

**DEPARTMENT OF THE TREASURY**

**5 CFR Chapter XXI**

**Supplemental Standards of Ethical Conduct for Employees of the  
Department of the Treasury**

**RIN 3209-AA04, 3209-AA15**

**58 FR 41193**

**August 3, 1993**

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**ACTION:** Proposed rule.

**SUMMARY:** The Department of the Treasury (Department), with the concurrence of the Office of Government Ethics (OGE), proposes to issue regulations for the officers and employees of the Department that supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE. The proposed rule is a necessary supplement to the Executive Branch-wide Standards because it addresses ethical issues unique to the Department. The proposed rule establishes regulations relating to: the designation of agency components for purposes of the gift rules; prohibitions on the ownership of certain financial interests; prohibitions on certain forms of borrowing and extensions of credit; prohibitions on recommendations concerning certain securities and services of certain types of professionals; limitations on purchases of assets controlled by the Department or related to Department operations; and restrictions on outside employment and business activities.

**DATES:** Comments are invited and must be received on or before September 2, 1993.

**ADDRESSES:** Send comments to the Office of the Assistant General Counsel (Administrative and General Law), Department of the Treasury, room 1410, Washington, DC 20220, Attention: Mr. Henry H. Booth.

**FOR FURTHER INFORMATION CONTACT:** Stephen J. McHale, Henry H. Booth, or R. Peter Rittling, Office of the Assistant General Counsel (Administrative and General Law), Department of the Treasury, telephone (202) 622-0450, FAX (202) 622-1176.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On August 7, 1992, the Office of Government Ethics published the Standards of Ethical Conduct for Employees of the Executive Branch. See *57 FR 35006-35067*, as corrected at *57 FR 48557* and *57 FR 52583*. 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. The Department and OGE have determined that the following supplemental regulations contained in the proposed rule are necessary to implement the Department's ethics program successfully, in light of the Department's unique programs and operations.

### **II. Analysis of the Regulations**

The following regulations will appear in new 5 CFR chapter XXI.

#### **Section 3101.101 General**

(a) *Purpose*. Proposed § 3101.101(a) explains that the regulations contained in the proposed rule would apply to all Department of the Treasury employees and are supplemental to the Executive Branch-wide Standards. Further, all Department employees must comply with the Executive Branch-wide Standards, the supplemental regulations in the proposed rule, once final, and bureau instructions issued pursuant to proposed § 3101.101(b). In addition, the Treasury rules of conduct, published at 31 CFR part O, will be revised and republished. The revision will delete rules superseded by the Executive Branch-wide Standards and modify some of the remaining rules. Department employees will be required to follow the revised rules republished under part O, and any related rules of conduct bureaus may be authorized to issue.

(b) *Bureau Instructions*. Proposed § 3101.101(b) would authorize the Department's bureaus, with the concurrence of the Designated Agency Ethics Official (DAEO), to issue instructions and manual issuance providing explanatory guidance and implementing procedures to assist employees in understanding and complying with the Executive Branch-wide Standards and these supplemental regulations.

(c) *Agency Designee*. Proposed § 3101.101(c) would delegate to bureaus the authority, by instruction or manual issuance, to designate agency designees to make determinations, give approvals, or take actions required or permitted by the supplemental regulations or Executive Branch-wide Standards.

#### **Section 3101.102 Designation of Separate Agency Components**

Section 2635.202(a) of the Executive Branch-wide Standards prohibits an employee from soliciting or accepting a gift from a prohibited source. A prohibited source is defined, in part, as a person who has a specific relationship with an employee's agency, as prescribed in *5 CFR 2635.203(d)*. For the purpose of identifying an employee's agency, § 2635.203(a) of the Executive Branch-wide Standards authorizes an executive department, by supplemental regulation, to

designate as a separate agency a component of the department that exercises a distinct and separate function. Designations made pursuant to § 2635.203(a) are used also to identify an employee's agency for purposes of applying the prohibition in 5 *CFR* 2635.807 concerning the receipt of compensation for teaching, speaking and writing that relates to an employee's official duties.

Section 3101.102 of the proposed rule would designate 13 of the Department's bureaus and offices as separate agencies. The Department has determined that these bureaus and offices exercise distinct and separate functions. The Legal Division would not be designated as a separate agency. Instead, Legal Division employees would be treated as part of the bureaus or offices in which they serve. Department employees not employed in one of the 13 designated bureaus or offices would be deemed employees of an agency that consists of all parts of the Department other than the 13 designated components and that is separate and distinct from each of the 13 designated components. Thus, for example, a bank regulated by the Office of the Comptroller of the Currency would be a prohibited source for all employees of that Office, but would not be a prohibited source as to all employees of the Departmental Offices unless that bank was seeking official action from or otherwise had a matter pending before the Departmental offices or an office not designated as a separate component.

