



Comptroller of the Currency
Administrator, National Banks
US Department of the Treasury

RESCINDED

OCC 2005-41

Subject: Examiner Ethics
Date: December 6, 2005

**To: Chief Executive Officers of All National
Banks, Federal Branches and Agencies,
Department and Division Heads, and All
Examining Personnel**

Description: One-Year Post-Employment Restrictions for Senior Examiners

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Employees who served as the senior examiner of a national bank for two or more months during the last 12 months of the person's employment with the OCC may not, within one year after leaving the OCC, knowingly accept compensation as an employee, officer, director, or consultant from the national bank or any company (including a bank holding company) that controls the bank. This one-year provision applies to any senior examiner who leaves the OCC on or after December 17, 2005. If a senior examiner violates the post-employment restrictions, the act requires the OCC to seek against the former examiner a removal or prohibition order for up to five years. The OCC also may seek a civil money penalty of up to \$250,000.

The OCC anticipates that the restrictions will apply to examiners-in-charge of national banks in the OCC's Large Bank or Mid-Size Bank programs. As noted in the preamble to the final rule, the OCC will develop policies and procedures to identify and notify those individual examiners who are subject to the post-employment restrictions.

The attached final rule, which is substantively similar to the final rules adopted by the other federal banking agencies, amends 12 CFR to implement the post-employment restrictions. The final rule also makes conforming changes to 12 CFR to clarify those procedures that apply to actions against senior examiners who violate the restrictions.

For further information, contact Mitchell Plave, counsel, Legislative and Regulatory Activities Division at (202) 874-5090, or Barrett Aldemeyer, senior counsel, Administrative and Internal Law Division at (202) 874-4460.

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel

Related Links

- [Final Rule 70 FR 69633](#)

DEPARTMENT OF THE TREASURY**Office of the Comptroller of the Currency****12 CFR Parts 4 and 19**

[Docket No. 05–19]

RIN 1557–AC94

FEDERAL RESERVE SYSTEM**12 CFR Parts 263 and 264a**

[Docket No. R–1230]

FEDERAL DEPOSIT INSURANCE CORPORATION**12 CFR Parts 308 and 336**

RIN 3064–AC92

DEPARTMENT OF THE TREASURY**Office of Thrift Supervision****12 CFR Parts 507 and 509**

[No. 2005–48]

RIN 1550–AB99

One-Year Post-Employment Restrictions for Senior Examiners

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Final rule.

SUMMARY: The OCC, Board, FDIC and OTS (the Agencies) have jointly adopted final rules to implement section 6303(b) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Intelligence Reform Act), which imposes post-employment restrictions on senior examiners of depository institutions and depository institution holding companies. Under section 6303(b), and the Agencies' final implementing rules, a senior examiner

employed by an Agency or a Federal Reserve Bank (Reserve Bank) may not knowingly accept compensation as an employee, officer, director, or consultant from certain depository institutions or depository institution holding companies he or she examined, or from certain related entities, for one year after the examiner leaves the employment or service of the Agency or Reserve Bank. If an examiner violates the one-year restriction, the statute requires the appropriate Federal banking agency to seek an order of removal and prohibition, a civil money penalty of up to \$250,000, or both. Section 10(k) will become effective on December 17, 2005.

DATES: Effective Date: December 17, 2005.

FOR FURTHER INFORMATION CONTACT:

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Board: Cary K. Williams, Assistant General Counsel, (202) 452–3295, Kieran J. Fallon, Assistant General Counsel, (202) 452–5270, Andrea Tokheim, Attorney, (202) 452–2300, Legal Division; William Spaniel, Deputy Associate Director, (202) 452–3469, or Jinai Holmes, Senior Financial Analyst, (202) 452–2834, Division of Banking Supervision and Regulation; for users of Telecommunication Devices for the Deaf (TDD) only, contact (202) 263–4869.

FDIC: Robert J. Fagan, Ethics Program Manager, Legal Division, (202) 898–6808; Stephen P. Gaddie, Special Assistant to the Deputy Director, Division of Supervision and Consumer Protection, (202) 898–6575; Richard Osterman, Senior Counsel, Legal Division, (202) 898–7028; and Kymberly K. Copa, Counsel, Legal Division, (202) 898–8832, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Elizabeth Moore, Special Counsel, Litigation Division, (202) 906–7039; or Karen Osterloh, Special Counsel, Regulations and Legislation Division, (202) 906–6639, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:**I. Background**

Under section 6303(b) of the Intelligence Reform Act,¹ which added a new section 10(k) to the Federal Deposit Insurance Act (FDI Act), an officer or employee of an Agency or Reserve Bank who acts as a “senior examiner” for a particular depository institution may not, within one year after terminating employment with the relevant Agency or Reserve Bank, knowingly accept compensation as an officer, director, employee or consultant from that depository institution or any company (including a bank holding company or savings and loan holding company) that controls the depository institution.² Section 10(k) imposes a similar post-employment restriction on an officer or employee who acts as the “senior examiner” of a particular depository institution holding company, but in these circumstances, the post-employment restrictions apply to relationships with the depository institution holding company and any depository institution subsidiary of the holding company.³ The restrictions in section 10(k) apply only to examiners who served as a senior examiner for a particular depository institution or holding company for two or more months during the final twelve months of their employment at the Agency or Reserve Bank.

If a senior examiner violates the one-year post-employment restrictions in section 10(k), the statute requires the appropriate Federal banking agency to initiate proceedings to impose an order of removal and prohibition or a civil money penalty, or both, on the former senior examiner. Congress directed each Agency to prescribe regulations to administer and carry out section 10(k), including rules, regulations or guidelines to define the scope of persons who are “senior examiners.” The post-employment restrictions in section 10(k) are in addition to any other conflict of interest and ethics rules and restrictions that may apply to

¹ Pub. L. 108–458, 118 Stat. 3638, 3751–53 (Dec. 17, 2004).

