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FEDERAL DEPOSIT INSURANCE CORPORATION

5 CFR Part 3201

12 CFR Part 336

RINs 3064-AA08, 3209-AA15

Supplemental Standards of Ethical Conduct for Employees of the Federal Deposit Insurance Corporation

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

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation, 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 Corporation to supplement the Standards of Ethical Conduct for Employees of the Executive Branch (Executive Branch-wide Standards) issued by OGE. The final rule will become effective 30 days after the date of publication, and will establish: prohibitions on borrowing and extensions of credit; prohibitions on the ownership of certain financial interests; prohibitions on the purchase of property controlled by the Corporation or the Resolution Trust Corporation (RTC); limitations on official dealings with former employers and clients; disqualification requirements relating to employment of family members outside the Corporation; and limitations on outside employment activities.

EFFECTIVE DATE: May 25, 1995.

FOR FURTHER INFORMATION CONTACT: Katherine A. Corigliano, Assistant Executive Secretary (Ethics), (202) 898-7272; Richard M. Handy, Ethics Program Manager, (202) 898-7271; or Paul A. Jeddeloh, Senior Program Attorney, (202) 898-7161, in the Office of the Executive Secretary of the FDIC.

SUPPLEMENTARY INFORMATION:

I. Background

On July 12, 1994, with the concurrence of OGE, the Corporation published for comment a proposed rule to establish supplemental standards of ethical conduct for employees of the FDIC (59 FR 35480-35487). The proposed rule was issued to supplement the Standards of Ethical Conduct for Employees of the Executive Branch published by OGE on August 7, 1992, and effective February 3, 1993 (57 FR 35006-35067, as corrected at 57 FR 48557 and 57 FR 52583, with additional grace period extensions for certain existing agency standards of conduct at 59 FR 4779-4780 and 60 FR 6390-6391, which grace period expires on January 3, 1996). The Executive Branch-wide Standards, now codified at 5 CFR part 2635, establish uniform standards of ethical conduct for executive branch employees. The proposed rule was issued pursuant to 5 CFR 2635.105 and the Resolution Trust Corporation Completion Act (P.L. 103-204) which authorize the Corporation to publish agency-specific supplemental regulations necessary to implement its ethics program. The Corporation, with the concurrence of OGE, determined that the supplemental regulations contained in the proposed rule were necessary successfully to continue the Corporation's ethics program in light of the Corporation's unique programs and operations.

The proposed rule prescribed a 60-day comment period and invited comments from all interested parties. The Corporation received nine comment letters and, after careful consideration of each comment, has made appropriate modifications to the rule. Technical changes were made to accommodate the formation, subsequent to the publication of the proposed rule, of a new Division within the Corporation—the Division of Compliance and Consumer Affairs. At the request of the Board of Directors, a provision was added to the credit restrictions in order to retain the current restrictions for certain categories of employees of the Division of Depositor and Asset Services. The Corporation, with the concurrence of OGE, is now publishing as a final rule the Supplemental Standards of Conduct for Employees of the Federal Deposit

Insurance Corporation, to be codified in new part 3201 of 5 CFR chapter XXII.

II. Summary of the Comments

The Corporation received comments from eight employees and one financial institution trade association. The comments from employees contained both requests for substantive changes and for guidance on the application of the rule in general or in specific sections. The comments received from the trade association expressed support for certain specific sections of the rule and suggested substantive changes.

III. Analysis of the Comments

Section 3201.101 General

One commenter requested guidance on the meaning of the term *employee* as defined in § 3201.101(d) as it would be applied to employees of contractors doing business with the Corporation. As required by section 19 of the Resolution Trust Corporation Completion Act and implemented in the final rule, the term *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. All employees of contractors who fall under such definition would be subject to the Executive Branch-wide Standards and specified provisions of part 3201.

Section 3201.102 Extensions of Credit From FDIC-Insured Depository Institutions

One commenter, in reference to the preamble discussion of § 3201.102(c) in the proposed rule, asked whether the prohibition on examiners obtaining extensions of credit from institutions that they have examined carried a time limitation and expressed concern that the restriction, if it did not carry a time limitation, was too severe. The prohibition referred to by the commenter is found at 18 U.S.C. 213, a criminal statute, and was referenced in the preamble to assist the reader in understanding part of the basis for the imposition of the restrictions found at § 3201.102(c). 18 U.S.C. 213 does not carry a time limitation.

One commenter suggested that, for purposes of § 3201.102(c), an examiner might not be aware of the identity of the person or company from whom or which he or she intended to obtain