This section of the proposed rule would apply Department-wide and is only for the purpose of defining an employee's agency as that term is used in subpart B of 5 *CFR* part 2635 and 5 *CFR* 2635.807.

### **Section 3101.103 Prohibition on Purchase of Certain Assets**

(a) *General Prohibition.* Proposed § 3101.103(a) would prohibit all Department employees from purchasing property that is either owned by the Government and under the control of an employee's bureau, or sold under the direction of or incident to the functions of an employee's bureau. This prohibition is not intended to apply to assets under the control of or sold incident to the functions of an agency other than Treasury with which a Treasury official is affiliated in an ex officio capacity (e.g., the Secretary of the Treasury is a member of the Board of the Pension Benefit Guaranty Corporation). The purchase of such assets would be subject to the regulations of the agency controlling or disposing of the assets and not subject to the Department regulations.

(b) *Exceptions.* Section 3101.103(b) excepts from the prohibition in § 3101.103(a) Government securities, items sold to the public at a fixed price, and foreign gifts purchased pursuant to 41 *CFR* parts 101-49.

(c) *Waiver.* An agency designee, with the advice and legal clearance of the DAEO, or the appropriate Office of Chief or Legal Counsel, would be authorized under § 3101.103(c) to grant a written waiver of the prohibition in proposed § 3101.103(a) based upon a determination that the waiver is lawful, and meets the waiver standard established in that subsection. This waiver is similar to other waivers proposed throughout these supplemental regulations. The waiver provisions are intended, in appropriate cases, to ease the burden that the supplemental regulations may impose on the private lives of employees of the Department, while ensuring that employees do not engage in actions that may interfere with the objective and impartial execution of their official duties or raise questions about possible misuse of their official positions.

The general prohibition and waiver provisions included in proposed § 3101.103 would apply to all Department employees. As set forth in a note to that section, the employees of the Office of the

Comptroller of the Currency (OCC) and the Office of Thrift Supervision (OTS) would be subject to additional limitations on their purchase of certain assets pursuant to the bureau-specific rules contained later in this part.

Section 3101.103 is proposed as a supplement to § 2635.702 of the Executive Branch-wide Standards, prohibiting generally the use of public office for private gain. The Department exercises broad powers to seize, hold and forfeit private property. It is therefore important to preserve the public's confidence that these powers will not be misused to benefit the private interests of a Department employee. Prohibiting employees from engaging in certain purchases that may appear improper is essential to achieve this objective.

### **Section 3101.104 Outside Employment**

(a) *General Requirement for Prior Approval.* Proposed § 3101.104(a) would require all employees of the Department to obtain prior written approval before engaging in any outside employment or business activity. This requirement would apply to any outside employment or business activity regardless of whether it is compensated. The regulation would establish a Department-wide standard allowing approval of outside employment or business activity upon a determination that the outside employment or business activity is not prohibited by law, the Executive Branch-wide Standards, or these supplemental regulations. As would be evident from this standard, § 3101.104 would not itself provide a basis to deny any Department employee's request for approval of outside employment. The basis must be found in applicable statutes, the Executive Branch-wide Standards, or another provision of these supplemental regulations. Bureau-specific regulations that would restrict the outside employment and activities of employees of the Bureau of Alcohol, Tobacco and Firearms, the Internal Revenue Service, the Legal Division, the OCC, the United States Customs Service and the United States Secret Service appear later in this part as proposed.

(b) *Bureau Responsibilities.* Under proposed § 3101.104(b), the bureaus would be required to issue instructions or manual issuances; (1) Establishing procedures for the submission of requests for approval of outside employment or business activity, and (2) designating bureau officials responsible for processing the requests. The bureaus could include examples of permissible and impermissible employment and activities in their instructions or manual issuances. Further, the bureaus would be required to retain all requests for approval to engage in outside employment or business activity in the requesting employee's Official Personnel Folder (temporary side), whether a request is granted or not. Categories of outside employment or activities could be exempted by the bureaus from the prior written approval requirement provided the employment or activities exempted are not prohibited by law, the Executive Branch-wide Standards, or these supplemental regulations, and would normally be approved if subject to the case-by-case requirement for prior approval.

For the purposes of this section, the Departmental Offices and the Office of the Inspector General are considered bureaus.

