

institutions asked for guidance on the application of either the rule in general or a specific section of the rule. The bureaus' comments recommended substantive changes to certain sections of the rule that applied specifically to their employees. After the comment period closed, certain offices in the Department requested changes to § 3101.103 to make it more restrictive and to increase its coverage to include an employee's spouse and minor children. The suggested changes are being reviewed and may be implemented in the future by amending the rule. At this time, however, this section applies only to Department employees.

III. Analysis of the Comments

One Department employee asked whether the final rule will apply retroactively. The employee was concerned that the final rule, once effective, would be used to discipline employees for actions taken before the effective date of the final rule. The final rule applies prospectively only.

Another Department employee asked whether § 3101.103, which prohibits Department employees from purchasing, either directly or indirectly, certain Government owned or controlled property, would apply to the relatives and friends of Department employees. Section 3101.103 applies only to Department employees. However, a Department employee may not circumvent the prohibition by having a friend or relative purchase property for the employee's use or possession that the employee would otherwise be prohibited from purchasing. This is considered an indirect purchase and is prohibited by § 3101.103.

Two private financial institutions submitted comments asking whether the final rule will apply to the employees of private financial institutions. As stated in the Summary section of the proposed rule, the regulations will apply only to the officers and employees of the Department of the Treasury, with specific provisions also applicable to certain members of their families. This has not been changed; therefore, the final rule does not apply to private financial institutions or their employees.

Finally, two bureaus of the Department, the OCC and the OTS, submitted comments recommending substantive changes to specific sections of the rule that will apply exclusively to their employees. All changes were incorporated into the final rule. In general, many of the regulations specific to OTS and OCC employees included in this rule are based on old OCC and OTS

conduct regulations which predate and were displaced by the Executive Branch-wide Standards. These changes fixed inconsistencies between the new regulations and the old regulations on which they are based.

The first change we made was to § 3101.109(c)(3)(iii). Section 3101.109(c)(3)(iii) prescribes an exception to the OTS borrowing prohibition contained in § 3101.109(c). As proposed, the exception would have permitted an OTS employee to obtain a loan or extension of credit by assuming a mortgage loan on a personal residence without first obtaining approval from the bureau. In the final rule, the exception is retained but modified to require the employee to obtain the prior approval of the Chief Counsel, a Regional Director, Regional Deputy Director, or designee before securing a loan or extension of credit under this exception.

We also revised § 3101.109(c)(4). As proposed, § 3101.109(c)(4) would have permitted covered OTS employees, their spouses and minor children, to retain preexisting credit in only three specific situations. In the final rule, § 3101.109(c)(4) is revised to permit the retention of preexisting credit in a fourth situation. As modified, a covered employee, or a spouse or a minor child, may retain preexisting credit if the credit was extended before April 30, 1991, the date on which the borrowing prohibition included in § 3101.109(c) was first implemented in the old OTS conduct rules. This final rule continues the OTS borrowing prohibition; therefore, it is necessary to include the exception for preexisting credit obtained before April 30, 1991, the date that the prohibition originally took effect.

In the proposed rule, the prohibition on the purchase of assets in § 3101.109(f), applied to all OTS employees, their spouses and minor children. In the final rule, the prohibition in § 3101.109(f) was modified to apply only to "covered" OTS employees, their spouses and minor children. The reason for the modification was to make § 3101.109(f) consistent with a similar prohibition contained in the old OTS conduct rules. The term covered OTS employee is defined in § 3101.109(a).

In a joint comment, both the OTS and the OCC recommended changing certain language in the exception to the prohibitions against owning certain financial interests. All recommended changes were incorporated into the final rule.

Under §§ 3101.108(a) and 3101.109(b) of the final rule, OCC employees and covered OTS employees are prohibited

from owning the securities of entities regulated by their respective bureaus. However, under §§ 3101.108(a)(3)(i) and 3101.109(b)(3)(i), which are nearly the same for the OCC and the OTS, an OCC or covered OTS employee may invest in a publicly traded or publicly available "mutual fund or other collective investment fund or in a widely held pension or similar fund" if the fund does not invest more than "25 percent" of its "assets" in the securities of "one or more" regulated entities.

In general, the revised exception describes in greater detail the types of funds in which an employee is permitted to invest. In the proposed rule, the exception was limited to "publicly traded or publicly available investment fund[s]." Now, under the modified exception, a covered employee may invest in a "publicly traded or publicly available mutual fund or other collective investment fund," including a registered investment company like a money market fund, unit investment trust, or other publicly traded or publicly available pooled investment fund, or a "widely held pension or similar fund," such as a deferred compensation plan administered by a corporation for its employees.

Additionally, the effect of the exception, as revised, is to prohibit an employee from investing in a fund that invests more than 25 percent of its assets in the securities of one or more regulated entities. This modification simplifies the restriction contained in the proposed rule that would have prohibited an employee from investing in a fund that invested more than 5 percent of its assets in the securities of one regulated entity or more than 20 percent of its assets in the securities of a regulated industry. The 25 percent limitation is based upon current security law and policy, including the definition of a diversified management company and the investment industry concentration limit contained in §§ 5(b) and 8(b), respectively, of the Investment Company Act of 1940 (15 U.S.C. 80a-5(b), 80a-8(b)). Overall, the changes to §§ 3101.108(a) and 3101.109(b)(3) will clarify the standards employees must follow in making personal investments.

IV. Change in the Final Rule

Section 3101.102 lists the components of the Department that are designated as separate agencies for the purposes of the regulations contained in 5 CFR 2635.807 and subpart B of 5 CFR Part 2635. The United States Savings Bonds Division, which was listed as a separate agency in the proposed rule, is deleted from the list in the final rule because it was assumed into the Bureau of the Public