² For purposes of section 10(k), the term “depository institution” includes an uninsured branch or agency of a foreign bank, if the branch or agency is located in a state of the United States. See 12 U.S.C. 1820(k)(2)(A). The FDIC has made a minor technical change to the definition of “depository institution” in its regulation to recognize that the term may include uninsured branches or agencies of foreign banks for these purposes.

³ For purposes of the post-employment restriction of section 10(k), the term “depository institution holding company” means a bank holding company or a savings and loan holding company, and also includes, among other things, a foreign bank that has a branch, agency, or commercial lending company subsidiary in the United States.

examiners under applicable Federal law or the internal codes of conduct established by an Agency or a Reserve Bank.

II. Proposed Rule and Comments Received

On August 5, 2005, the Agencies jointly published proposed rules that would implement the post-employment restrictions in section 10(k).⁴ The proposed rules defined the term “senior examiner,” discussed the types of Agency and Federal Reserve examiners that would be considered a “senior examiner” in light of the examination programs of each Agency, addressed the nature and scope of the one-year post-employment restriction, and described the procedures for seeking penalties on senior examiners who violate section 10(k).

The Agencies received comments on the proposal from a trade association for banking institutions and an individual. The banking trade association endorsed the proposed rule without suggestions for change and, in particular, noted that the proposed definition of “senior examiner” clearly and appropriately defined those individuals who would be subject to the statutory restriction in accordance with Congress’ intent. The individual commenter also generally supported the proposed rules, but asked that the Agencies clarify the rules’ application in certain respects. For example, the commenter asked that the Agencies clarify whether an examiner who performs periodic, short-term examinations of a depository institution or depository institution holding company would be considered a “senior examiner.”

III. Final Rule

The Agencies have adopted final rules that are substantively identical to the proposed rules. The Agencies, however, have made minor, technical changes to the rules as discussed below. As required, the Agencies have consulted with each other to assure that the final rules are, to the extent possible, consistent, comparable and practicable, taking into account the differences in the supervisory programs utilized by the Agencies for the supervision of depository institutions and depository institution holding companies.⁵

A. Definition of “Senior Examiner”

The post-employment restrictions in section 10(k) apply only to an officer or employee of an Agency or Reserve Bank who serves as the “senior examiner” (or

in a functionally equivalent position) of a particular depository institution or depository institution holding company and who, in this capacity, has “continuing, broad responsibility for the examination (or inspection) of that depository institution or depository institution holding company” on behalf of the relevant Agency or Reserve Bank.⁶ The final rules, like the proposed rules, provide that an officer or employee of an Agency or a Reserve Bank will be considered the “senior examiner” for a particular depository institution or depository institution holding company if:

- The individual has been authorized by the relevant Agency to conduct examinations or inspections on behalf of the Agency;⁷
- The relevant Agency or Reserve Bank has assigned the individual continuing, broad, and lead responsibility for examining or inspecting the depository institution or holding company; and
- The individual’s responsibilities for the depository institution or holding company represent a substantial portion of the individual’s assigned responsibilities and require the individual to routinely interact with officers or employees of the institution, holding company, or its affiliates.

To be considered a “senior examiner,” an officer or employee must meet each of the criteria listed above. Thus, if a substantial portion of an examiner’s responsibilities involve conducting or leading a targeted examination (such as a review of an institution’s credit risk management, information systems or internal audit functions), but the examiner does not have broad and lead responsibility for the Agency’s or Reserve Bank’s overall examination program with respect to the institution, the examiner would not be considered a “senior examiner” with respect to the institution. Such an examiner is not likely to develop the type and degree of relationship with any one institution that the post-employment restriction was designed to address. In addition, the final rules would not cover an examiner who performs only periodic, short-term examinations of a depository institution or depository institution holding

company and who does not have ongoing, continuing responsibility for the institution or holding company. Similarly, an examiner who divides his or her time across a portfolio of depository institutions or holding companies, each of which does not represent a substantial portion of the examiner’s responsibilities, also would not be considered a “senior examiner.”

To be a “senior examiner,” the examiner also must have “continuing” responsibility for the relevant Agency’s or Reserve Bank’s supervisory program with respect to the particular depository institution or depository institution holding company. The Agencies believe that an examiner would have “continuing” responsibility for an institution or holding company only when the examiner’s responsibilities for the institution or company were expected to continue for a sufficient period of time, for example, for at least two months, that would enable the examiner to develop the type and degree of “meaningful,” “dedicated” and “sustained” relationship with the institution or company that the statute was designed to address.⁸

The Agencies believe that the definition of “senior examiner” properly applies the post-employment restrictions in section 10(k) to those examiners who, by reason of their position and assigned responsibilities, have broad responsibility for a depository institution or depository institution holding company and are expected to devote a substantial amount of their time to that institution or holding company on a continuing basis.

Because the titles and roles of examiners vary among the Agencies, the preamble to the proposed rules described the types of examiners that each Agency expected would be considered a “senior examiner” in light of the structure and nature of the Agency’s supervisory program.⁹ The trade association commenter found that these descriptions were very helpful, and the Agencies believe these descriptions accurately describe the types of examiners that may be considered “senior examiners” under the Agencies’ current supervisory programs. To further help examiners comply with the one-year post-employment restrictions, the Agencies intend to establish and maintain appropriate procedures to notify an examiner in writing if the relevant Agency believes the examiner’s assigned responsibilities would cause the

⁶ *Id.* § 1820(k)(1)(B).

⁷ The Agencies have modified the proposed rules to refer to individuals who have been “authorized” to conduct examinations, rather than “commissioned” or “designated” to conduct examinations, to reflect the fact that some individuals authorized to conduct examinations of depository institutions or holding companies may be credentialed to conduct such examinations, but not yet formally be “commissioned” to do so.

⁸ 150 Cong. Rec. S10356 (daily ed. Oct. 4, 2004) (statement of Sen. Levin).