The regulation in § 3101.104, requiring prior written approval, is proposed pursuant to § 2635.803 of the Executive Branch-wide Standards. Given the breadth of the Department's responsibilities, requiring prior written approval of outside employment and business activities provides a necessary control to ensure that employees do not engage in outside employment or activities in violation of applicable laws and regulations.

### **Section 3101.105 Additional Rules for Bureau of Alcohol, Tobacco and Firearms Employees**

The regulations contained in proposed § 3101.105 apply only to employees of the Bureau of Alcohol, Tobacco and Firearms (ATF), and are in addition to the regulations in proposed § 3101.101 through § 3101.104 which would apply to all Department employees.

(a) *Prohibited Financial Interests.* Proposed § 3101.105(a) would regulate the financial interests of ATF employees. More specifically, ATF employees and their spouses or minor children would generally be prohibited from having any financial interest in the alcohol, tobacco, firearms or explosives industries.

(b) *Waiver.* Under proposed § 3101.105(b), an agency designee, with the advice and legal clearance of the DAEO or Office of the Chief Counsel, would be authorized to grant a written waiver of the prohibition in proposed § 3101.105(a) based upon a determination that the financial interest is not prohibited by 26 U.S.C. 7214(b), proscribing investment in the alcohol or tobacco industries, and meets the waiver standard established in that subsection of the regulations. Further action may be required under a waiver, including a written disqualification.

Section 3101.105 is proposed as a supplement to § 2635.403 of the Executive Branch-wide Standards, which deals with prohibited financial interests. Accordingly, the term "financial interest" as used in this section is intended to have the same meaning as that term is given in § 2635.403(c) of the Executive Branch-wide Standards. Under that definition, a financial interest includes, for example, an employee's current or contingent ownership or equity or security interest in real or personal property or a business, or a compensated employment relationship. And, consistent with that definition and the authority in 5 CFR 2635.403(a), proposed § 3101.105(a) would make it clear that the prohibition extends to the financial interests of spouses and minor children of ATF employees.

The prohibition proposed in § 3101.105 is based in part on the statutory prohibition at 26 U.S.C. 7214(b), proscribing employee investment in the alcohol or tobacco industries, and is intended in part to ensure that ATF employees do not violate that statute. However, under the authority in 5 CFR 2635.403(a), the section would extend a similar prohibition (unless waived) to interests in two additional industries regulated by the ATF: The firearms and explosives industries. Prohibiting ATF employees from having financial interests in entities that are regulated by or closely connected to the work of their bureau is important for three reasons: (1) To maintain the ATF's appearance of impartiality and objectivity in the execution of its regulatory functions; (2) to eliminate a regulated entity's concern that sensitive information provided to the bureau might be misused for private gain; and (3) to avoid the large-scale recusal of employees from official matters resulting in an inability of the bureau to fulfill its mission.

### **Section 3101.106 Additional Rules for Internal Revenue Service Employees**

The regulations contained in § 3101.106 of the proposed rule apply only to employees of the Internal Revenue Service (IRS), and are in addition to the regulations in proposed § 3101.101 through § 3101.104 which would apply to all Department employees.

(a) *Prohibited Recommendations.* Proposed § 3101.106(a) would prohibit all IRS employees from recommending or suggesting the services of a specific attorney or accountant or firm of attorneys or accountants to any individual in connection with a matter involving or that may involve

the IRS. This prohibition supplements § 2635.702(c) of the Executive Branch-wide Standards, prohibiting a Government employee from using public office to endorse any product, service or enterprise. It is, in part, the purpose of this proposed supplemental prohibition to eliminate any misunderstanding or harm that could result from such a recommendation. An IRS employee's recommendation of an attorney or accountant may mislead a taxpayer into believing that the IRS endorses that individual or accords the opinion of that individual special weight. This rule, however, would not prohibit IRS offices from providing to taxpayers in need of professional assistance the names of independent referral agencies, such as bar associations.

(b) *Outside Employment.* Proposed § 3101.106(b) would establish regulations concerning the outside employment of IRS employees. The proposed regulations would supplement § 2635.802 of the Executive Branch-Wide Standards by prohibiting certain tax-related outside activities that, if engaged in by IRS employees, would cause reasonable persons to question the objectivity and impartiality with which IRS programs are administered, or would otherwise conflict with IRS employees' official duties. More specifically, the rule would prohibit IRS employees from engaging in any outside employment that would involve performing certain legal services; appearing on behalf of taxpayers regarding tax matters; accounting or bookkeeping regarding tax matters; or preparing tax returns for any compensation, monetary or otherwise. Regulations on outside employment specific to IRS employees are necessary to address situations and issues unique to IRS employees in light of the IRS's specialized tax administration duties.

