

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.

§ 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, including credit obtained through the use of a credit card, from any OTS-regulated savings association or 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 shall apply to the spouse or minor child of a covered OTS 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 OTS employee does not participate in the negotiation for the loan or serve as co-maker, endorser, or guarantor of the loan.

(3) *Exceptions.* Nothing in this section prohibits a covered OTS employee, or the spouse or minor child of a covered OTS employee, from obtaining a loan or extension of credit described in paragraphs (c)(3)(i) through (c)(3)(iii) of this section from an OTS-regulated savings association if the loan or extension of credit is obtained on terms and conditions no more favorable than those offered to the general public, the employee is not assigned to examine the savings association at the time the loan or extension of credit is obtained, and the employee submits to the Chief Counsel or designee a written disqualification from examining or otherwise participating in the supervision of the savings association. The exceptions provided by this paragraph are for loans or extensions of credit obtained:

(i) Through use of a credit card issued by a savings association where:

(A) The employee is assigned to a regional office and the savings association is not headquartered in the employee's region; or

(B) The employee is assigned to the Washington office;

(ii) Through use of a savings association credit card sponsored by a retailing firm (e.g., Sears); or

(iii) Through assumption of a mortgage loan on the employee's residence which is liquidated in accordance with its original terms without renewal or renegotiation, with prior approval from the Chief Counsel, a Regional Director, Regional Deputy Director or designee.

(4) *Pre-existing credit.* This section does not prohibit a covered OTS