⁹ See 70 FR 45326–45327 (August 5, 2005).

⁴ 70 FR 45323 (Aug. 5, 2005).

⁵ 12 U.S.C. 1820(k)(4)(B).

examiner to be considered a “senior examiner” with respect to any depository institution or depository institution holding company. Nonetheless, the post-employment restrictions in section 10(k) and the final rules apply directly to senior examiners, and examiners are responsible for becoming familiar with and ensuring their own compliance with the statute. Accordingly, examiners who have questions concerning whether they may be considered a “senior examiner” for an institution or holding company are encouraged to contact the appropriate persons at their respective Agency or Reserve Bank.

B. One-Year Post-Employment Restrictions

If an officer or employee of an Agency or a Reserve Bank serves as the senior examiner for a depository institution during two or more months of the individual’s final twelve months of employment with the Agency or Reserve Bank, section 10(k) prohibits the individual from knowingly accepting compensation as an employee, officer, director, or consultant from the depository institution or any company that controls the depository institution (including a bank holding company or savings and loan holding company) for one year after leaving the employment of the Agency or Reserve Bank. Because the prohibition extends to companies that control the relevant depository institution, it would not prohibit the senior examiner from accepting employment with a subsidiary or affiliate of a bank holding company, savings and loan holding company, or other company that controls the depository institution (other than the depository institution for which the individual served as a senior examiner).¹⁰

If an officer or employee serves as the senior examiner for a depository institution holding company for two or more months during the last twelve months of his or her employment with an Agency or a Reserve Bank, the statute and final rule prohibit the individual from becoming employed by, or otherwise accepting compensation in the manner described above, from that holding company or any depository institution subsidiary of the holding

company for one year after leaving the employment of the Agency or Reserve Bank.

Under section 10(k), a person is deemed to be a consultant for purposes of the one-year post-employment restrictions only if such person “directly works on matters for, or on behalf of,” the relevant depository institution, depository institution holding company or other company.¹¹ The Agencies have incorporated this rule of construction into the final rules. We interpret this provision to mean that a former senior examiner who joins a consulting or other firm may not, during the twelve-month post-employment “cooling-off” period, participate in any work that the firm is conducting for a depository institution or company that the former senior examiner would be prohibited from doing directly.¹² The former senior examiner would not, however, violate the post-employment restrictions in section 10(k) by joining a firm that performs work for such an institution or company as long as the former senior examiner does not personally participate in any such work.

As provided by section 10(k), the head of each Agency may waive application of the statute’s post-employment restrictions to a senior examiner on a case-by-case basis if the head of the Agency determines that “granting the waiver would not affect the integrity of the supervisory program of [such Agency].”¹³ The Agencies expect to grant waivers only in special circumstances. If an Agency grants a waiver to a senior examiner, the post-employment restrictions in section 10(k), and the associated penalties, would not apply to the senior examiner.

C. Penalties

If a senior examiner violates the post-employment restrictions in section 10(k), the statute requires the appropriate Agency to seek one of the following penalties:

- An order (1) removing the individual from his or her position at, or prohibiting the individual from further participation in the affairs of, the relevant depository institution, depository institution holding company, or other company for a period of up to five years, and (2) prohibiting the individual from participating in the conduct of the affairs of any insured

depository institution for a period of up to five years; or

- A civil monetary penalty of not more than \$250,000.¹⁴
- An Agency also has the discretion to seek both of these penalties. A former senior examiner who is subject to a removal and prohibition order under section 10(k) is also subject to paragraphs (6) and (7) of section 8(e) of the FDI Act, which pertain to the scope of orders prohibiting a person from participating in certain banking activities.¹⁵ These provisions, for example, would prohibit a former senior examiner, for the duration of a prohibition order issued under section 10(k), from participating in the affairs of any bank holding company or subsidiary of a bank holding company, savings and loan holding company or subsidiary of a savings and loan holding company, foreign bank that operates a branch, agency or commercial lending company subsidiary in the United States or any subsidiary of such a foreign bank, or certain other entities, such as credit unions.¹⁶ In addition, these provisions would prohibit the individual, during the term of the prohibition order, from accepting employment with any appropriate Federal financial institutions regulatory agency (as defined in 12 U.S.C. 1818(e)(7)(D)), and certain other Federal agencies. The penalties that may apply to a senior examiner under section 10(k) are in addition to any other administrative, civil, or criminal penalty that may apply.

Under section 10(k), to obtain an order of removal or prohibition, an Agency must follow the rules and procedures that apply in similar types of proceedings against depository institutions and institution-affiliated parties. Specifically, section 10(k) states that removal and prohibition proceedings must be conducted in accordance with section 8(e)(4) of the FDI Act, which provides the individual the right to an administrative hearing prior to final Agency action. Section 10(k) further provides that an Agency seeking to impose a civil monetary penalty on a former senior examiner must do so either in accordance with

¹⁴ *Id.* § 1820(k)(6)(A). If the appropriate Federal banking agency does not assess a civil monetary penalty against a senior examiner who violates the post-employment restrictions in section 10(k), the Attorney General of the United States may bring a civil action to impose such a penalty against the senior examiner. *Id.*

¹⁵ *Id.* § 1820(k)(6)(B).

¹⁶ The appropriate Agency may consent to a change in the application of this restriction as it applies to a particular institution or other company, as provided in section 8(e)(7)(B) of the FDI Act (12 U.S.C. 1818(e)(7)(B)).

¹⁰ The Agencies note, however, that a former senior examiner may not evade the post-employment restrictions in section 10(k) by nominally accepting employment with a company not directly covered by the post-employment restrictions, but then functionally serve as an officer, employee, director, or consultant for a depository institution or company that the former senior examiner would have been prohibited from working for directly.

¹¹ 12 U.S.C. 1820(k)(3).

¹² Of course, a former senior examiner who is self-employed similarly may not accept compensation for work performed as a consultant in his or her individual capacity for the relevant depository institution, depository institution holding company, or other company.