(c) *Seasonal Employees.* Proposed § 3101.106(c) would address the special circumstances of seasonal employees at the IRS. While in non-duty status, seasonal employees would be able to engage in outside employment or activities, other than those prohibited by § 3101.106(b), without obtaining the prior written approval that would otherwise be required of all Department employees by § 3101.104 of these supplemental regulations.

### **Section 3101.107 Additional Rules for Legal Division Employees**

The regulations contained in § 3101.107 of the proposed rule apply only to employees of the Legal Division, and are in addition to the regulations in proposed § 3101.101 through § 3101.104 which would apply to all Department employees.

(a) *Application of Rules of Other Bureaus.* The Legal Division includes the attorneys responsible for providing legal advice to officials in all of the Department's bureaus or offices, as well as the staff assigned to support those attorneys. While the Legal Division is a separate bureau of the Department, each member of the Division is assigned to serve in a particular bureau or office. Under proposed § 3101.107(a), employees of the Legal Division would be required to follow any bureau-specific rules contained in these supplemental regulations that are applicable to the employees of the bureaus or offices in which the Legal Division employees serve, subject to any instruction issued by the General Counsel or appropriate Chief of Legal Counsel, pursuant to proposed § 3101.101.

(b) *Outside Employment.* Proposed § 3101.107(b) would prohibit attorneys in the Legal Division from practicing law outside their official positions where they may in fact or in appearance take a legal position in conflict with the interests of the Department. Further, Legal Division attorneys would be prohibited from interpreting a statute, regulation or rule administered by the Department as part of the outside practice of law. The proposed regulation in this section is consistent with the rules of professional conduct governing the attorney-client relationship. It is a

necessary supplement to the general Executive Branch-wide Standards at § 2635.802(a) because it specifically addresses the unique and sensitive relationship between an attorney and a client, which, for the attorneys in the Legal Division, is the Department of the Treasury.

### **Section 3101.108 Additional Rules for Office of the Comptroller of the Currency Employees**

Section 3101.108 of the proposed rule contains several regulations specific to the employees of the Office of the Comptroller of the Currency; they are in addition to the regulations in proposed § 3101.101 through § 3101.104 which would apply to all Department employees.

(a) *Prohibited Financial Interests.* As proposed, § 3101.108(a)(1) would prohibit an OCC employee, or a spouse of minor child of an OCC employee, from owning securities issued by a commercial bank or commercial bank affiliate, including a bank holding company.

The Department has determined that in light of the OCC's sensitive bank regulatory functions this restriction is necessary to: (1) Maintain public confidence in the impartiality and objectivity with which the OCC executes its regulatory functions; (2) eliminate any reason for regulated entities to be concerned that sensitive information provided to the OCC might be misused for private gain; and (3) avoid the widespread disqualification of employees from official matters that might result in the OCC's inability to fulfill its mission.

The term "commercial bank," as used in this section, includes both national and State-chartered banks. The scope of this prohibition is expanded to cover both national and State-chartered commercial banks for the purposes of easing administration and minimizing inadvertent violations, even though the OCC's regulatory jurisdiction includes only national banks and their affiliates. Whether a financial interest is held indirectly by a national bank may be difficult for an ethics official and employee to determine in today's financial services industry where financial institutions frequently merge, consolidate or change their charters. A prohibition on the ownership of all commercial bank securities establishes a bright-line test, enabling employees easily to identify prohibited interests. The utility of this bright-line test outweighs any incremental restriction on an employee's ability to invest that may result from the extension of the prohibition to State-chartered bank securities.

Proposed § 3101.108(a)(2) contains a comprehensive definition of the term "securities." It includes any "interest in debt or equity instruments" such as, for example, stocks, bonds and commercial paper. However, the term securities as used in these supplemental regulations does not include deposit accounts. Finally, proposed § 3101.108(a)(3) (i)-(iii) includes several exceptions to the prohibition in § 3101.108(a)(1) on financial interests. The exceptions are intended to ease the restrictions on the financial interests of OCC employees, their spouses and their minor children, and to permit interests of a character unlikely to raise questions regarding the objective and impartial performance of OCC employees' official duties or the possible misuse of their positions. Subsection § 3101.108(a)(3)(iv) is included as a specific cross reference to the proposed waiver authority at § 3101.108(g) which would be used on a case-by-case basis.

