not participate by action, advice or recommendation in any application, enforcement action, investigation, or other particular matter involving specific parties to which a depository institution or its affiliate is a party if any of the following are indebted to the depository institution or any of its affiliates:

(1) The employee;

(2) The spouse or dependent child of the employee;

(3) A company or business if the employee or the employee's spouse or dependent child owns or controls more than 10 percent of its equity; or

(4) A partnership if the employee or the employee's spouse or dependent child is a general partner.

(b) *Exceptions—(1) Consumer credit on nonpreferential terms.*

Disqualification of a supervisory employee is not required by paragraph (a) of this section for the following types of indebtedness if payment on the indebtedness is current and the indebtedness is on terms and conditions offered to the public:

(i) Credit extended through the use of a credit card;

(ii) Credit extended through use of an overdraft protection line;

(iii) Amortizing consumer credit (e.g., home mortgage loans, automobile loans); and

(iv) Credit extended under home equity lines of credit.

(2) *Indebtedness of a spouse or dependent child.* Disqualification is not required with respect to any indebtedness of the employee's spouse or dependent child, or a company, business or partnership in which the spouse or dependent child has an interest described in paragraphs (a)(3) and (a)(4) of this section, if:

(i) The indebtedness represents the sole financial interest or responsibility of the spouse, child, company, business or partnership and is not derived from the employee's income, assets or activities; and

(ii) The employee has no knowledge of the identity of the lender.

(c) *Waivers.* The Board's Designated Agency Ethics Official, after consulting with the relevant Division director, may grant a written waiver from the disqualification requirement in paragraph (a) of this section using the authorization process set forth in the Office of Government Ethics' Standards of Ethical Conduct at 5 CFR 2635.502(d).

§ 6801.108 Restrictions resulting from employment of family members.

A supervisory employee may not participate in any particular matter to which a depository institution or its affiliate is a party if the depository institution or affiliate employs his or her spouse, child, parent or sibling unless the supervising officer, with the concurrence of the Board's Designated Agency Ethics Official, has authorized the employee to participate in the matter using the authorization process set forth in the Office of Government Ethics' Standards of Ethical Conduct at 5 CFR 2635.502(d).

§ 6801.109 Prior approval for compensated outside employment.

(a) *Approval requirement.* An employee shall obtain prior written approval from his or her Division director (or the Division director's designee) and the concurrence of the Board's Designated Agency Ethics Official before engaging in compensated outside employment.

(b) *Standard for approval.* Approval will be granted unless a determination is made that the prospective outside employment is expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and this part.

(c) *Definition of employment.* For purposes of this section, the term compensated outside employment means any form of compensated non-Federal employment or business relationship involving the provision of personal services by the employee. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher or speaker.

TITLE 12—BANKS AND BANKING

CHAPTER II—FEDERAL RESERVE SYSTEM

2. 12 CFR part 264 is revised to read as follows:

PART 264—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Authority: 5 U.S.C. 7301; 12 U.S.C. 244.

§ 264.101 Cross-reference to employees' ethical conduct standards and financial disclosure regulations.

Employees of the Board of Governors of the Federal Reserve System (Board) are subject to the executive branch-wide standards of ethical conduct at 5 CFR part 2635 and the Board's regulation at 5 CFR part 6801, which supplements the executive branch-wide standards, and the executive branch-wide financial disclosure regulation at 5 CFR part 2634.

[FR Doc. 96-26407 Filed 10-15-96; 8:45 am]
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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 235, 286 and 299

[INS No. 1675-94]

RIN 1115-AD82

Collection of Fees Under the Dedicated Commuter Lane Program; Port Passenger Accelerated Service System (PORTPASS) Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: The Immigration and Naturalization Service (Service) published an interim rule with request for comments on September 29, 1995, which allowed for implementation of additional land border inspection fee projects designed to facilitate the entry of identified, low-risk, legitimate border crossers on the northern border. The rule also allowed for the implementation of a pilot dedicated commuter lane (DCL) to facilitate the entry of identified, low-risk, legitimate border crossers on the California-Mexico border. This final rule clarifies and better defines the interim rule, and addresses questions and practical issues which arose during the operation of the pilot dedicated commuter lane (DCL) on the California-Mexico border at the Otay Mesa Port of Entry (POE).

EFFECTIVE DATE: October 16, 1996.

FOR FURTHER INFORMATION CONTACT: Robert A. Mocny, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street, NW., Room 4064, Washington, DC 20536, telephone (202) 514-3019.

SUPPLEMENTARY INFORMATION: The provisions of Public Law 101-515, dated November 5, 1990, authorized the establishment of pilot projects at land

border POEs for which a fee may be charged and collected for inspection services provided at land border POEs. The implementing regulation which established pilot programs for the charging of a land border user fee for inspection services was published as an interim rule by the Service on May 13, 1991, at 56 FR 21917-21920. That interim rule placed all eligibility requirements, application processes, and compliance requirements pertaining to inspection user fees in § 286.6.

On September 29, 1995, the Commissioner, Immigration and Naturalization Service, published in the Federal Register at 60 FR 50386-50399, an interim rule with request for comments by November 28, 1995. The interim rule added a variety of border inspection pilot projects to selected POEs on the northern and California-Mexico land borders, and moved application and eligibility requirements for those persons seeking to participate in any of the pilot projects from 8 CFR 286.8 to 8 CFR 235.13. Expanding and testing pilot projects on land borders facilitates the entry of low-risk, legitimate border crossers, while still safeguarding the integrity of the United States land borders.

No comments were received on the interim rule. However, the following summarizes and explains the changes made in this final rule which clarify and address practical issues which arose during implementation and operation of the pilot program.

PORTPASS Program Definitions—§ 235.13(a)(1)

The effect of use of the PORTPASS Program by an alien participant was distinguished from use of the program by the U.S. citizen participant. Each time the alien uses the PORTPASS program he or she is making an "entry" as defined by section 101(a)(13) of the Immigration and Nationality Act (Act), as amended, a term which is not applicable to U.S. citizens.

In the definition under "DCL System Costs Fee," a vehicle fee was added to cover the costs in certain situations of a participant registering more than one vehicle, and expiration dates were clarified.

Eligibility Requirements—§ 235.13(a)(3)

Additional notice is provided that criminal history databases will be accessed in order to determine an applicant's program eligibility.

Application—§ 235.13(a)(4) and (5)

This paragraph was rewritten to allow for better organization and understanding of the application