¹³ *Id.* § 1820(k)(5).

section 8(i) of the FDI Act, which also provides the individual the right to an administrative hearing prior to final Agency action, or through a civil action brought in an appropriate United States District Court.¹⁷

As stated in the preamble to the proposal, the Agencies do not believe it is necessary to codify these procedures, which are adequately set forth in the statute. Accordingly, the final rules cross-reference the required statutory procedures. Proceedings against examiners for violations of the post-employment restrictions would take place in accordance with the Agencies' rules of practice and procedure, and the Agencies have amended the scope sections of their respective Rules of Practice and Procedure to reflect this fact.

D. Effective Date

The Intelligence Reform Act provides that the post-employment restrictions imposed by section 10(k) shall become effective on December 17, 2005.¹⁸ Accordingly, section 10(k) and the final rules apply only to officers or employees of an Agency or Reserve Bank who terminate their employment with the Agency or Reserve Bank on or after December 17, 2005. As explained in the proposal, however, because of the statute's twelve-month "look-back" provision, an officer or employee who leaves an Agency or a Reserve Bank within one year of December 17, 2005, may be subject to the post-employment restrictions in section 10(k) based on his or her examination responsibilities as far back as December 17, 2004.

For example, if an Agency examiner terminates his or her employment with the relevant Agency on January 1, 2006, and the individual, while employed by the Agency, served as the "senior examiner" for a particular depository institution from May 1, 2005 to October 1, 2005, the individual is subject to the post-employment restrictions. Although the service that caused the individual to be considered a "senior examiner" occurred prior to December 17, 2005, such service occurred during the last twelve months of the individual's employment with the Agency and, accordingly, the examiner may not become employed by the relevant depository institution, or any company that controls the depository institution, until January 2, 2007. However, if in the foregoing example the examiner terminated his or her employment with the Agency prior to December 17, 2005

(the effective date of the statute), the employee would not be subject to the post-employment restrictions in section 10(k).

Regulatory Flexibility Act

Under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), each Agency certifies that the final rules will not have a significant economic impact on a substantial number of small entities. Section 10(k) and the final rules impose post-employment restrictions on certain senior examiners employed by an Agency or a Reserve Bank and do not impose any obligations or restrictions on banking organizations, including small banking organizations.

Executive Order 12866

The OCC and OTS have determined that this final rulemaking is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

Under section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), the OCC and OTS must prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the OCC and OTS to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. The OCC and OTS have determined that their respective final rules will not result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Accordingly, neither the OCC nor OTS has prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 3506; 5 CFR 1320 Appendix A.1), the Agencies reviewed the final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106-102, 113 Stat. 1338, 1471 (Nov. 12, 1999) requires the Federal banking agencies to use

plain language in all proposed and final rules published after January 1, 2000. As noted above, commenters generally found the proposed rules were clear and the final rules are substantively similar to the proposed rules.

List of Subjects

12 CFR Part 4

Administrative practice and procedure, Availability and release of information, Confidential business information, Contracting outreach program, Freedom of information, National banks, Organization and functions (government agencies), Reporting and recordkeeping requirements, Women and minority businesses.

12 CFR Part 19

Administrative practice and procedure, Crime, Equal access to justice, Investigation, National banks, Penalties, Securities.

12 CFR Part 263

Administrative practice and procedure, Claims, Crime, Equal access to justice, Lawyers, Penalties.

12 CFR Part 264a

Conflicts of interest.

12 CFR Part 308

Administrative practice and procedure, Bank deposit insurance, Claims, Crime, Equal access to justice, Investigations, Lawyers, Penalties.

12 CFR Part 336

Conflict of interests.

12 CFR Part 507

Ethics, Governmental employees, OTS employees.

12 CFR Part 509

Administrative practice and procedure, Penalties.

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

■ For the reasons set forth in the preamble, the OCC amends parts 4 and 19 of title 12 of the Code of Federal Regulations as follows:

■ 1. The title of part 4 is revised to read as follows:

¹⁷ *Id.* § 1820(k)(6).

¹⁸ See section 6303(d) of the Intelligence Reform Act.

PART 4—ORGANIZATION AND FUNCTIONS, AVAILABILITY AND RELEASE OF INFORMATION, CONTRACTING OUTREACH PROGRAM, POST-EMPLOYMENT RESTRICTIONS FOR SENIOR EXAMINERS

- 2. The authority citation for part 4 is revised to read as follows:

Authority: 12 U.S.C. 93a. Subpart A also issued under 5 U.S.C. 552; Subpart B also issued under 5 U.S.C. 552; E.O. 12600 (3 CFR 1987 Comp., p. 235). Subpart C also issued under 5 U.S.C. 301, 552; 12 U.S.C. 161, 481, 482, 484(a), 1442, 1817(a)(3), 1818(u) and (v), 1820(d)(6), 1820(k), 1821(c), 1821(o), 1821(t), 1831m, 1831p-1, 1831o, 1867, 1951 *et seq.*, 2601 *et seq.*, 2801 *et seq.*, 2901 *et seq.*, 3101 *et seq.*, 3401 *et seq.*; 15 U.S.C. 77uu(b), 78q(c)(3); 18 U.S.C. 641, 1905, 1906; 29 U.S.C. 1204; 31 U.S.C. 9701; 42 U.S.C. 3601; 44 U.S.C. 3506, 3510. Subpart D also issued under 12 U.S.C. 1833e.

- 3. A new subpart E is added to part 4 to read as follows:

Subpart E—One-Year Restrictions on Post-Employment Activities of Senior Examiners

- Sec.
4.72 Scope and purpose.
4.73 Definitions.
4.74 One-year post-employment restrictions.
4.75 Effective date; waivers.
4.76 Penalties.

§ 4.72 Scope and purpose.

This subpart describes those OCC examiners who are subject to the post-employment restrictions set forth in section 10(k) of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1820(k)) and implements those restrictions for officers and employees of the OCC.