(b) *Prohibited Borrowing.* The proposed rules on borrowing contained in § 3101.108 (b)(1) and (b)(2) would apply only to "covered OCC employees," their spouses and minor children. For the purposes of this subsection, the term covered OCC employee would be defined in proposed § 3101.108(b)(3) to mean all OCC bank examiners and any other OCC employee specified in an OCC instruction or manual issuance who the Comptroller of the Currency or a designee determines

should be subject to the borrowing prohibition pursuant to the standard established in this subsection.

A covered OCC employee would be prohibited from seeking or obtaining a loan or extension of credit from a national bank or an officer, director, employee, or subsidiary of a national bank. For the purposes of this section, an extension of credit includes any credit obtained by use of a credit card. The borrowing prohibition applies equally to spouses and minor children of covered OCC employees unless the loan or extension of credit is supported exclusively by the income or means of the spouse or minor child and is obtained on the same terms and conditions as those offered to the public, and the covered OCC employee does not participate in the negotiations for the loan or serve as co-maker, endorser or guarantor of the loan.

In contrast to the proposed prohibition of holding securities set forth in § 3101.108(a), the rule in this subsection would regulate borrowing from only national banks, and not from State-chartered banks. While some of the same concerns resulting from the integration of the banking industry apply here, permitting employees to have access to adequate sources of credit outweighs any incremental benefit that may be gained by extending the rule to cover loans from State-chartered banks.

Exceptions to the prohibition on borrowing are set forth in proposed § 3101.108(b)(4). Under the exceptions, a covered OCC employee or spouse or minor child of a covered OCC employee would be permitted to obtain a loan or extension of credit from a national bank provided the loan or extension of credit is obtained under one of the conditions indicated in subsections (b)(4) (i)-(iii), and provided: (1) The terms and conditions of the transaction are not more favorable than for the general public; (2) the employee is not assigned to examine the bank at the time of the transaction; and (3) the employee is disqualified from examining or participating in the supervision of the bank. As with the exceptions to the financial interests prohibitions in proposed § 3101.108(a)(3), the exceptions in § 3101.108(b)(4) are intended to minimize the burden on covered OCC employees, and their spouses and minor children, in obtaining loans or extensions of credit that are unlikely to raise issues regarding the motivation of the lender or the objective and impartial performance of official duties by OCC employees.

Proposed § 3101.108(b)(5) addresses pre-existing credit and serves to clarify that § 3101.108 (b)(1) and (b)(2) would impose prohibitions only on seeking or obtaining loans or extensions of credit. Thus, there would be no prohibition on a covered OCC employee, or a spouse or minor child of a covered OCC employee, retaining a loan from a national bank provided the loan was obtained either: (1) Prior to the covered employee's employment at the OCC; or (2) as a result of the sale or transfer of the loan to a national bank, or a conversion or merger of the lender into a national bank. The renewal or renegotiation of a pre-existing loan or extension of credit, however, would be treated as a new loan subject to the prohibitions in § 3101.108 (b)(1) and (b)(2).

The proposed prohibition on borrowing contained in § 3101.108(b) is necessary for several reasons. First, it is necessary to prevent covered OCC employees from obtaining or appearing to obtain loans or extensions of credit on preferential terms, or from benefiting or appearing to benefit from their official positions through possible forbearance by the lender in collecting on the indebtedness. Second, public confidence in the integrity of the OCC will be strengthened by prohibiting OCC employees from engaging in financial transactions with institutions regulated by the OCC. Third, the borrowing prohibition implements, in part, *18 U.S.C. 212* and *213*, regulating the offer and acceptance of certain loans to and by bank examiners. Finally, limitations on OCC

employees' borrowing from regulated institutions will avoid a high number of employee disqualifications that would have a detrimental effect on the OCC's administration of its supervisory responsibilities.

(c) *Restrictions Arising from Third Party Relationships.* Proposed § 3101.108(c) would attribute to an OCC employee certain securities and loans, or extensions of credit, that are held by the entities described in that subsection (e.g., trusts, partnerships, closely-held corporations). An employee with an attributed interest would be required to report the interest to the Chief Counsel or designee, and could be required to terminate the relationship with the entity, disqualify himself or herself from a matter or take other appropriate action as determined by the Chief Counsel or designee to avoid a violation of the conflict of interest statutes, the Executive Branch-wide Standards or these supplemental regulations.