§ 4.73 Definitions.

For purposes of this subpart:

Bank holding company means any company that controls a bank (as provided in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*)).

Consultant. For purposes of this subpart, a consultant for a national bank, bank holding company, or other company shall include only an individual who works directly on matters for, or on behalf of, such bank, bank holding company, or other company.

Control has the meaning given in section 2 of the Bank Holding Company Act (12 U.S.C. 1841(a)). For purposes of this subpart, a foreign bank shall be deemed to control any branch or agency of the foreign bank.

Depository institution has the meaning given in section 3 of the FDI Act (12 U.S.C. 1813(c)). For purposes of this subpart, a depository institution includes an uninsured branch or agency of a foreign bank, if such branch or agency is located in any State.

Federal Reserve means the Board of Governors of the Federal Reserve System and the Federal Reserve Banks.

Foreign bank means any foreign bank or company described in section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)).

Insured depository institution has the meaning given in section 3 of the FDI Act (12 U.S.C. 1813(c)(2)).

National bank means a national banking association or a Federal branch or agency of a foreign bank.

Senior examiner. For purposes of this subpart, an officer or employee of the OCC is considered to be the “senior examiner” for a particular national bank if—

- (1) The officer or employee has been authorized by the OCC to conduct examinations on behalf of the OCC;
- (2) The officer or employee has been assigned continuing, broad, and lead responsibility for examining the national bank; and
- (3) The officer's or employee's responsibilities for examining the national bank—

- (i) Represent a substantial portion of the officer's or employee's assigned responsibilities; and
- (ii) Require the officer or employee to interact routinely with officers or employees of the national bank or its affiliates.

§ 4.74 One-year post-employment restrictions.

An officer or employee of the OCC who serves as the senior examiner of a national bank for two or more months during the last twelve months of such individual's employment with the OCC may not, within one year after leaving the employment of the OCC, knowingly accept compensation as an employee, officer, director or consultant from the national bank, or any company (including a bank holding company) that controls the national bank.

§ 4.75 Effective date; waivers.

The post-employment restrictions set forth in section 10(k) of the FDI Act and § 4.74 do not apply to any officer or employee of the OCC, or any former officer or employee of the OCC, if—

- (a) The individual ceased to be an officer or employee of the OCC before December 17, 2005; or
- (b) The Comptroller of the Currency certifies, in writing and on a case-by-

case basis, that granting the individual a waiver of the restrictions would not affect the integrity of the OCC's supervisory program.

§ 4.76 Penalties.

(a) *Penalties under section 10(k) of FDI Act.* If a senior examiner of a national bank, after leaving the employment of the OCC, accepts compensation as an employee, officer, director, or consultant from that bank, or any company (including a bank holding company) that controls that bank, then the examiner shall, in accordance with section 10(k)(6) of the FDI Act, be subject to one of the following penalties—

- (1) An order—
 - (i) Removing the individual from office or prohibiting the individual from further participation in the affairs of the relevant national bank, bank holding company, or other company that controls such institution for a period of up to five years; and
 - (ii) Prohibiting the individual from participating in the affairs of any insured depository institution for a period of up to five years; or
- (2) A civil monetary penalty of not more than \$250,000.

(b) *Enforcement by appropriate Federal banking agency.* Violations of § 4.74 shall be administered or enforced by the appropriate Federal banking agency for the depository institution or depository institution holding company that provided compensation to the former senior examiner. For purposes of this paragraph, the appropriate Federal banking agency for a company that is not a depository institution or depository institution holding company shall be the Federal banking agency that formerly employed the senior examiner.

(c) *Scope of prohibition orders.* Any senior examiner who is subject to an order issued under paragraph (a) of this section shall, as required by 12 U.S.C. 1820(k)(6)(B), be subject to paragraphs (6) and (7) of section 8(e) of the FDI Act (12 U.S.C. 1818(e)(6)–(7)) in the same manner and to the same extent as a person subject to an order issued under section 8(e).

(d) *Procedures.* The procedures applicable to actions under paragraph (a) of this section are provided in section 10(k)(6) of the FDI Act (12 U.S.C. 1820(k)(6)) and in 12 CFR part 19.

(e) *Remedies not exclusive.* The OCC may seek both of the penalties described in paragraph (a) of this section. In addition, a senior examiner who accepts compensation as described in § 4.74 may be subject to other administrative,

civil or criminal remedies or penalties as provided in law.

PART 19—RULES OF PRACTICE AND PROCEDURE

■ 4. The authority citation for part 19 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 93a, 164, 505, 1817, 1818, 1820, 1831m, 1831o, 1972, 3102, 3108(a), 3909 and 4717; 15 U.S.C. 78(h) and (i), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3, and 78w; 28 U.S.C. 2461 note; 31 U.S.C. 330 and 5321; and 42 U.S.C. 4012a.

■ 5. Section 19.1 is amended by redesignating paragraph (g) as paragraph (h), removing the word “and” at the end of the paragraph (f), and adding a new paragraph (g) to read as follows:

§ 19.1 Scope.

* * * * *

(g) Removal, prohibition, and civil monetary penalty proceedings under section 10(k) of the FDI Act (12 U.S.C. 1820(k)) for violations of the post-employment restrictions imposed by that section; and

* * * * *

Dated: November 14, 2005.

John C. Dugan,

Comptroller of the Currency.

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

■ For the reasons set forth in the preamble, the Board is amending part 263 and adding a new part 264a to Title 12, Chapter II, of the Code of Federal Regulations as follows:

PART 263—RULES OF PRACTICE FOR HEARINGS

■ 1. The authority citation for part 263 continues to read as follows:

Authority: 5 U.S.C. 504; 12 U.S.C. 248, 324, 504, 505, 1817(j), 1818, 1828(c), 1831o, 1831p–1, 1847(b), 1847(d), 1884(b), 1972(2)(F), 3105, 3107, 3108, 3907, 3909; 15 U.S.C. 21, 78o–4, 78o–5, 78u–2; and 28 U.S.C. 2461 note.

■ 2. Section 263.1 is amended by redesignating paragraph (g) as paragraph (h), removing the word “and” at the end of the paragraph (f), and adding new paragraph (g) to read as follows:

§ 263.1 Scope.

* * * * *

(g) Removal, prohibition, and civil monetary penalty proceedings under section 10(k) of the FDI Act (12 U.S.C. 1820(k)) for violations of the special

post-employment restrictions imposed by that section; and

* * * * *

■ 3. New part 264a is added to read as follows:

PART 264a—POST-EMPLOYMENT RESTRICTIONS FOR SENIOR EXAMINERS

Sec.

264a.1 What is the purpose and scope of this part?

264a.2 Who is considered a senior examiner of the Federal Reserve?

264a.3 What special post-employment restrictions apply to senior examiners?

264a.4 When do these special restrictions become effective and may they be waived?

264a.5 What are the penalties for violating these special post-employment restrictions?

264a.6 What other definitions and rules of construction apply for purposes of this part?

Authority: 12 U.S.C. 1820(k).

§ 264a.1 What is the purpose and scope of this part?

This part identifies those officers and employees of the Federal Reserve that are subject to the special post-employment restrictions set forth in section 10(k) of the Federal Deposit Insurance Act (FDI Act) and implements those restrictions as they apply to officers and employees of the Federal Reserve.

§ 264a.2 Who is considered a senior examiner of the Federal Reserve?

For purposes of this part, an officer or employee of the Federal Reserve is considered to be the “senior examiner” for a particular state member bank, bank holding company or foreign bank if—

(a) The officer or employee has been authorized by the Board to conduct examinations or inspections on behalf of the Board;

(b) The officer or employee has been assigned continuing, broad and lead responsibility for examining or inspecting the state member bank, bank holding company or foreign bank; and

(c) The officer’s or employee’s responsibilities for examining, inspecting and supervising the state member bank, bank holding company or foreign bank—

(1) Represent a substantial portion of the officer’s or employee’s assigned responsibilities; and

(2) Require the officer or employee to interact routinely with officers or employees of the state member bank, bank holding company or foreign bank or its affiliates.

§ 264a.3 What special post-employment restrictions apply to senior examiners?

(a) *Senior Examiners of State Member Banks.* An officer or employee of the Federal Reserve who serves as the senior examiner of a state member bank for two or more months during the last twelve months of such individual’s employment with the Federal Reserve may not, within one year after leaving the employment of the Federal Reserve, knowingly accept compensation as an employee, officer, director or consultant from—

(1) The state member bank; or
(2) Any company (including a bank holding company) that controls the state member bank.

(b) *Senior Examiners of Bank Holding Companies.* An officer or employee of the Federal Reserve who serves as the senior examiner of a bank holding company for two or more months during the last twelve months of such individual’s employment with the Federal Reserve may not, within one year of leaving the employment of the Federal Reserve, knowingly accept compensation as an employee, officer, director or consultant from—

(1) The bank holding company; or
(2) Any depository institution that is controlled by the bank holding company.

(c) *Senior Examiners of Foreign Banks.* An officer or employee of the Federal Reserve who serves as the senior examiner of a foreign bank for two or more months during the last twelve months of such individual’s employment with the Federal Reserve may not, within one year of leaving the employment of the Federal Reserve, knowingly accept compensation as an employee, officer, director or consultant from—

(1) The foreign bank; or
(2) Any branch or agency of the foreign bank located in the United States; or
(3) Any other depository institution controlled by the foreign bank.

§ 264a.4 When do these special restrictions become effective and may they be waived?

The post-employment restrictions set forth in section 10(k) of the FDI Act and § 264a.3 do not apply to any officer or employee of the Federal Reserve, or any former officer or employee of the Federal Reserve, if—

(a) The individual ceased to be an officer or employee of the Federal Reserve before December 17, 2005; or

(b) The Chairman of the Board of Governors certifies, in writing and on a case-by-case basis, that granting the individual a waiver of the restrictions

would not affect the integrity of the Federal Reserve's supervisory program.

§ 264a.5 What are the penalties for violating these special post-employment restrictions?

(a) *Penalties under section 10(k) of FDI Act.*—A senior examiner of the Federal Reserve who, after leaving the employment of the Federal Reserve, violates the restrictions set forth in § 264a.3 shall, in accordance with section 10(k)(6) of the FDI Act, be subject to one or both of the following penalties—

(1) An order—

(i) Removing the individual from office or prohibiting the individual from further participation in the affairs of the relevant state member bank, bank holding company, foreign bank or other depository institution or company for a period of up to five years; and

(ii) Prohibiting the individual from participating in the affairs of any insured depository institution for a period of up to five years; and/or

(2) A civil monetary penalty of not more than \$250,000.

(b) *Imposition of penalties.* The penalties described in paragraph (a) of this section shall be imposed by the appropriate Federal banking agency as determined under section 10(k)(6) of the FDI Act, which may be an agency other than the Federal Reserve.

(c) *Scope of prohibition orders.* Any senior examiner who is subject to an order issued under paragraph (a) of this section shall, as required by section 10(k)(6)(B) of the FDI Act, be subject to paragraphs (6) and (7) of section 8(e) of the FDI Act in the same manner and to the same extent as a person subject to an order issued under section 8(e).

(d) *Procedures.* The procedures applicable to actions under paragraph (a) of this section are provided in section 10(k)(6) of the FDI Act.

(e) *Other penalties.* The penalties set forth in paragraph (a) of this section are not exclusive, and a senior examiner who violates the restrictions in § 264a.3 also may be subject to other administrative, civil or criminal remedies or penalties as provided in law.

§ 264a.6 What other definitions and rules of construction apply for purposes of this part?