(d) *Prohibited Recommendations.* As proposed, § 3101.108(d) would prohibit OCC employees from making any recommendation or suggestion regarding a security issued by a commercial bank or commercial bank affiliate, including a bank holding company. This rule is intended in part to eliminate any misunderstanding or harm that could result from such a recommendation. For example, an investor should not be misled into believing, pursuant to the recommendation of an OCC employee, that the securities of a particular institution regulated by the OCC are a sound buy because the investor believes that the employee may have access to inside information. Rules addressing similar concerns apply to the employees of the OTS and IRS.

(e) *Prohibited Purchase of Assets.* Section 3101.108(e) is proposed as a further supplement to the proposed prohibitions in § 3101.103, regarding the purchase of assets by all Department employees. It would specifically prohibit an OCC employee, or a spouse or minor child of an OCC employee, from purchasing assets from a national bank or national bank affiliate, including a bank holding company. An asset sold by public auction or by a method that ensures that the asset is sold at its fair market value would be exempt from this prohibition.

(f) *Outside Employment.* Proposed § 3101.108(f) would supplement § 2635.802 of the Executive Branch-wide Standards by prohibiting certain OCC employees from engaging in specified outside employment and activities. The prohibition in this section would apply only to covered OCC employees. For the purpose of this subsection, the term covered OCC employee would mean all OCC bank examiners and any other employee specified in an OCC instruction or manual issuance who the Comptroller of the Currency or designee determines should be covered by the rule pursuant to the standard established in the subsection. Employees of the OCC covered by this rule would be prohibited from performing compensated services for any bank, banking or loan association or national bank affiliate or any officer, director, employee or person connected in any way with any of the foregoing entities. This regulation, based in part on *18 U.S.C. 1909*, addresses situations unique to OCC bank examiners and OCC employees involved in the regulation of national banks, and prohibits activity that, if engaged in, may interfere with the objective and impartial performance of an employee's official duties.

(g) *Waivers.* Proposed § 3101.108(g) would give an agency designee authority, with the advice and legal clearance of the DAEO or the Office of the Chief Counsel, to grant a written waiver of any prohibition in proposed § 3101.108 based upon a determination that the waiver is consistent with law and the Executive Branch-wide Standards, and meets the waiver standard established in the subsection. An employee may be required under the waiver to disqualify himself or herself from a particular matter or take other appropriate action.

## **Section 3101.109 Additional Rules for Office of Thrift Supervision Employees**

Section 3101.109 of the proposed rule contains several rules applicable solely to the employees of the Office of Thrift Supervision; they are in addition to the regulations in proposed § 3101.101 through § 3101.104 which would apply to all Department employees. These rules are very similar to the rules that would apply to OCC employees under proposed § 3101.108. They differ in scope primarily in that § 3101.109 would impose no specific prohibition on the outside employment and business activities of OTS employees. This is due in part to the fact that OTS employees are not subject to *18 U.S.C. 1909*. Nevertheless, OTS employees, like all other Department employees, would be required to obtain prior approval for outside employment pursuant to proposed § 3101.104.

(a) *Covered OTS Employees.* Several of the rules in proposed § 3101.109 would apply only to "covered OTS employees." Covered OTS employees as the term is used in this section would mean all OTS grade 17 positions or above, and any OTS employees specified in an OTS instruction or manual issuance who the Director of the OTS or a designee determines should be covered by the prohibitions contained in this section pursuant to the standard established in § 3101.109(a).

(b) *Prohibited Financial Interests.* The proposed financial interest provisions of § 3101.109(b) are similar to those proposed for application to OCC employees. Specifically, the subsection would prohibit covered OTS employees, and their spouses or minor children from owning securities issued by an OTS-regulated savings association or savings association holding company. As with the OCC rule, this prohibition is intended to ensure public confidence in the manner in which the OTS fulfills its regulatory responsibilities, eliminate potential concerns over use of nonpublic information and avoid wide-spread disqualification of OCC employees.

(c) *Prohibited Borrowing.* Proposed § 3101.109(c) would prohibit covered OTS employees from seeking or obtaining loans or extensions of credit from and OTS-regulated savings association or an officer, director, employee, or subsidiary of an OTS-regulated savings association. For the purpose of this subsection, an extension of credit includes credit obtained through the use of credit cards. The prohibition on borrowing in § 3101.109(c) is required in part by *18 U.S.C. 212* and *213*, and is similar in scope and purpose to the borrowing prohibition proposed for application to OCC employees. The proposed exceptions in § 3101.109(c)(3) are similar to those in the OCC borrowing rule.

(d) *Restrictions Arising from Third Party Relationships.* Proposed § 3101.109(d) is identical to the rule proposed for the purpose of regulating OCC employees' relationships with certain entities.

(e) *Prohibited Recommendations.* Proposed § 3101.109(e) is substantially the same as the prohibition on making recommendations concerning regulated entities that is proposed for application to OCC employees.

(f) *Prohibited Purchase of Assets.* Proposed § 3101.109(f) is substantially the same as the prohibition on purchasing the assets of certain regulated proposed for application to OCC employees.

(g) *Waivers.* Proposed § 3101.109(g) would give an agency designee authority, with the advice and legal clearance of the DAEO or Office of the Chief Counsel, to grant a written waiver of any prohibition in proposed § 3101.109 upon a determination that the waiver is consistent with law and

the Executive Branch-wide Standards, and meets the waiver standard established in the subsection. An employee may be required under the waiver to disqualify himself or herself from a particular matter or take other appropriate action.

### **Section 3101.110 Additional Rules for United States Customs Service Employees**

Section § 3101.110 of the proposed rule contains regulations applicable only to employees of the United States Customs Service; they are in addition to the regulation in proposed § 3101.101 through § 3101.104 which would apply to all Department employees.

(a) *Prohibition on Employment.* Under proposed § 3101.110(a), Customs Service employees would be prohibited from working for specified types of entities that are regulated by or have a business relationship with the Custom Service.

(b) *Restrictions Arising from Employment of Relatives.* Under proposed § 3101.110(b), a Customs Service employee would be required to file a report of family member employment with his or her supervisor if the employee's spouse or a relative who is dependent on or resides with the employee is employed with an entity specified in proposed § 3101.110(a). The report would be forwarded to the appropriate regional counsel for transmittal to the Chief Counsel. The employee would be disqualified from participating in any matter involving the employee's spouse or relative, or their employer, unless the employee received the appropriate authorization pursuant to the standard in section 2635.502(d) of the Executive Branch-wide Standards. In effect, proposed § 3101.110(b) supplements § 2635.502 of the Executive Branch-wide Standards.

The regulations in proposed § 3101.110(a) are necessitated by the frequent contact Customs Service employees have with importers at the local level, and are designed to assure that the Customs Service and its employees maintain the highest level of integrity while minimally restricting the employees' personal activities and associations. Customs Service employees at all levels carry out many types of duties that can have a major impact on the business of an importer, broker, or carrier. For example, Customs Service inspectors enforce customs laws and make determinations involving the financial interests of importers at every port or entry in the United States. In addition, Customs Service employees audit and investigate numerous companies to determine potential violations of the customs laws. The regulations in this section will prevent the outside employment interests of Customs Service employees and their family members from interfering with the objective and impartial execution of the employees' official duties and will help to ensure public confidence in the Customs Service's execution of its mission.

### **Section 3101.111 Additional Rules for United States Secret Service Employees**

Proposed § 3101.111 explains that Secret Service regulations regarding compensated outside the employment in effect on February 2, 1993, will remain in effect until February 3, 1994, or until superseded by a new supplemental regulation substituted for § 3101.111. This temporary preservation of existing rules is consistent with the note following § 2635.403(a) of the Executive Branch-wide Standards and recognizes the need for further study of the extent to which the outside activities of law enforcement personnel should be restricted because of their special responsibilities. During the next year the Department, in consultation with OGE, will be working with other law enforcement agencies to determine whether special rules are needed in this area.

### **III. Matters of Regulatory Procedure**

#### **Executive Order 12291, Federal Regulation**

Because this rule relates to agency organization, management and personnel, it is not subject to Executive Order 12291.

#### **Regulatory Flexibility Act**

It is hereby certified that this proposed rule will not have significant economic impact on a substantial number of small entities. This rule affects only Federal employees and their immediate families.

#### **List of Subjects in 5 CFR Part 3101**

Conflict of interests, Government employees.

Dated: July 9, 1993.

**Jean E. Hanson,**  
*General Counsel, Department of the Treasury.*

Approved: July 27, 1993.

**Stephen D. Potts,**  
*Director, Office of Government Ethics.*

For the reasons set forth in the preamble, the Department of the Treasury, in concurrence with the Office of Government Ethics, is proposing to amend title 5 of the Code of Federal Regulations by adding a new chapter XXI, consisting of part 3101, to read as follows:

#### **CHAPTER XXI-DEPARTMENT OF THE TREASURY**

#### **PART 3101-SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF THE TREASURY**

Sec.

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**Authority:** 5 U.S.C. 301, 7301, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 7214(b); 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, 2635.203(a), 2635.403(a), 2635.803, 2635.807(a)(2)(ii).