For purposes of this part—

(a) *Bank holding company* means any company that controls a bank (as provided in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*)).

(b) A person shall be deemed to act as a *consultant* for a bank or other

company only if such person works directly on matters for, or on behalf of, such bank or other company.

(c) *Control* has the meaning given in section 2 of the Bank Holding Company Act.

(d) *Depository institution* has the meaning given in section 3 of the FDI Act and includes an uninsured branch or agency of a foreign bank, if such branch or agency is located in any State.

(e) *Federal Reserve* means the Board of Governors of the Federal Reserve System and the Federal Reserve Banks.

(f) *Foreign bank* means any foreign bank or company described in section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)).

(g) *Insured depository institution* has the meaning given in section 3 of the FDI Act.

Dated: November 10, 2005.

By order of the Board of Governors of the Federal Reserve System.

Robert deV. Frierson,

Deputy Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

■ For the reasons set forth in the preamble, the FDIC amends chapter III of title 12 of the Code of Federal Regulations as follows:

PART 308—RULES OF PRACTICE AND PROCEDURES

■ 1. The authority for part 308 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1815(e), 1817, 1818, 1820, 1828, 1829, 1829b, 1831i, 1831m(g)(4), 1831o, 1831p–1, 1832(c), 1884(b), 1972, 3102, 3108(a), 3349, 3909, 4717; 15 U.S.C. 78(h) and (i), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3, 78w, 6801(b), 6805(b)(1); 28 U.S.C. 2461 note; 31 U.S.C. 330, 5321; 42 U.S.C. 4012a; Sec. 3100(s) Pub. L. 104–134, 110 Stat. 1321–358.

■ 2. In § 308.1, redesignate paragraph (g) as paragraph (h), remove the word “and” at the end of the paragraph (f), and add a new paragraph (g) to read as follows:

§ 308.1 Scope.

* * * * *

(g) Proceedings under section 10(k) of the FDIA (12 U.S.C. 1820(k)) to impose penalties for violations of the post-employment restrictions under that subsection; and

* * * * *

PART 336—FDIC EMPLOYEES

■ 3. Subpart C is added to Part 336 to read as follows:

Subpart C—One-Year Restriction on Post-Employment Activities of Senior Examiners

Sec.

336.10 Purpose and scope.

336.11 Definitions.

336.12 One-year post-employment restriction.

336.13 Penalties.

Authority: 12 U.S.C. 1819 and 1820(k).

§ 336.10 Purpose and scope.

This subpart applies to officers or employees of the FDIC who are subject to the post-employment restrictions set forth in section 10(k) of the Federal Deposit Insurance Act, 12 U.S.C. 1820(k), and implements those restrictions as they apply to officers and employees of the FDIC.

§ 336.11 Definitions.

For purposes of this subpart:

(a) *Bank holding company* has the meaning given to such term in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)).

(b) A *consultant* for an insured depository institution or other company shall include only individuals who work directly on matters for, or on behalf of, such institution or other company.

(c) *Control* has the meaning given to such term in section 336.3(b), and a foreign bank shall be deemed to control any insured branch of the foreign bank.

(d) *Depository institution* means any bank or savings association, including a branch of a foreign bank, if such branch is located in the United States.

(e) *Foreign bank* means any bank or company described in section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)).

(f) *Savings and loan holding company* has the meaning given to such term in section 10(a)(1)(D) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(D)).

(g) A *senior examiner* for an insured depository institution means an officer or employee of the FDIC—

(1) who has been authorized by the FDIC to conduct examinations or inspections of insured depository institutions on behalf of the FDIC;

(2) who has been assigned continuing, broad, and lead responsibility for the examination or inspection of the institution;

(3) who routinely interacts with officers or employees of the institution or its affiliates; and

(4) whose responsibilities with respect to the institution represent a substantial portion of the FDIC officer or employee's overall responsibilities.

§ 336.12 One-year post-employment restriction.

(a) *Prohibition.* An officer or employee of the FDIC who serves as a senior examiner of an insured depository institution for at least 2 months during the last 12 months of that individual's employment with the FDIC may not, within 1 year after the termination date of his or her employment with the FDIC, knowingly accept compensation as an employee, officer, director, or consultant from—

(1) The insured depository institution; or

(2) Any company (including a bank holding company or savings and loan holding company) that controls such institution.

(b) *Waivers.* The post-employment restrictions in paragraph (a) of this section will not apply to a senior examiner if the FDIC Chairperson certifies in writing and on a case-by case basis that a waiver of the restrictions will not affect the integrity of the FDIC's supervisory program.

(c) *Effective Date.* The post-employment restrictions in paragraph (a) of this section will not apply to any officer or employee of the FDIC, or any former officer or employee of the FDIC, who ceased to be an officer or employee of the FDIC before December 17, 2005.

§ 336.13 Penalties.

(a) *Penalties under section 10(k) of the FDI Act.* A senior examiner of the FDIC who violates the post-employment restrictions set forth in § 336.12 shall be subject to the following penalties—

(1) An order—

(i) Removing such person from office or prohibiting such person from further participation in the affairs of the relevant insured depository institution or company (including a bank holding company or savings and loan holding company) that controls such institution for a period of up to five years, and

(ii) Prohibiting any further participation by such person, in any manner, in the affairs of any insured depository institution for a period of up to five years; or

(2) A civil monetary penalty of not more than \$250,000; or

(3) Both.

(b) *Enforcement by appropriate Federal banking agency of hiring entity.* Violations of § 336.12 shall be enforced by the appropriate Federal banking agency of the depository institution, depository institution holding company, or other company at which the violation occurred, as determined under section 10(k)(6), which may be an agency other than the FDIC.

(c) *Scope of prohibition orders.* Any senior examiner who is subject to an

order issued under paragraph (a)(1) of this section shall, as required by 12 U.S.C. 1820(k)(6)(B), be subject to paragraphs (6) and (7) of section 8(e) in the same manner and to the same extent as a person subject to an order issued under section 8(e).

(d) *Other penalties.* The penalties set forth in paragraph (a) of this section are not exclusive, and a senior examiner who violates the restrictions in § 336.12 may also be subject to other administrative, civil, or criminal remedies or penalties as provided by law.

Dated at Washington, DC, this 8th day of November, 2005.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,
Executive Secretary.

Department of the Treasury

Office of Thrift Supervision

12 CFR Chapter V

Authority and Issuance

■ For the reasons set forth in the preamble, OTS is amending chapter V of title 12 of the Code of Federal Regulations as follows:

■ 1. Add a new part 507 to read as follows:

PART 507—RESTRICTIONS ON POST-EMPLOYMENT ACTIVITIES OF SENIOR EXAMINERS

Sec.

507.1 What does this part do?

507.2 Who is a senior examiner?

507.3 What post-employment restrictions apply to senior examiners?

507.4 When will OTS waive the post-employment restrictions?

507.5 What are the penalties for violating the post-employment restrictions?

Authority: 12 U.S.C. 1462a, 1463 and 1820(k).

§ 507.1 What does this part do?

This part implements section 10(k) of the Federal Deposit Insurance Act (FDIA), which prohibits senior examiners from accepting compensation from certain companies following the termination of their employment. See 12 U.S.C. 1820(k). Except where otherwise provided, the terms used in this part have the meanings given in section 3 of the FDIA (12 U.S.C. 1813).

§ 507.2 Who is a senior examiner?

An individual is a senior examiner for a particular savings association or savings and loan holding company if—

(a) The individual is an officer or employee of OTS (including a special government employee) who has been

authorized by OTS to conduct examinations or inspections of savings associations or savings and loan holding companies;

(b) The individual has been assigned continuing, broad and lead responsibility for the examination or inspection of that savings association or savings and loan holding company; and

(c) The individual's responsibilities for examining, inspecting, or supervising that savings association or savings and loan holding company:

(1) Represent a substantial portion of the individual's assigned responsibilities at OTS; and

(2) Require the individual to interact on a routine basis with officers and employees of the savings association, savings and loan holding company, or its affiliates.

§ 507.3 What post-employment restrictions apply to senior examiners?

(a) *Prohibition.* (1) Senior examiner of savings association. An individual who serves as a senior examiner of a savings association for two or more of the last 12 months of his or her employment with OTS may not, within one year after the termination date of his or her employment with OTS, knowingly accept compensation as an employee, officer, director, or consultant from—

(i) The savings association; or
(ii) A savings and loan holding company, bank holding company, or any other company that controls the savings association.

(2) *Senior examiner of a savings and loan holding company.* An individual who serves as a senior examiner of a savings and loan holding company for two or more of the last 12 months of his or her employment with OTS may not, within one year after the termination date of his or her employment with OTS, knowingly accept compensation as an employee, officer, director, or consultant from—

(i) The savings and loan holding company; or

(ii) Any depository institution that is controlled by the savings and loan holding company.

(b) *Effective date.* The post-employment restrictions in paragraph (a) of this section do not apply to any senior examiner who terminated his employment at OTS before December 17, 2005.

(c) *Definitions.* For the purposes of this section—

(1) *Consultant.* An individual acts as a consultant for a savings association or other company only if he or she directly works on matters for, or on behalf of, the savings association or company.

(2) *Control*. Control has the same meaning given in part 574 of this chapter.

§ 507.4 When will OTS waive the post-employment restrictions?

The post-employment restriction in § 507.3 of this part will not apply to a senior examiner if the Director certifies in writing and on a case-by-case basis that a waiver of the restriction will not affect the integrity of OTS's supervisory program.

§ 507.5 What are the penalties for violating the post-employment restrictions?

(a) *Penalties*. A senior examiner who violates § 507.3 shall, in accordance with 12 U.S.C. 1820(k)(6), be subject to one or both of the following penalties:

(1) An order—

(i) Removing the person from office or prohibiting the person from further participating in the conduct of the affairs of the relevant depository institution, savings and loan holding company, bank holding company or other company for up to five years, and

(ii) Prohibiting the person from participating in the affairs of any insured depository institution for up to five years.

(2) A civil money penalty not to exceed \$250,000.

(b) *Scope of prohibition orders*. Any senior examiner who is subject to an order issued under paragraph (a)(1) of this section shall be subject to 12 U.S.C. 1818(e)(6) and (7) in the same manner and to the same extent as a person subject to an order issued under 12 U.S.C. 1818(e).

(c) *Procedures*. 12 U.S.C. 1820(k) describes the procedures that are applicable to actions under paragraph (a) of this section and the appropriate Federal banking agency authorized to take the action, which may be an agency other than OTS. Where OTS is the appropriate Federal banking agency, it will conduct administrative proceedings under 12 CFR part 509.

(d) *Other penalties*. The penalties under this section are not exclusive. A senior examiner who violates the restriction in § 507.3 may also be subject to other administrative, civil, or criminal remedy or penalty as provided by law.

PART 509—RULES OF PRACTICE AND PROCEDURES IN ADJUDICATORY PROCEEDINGS

■ 2. The authority citation for part 509 is revised to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 1464, 1467, 1467a, 1468, 1817(j), 1818, 1820(k), 3349, 4717; 15 U.S.C. 78(l); 78o–5,

78u–2; 28 U.S.C. 2461 note; 31 U.S.C. 5321; 42 U.S.C. 4012a.

■ 3. In § 509.1, redesignate paragraph (g) as paragraph (h); remove the word “and” at the end of paragraph (f); and add a new paragraph (g) to read as follows:

§ 509.1 Scope.

* * * * *

(g) Proceedings under section 10(k) of the FDIA (12 U.S.C. 1820(k)) to impose penalties on senior examiners for violation of post-employment prohibitions; and

* * * * *

Dated: November 7, 2005.
Office of Thrift Supervision.

John M. Reich,
Director.

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