#### **§ 3101.101 -- General.**

(a) *Purpose.* In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Department of the Treasury and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. Employees are required to comply with 5 CFR part 2635, this part, and bureau guidance and procedures established pursuant to this section. Department employees are also subject to any additional rules of conduct that the Department or their employing bureaus are authorized to issue.

(b) *Bureau instructions.* With the concurrence of the Designated Agency Ethics Official (DAEO), bureaus of the Department of the Treasury are authorized to issue instructions or manual issuances providing explanatory guidance and establishing procedures necessary to implement this part and part 2635 of this title. See 5 CFR 2635.105(c).

(c) *Definition of "agency designee".* As used in this part and part 2635 of this title, the term "agency designee" refers to any employee who has been delegated authority by an instruction or manual issuance issued by a bureau under paragraph (b) of this section to make a determination, give an approval, or take other action required or permitted by this part or part 2635 of this title with respect to another employee. See 5 CFR 2635.102(b).

#### **§ 3101.102 -- Designation of separate agency components.**

Pursuant to 5 CFR 2635.203(a), each of the following components of the Department of the Treasury is designated as a separate agency for purposes of the regulations contained in subpart B of 5 CFR part 2635 governing gifts from outside sources and 5 CFR 2635.807 governing teaching, speaking or writing:

- (a) Bureau of Alcohol, Tobacco and Firearms (ATF);
- (b) Bureau of Engraving and Printing;
- (c) Bureau of the Public Debt;

- (d) Federal Law Enforcement Training Center;
- (e) Financial Management Service;
- (f) Internal Revenue Service (IRS);
- (g) Office of the Comptroller of the Currency (OCC);
- (h) Office of the Inspector General;
- (i) Office of Thrift Supervision (OTS);
- (j) United States Customs Service (USCS);
- (k) United States Mint;
- (l) United States Savings Bonds Division; and
- (m) United States Secret Service.

For purposes of this section, employees in the Legal Division shall be considered to be part of the bureaus or offices in which they serve.

**Note:** As a result of the designations contained in this section, employees of the remaining parts of the Department of the Treasury (e.g., employees in Departmental Offices, including the Financial Crimes Enforcement Network) will also be treated as employees of an agency that is separate from all of the above listed bureaus and offices for purposes of determining whether the donor of a gift is a prohibited source under *5 CFR 2635.203(d)* and for identifying an employee's "agency" under *5 CFR 2635.807* governing teaching, speaking and writing.

### **§ 3101.103 -- Prohibition on purchase of certain assets.**

(a) *General prohibition.* Except as provided in paragraph (b) of this section, no employee of the Department of the Treasury shall purchase, directly or indirectly, property:

(1) Owned by the Government and under the control of the employee's bureau (or a bureau over which the employee exercises supervision); or

(2) Sold under the direction or incident to the functions of the employee's bureau.

(b) *Exceptions.* The prohibition in paragraph (a) of this section does not apply to the purchase of Government securities or items sold generally to the public at fixed prices, such as numismatic items produced by the United States Mint, or foreign gifts deposited with the Department pursuant to *5 U.S.C. 7342* that an employee may purchase pursuant to 41 CFR parts 101-49.

(c) *Waiver.* An employee may make a purchase otherwise prohibited by this section where a written waiver of the prohibition has been given to the employee by an agency designee with the advice and legal clearance of the DAEO, or the appropriate Office of Chief or Legal Counsel. Such a waiver may be granted only on a determination that the waiver is not otherwise prohibited by law and that, in the mind of a reasonable person with knowledge of the particular circumstances, the purchase of the asset will not raise a question as to whether the employee has used his or her official position or inside information to obtain an advantageous purchase or create an appearance of loss of impartiality in the performance of the employee's duties.

**Note:** Employees of the OCC and OTS are subject to additional limitations on the purchase of assets that are set out in bureau-specific rules contained in §§ 3101.108 and 3101.109.

### **§ 3101.104 -- Outside employment.**

(a) *General requirement for prior approval.* All Department of the Treasury employees shall obtain prior written approval before engaging in any outside employment or business activities, with or without compensation, except to the extent that the employing bureau issues an instruction or manual issuance pursuant to paragraph (b) of this section exempting an activity or class of activities from this requirement. Approval shall be granted only on a determination that the employment or activity is not expected to involve conduct prohibited by statute, part 2635 of this title or any provision of this part.

**Note:** Employees of the ATF, IRS, Legal Division, OCC, USCS and United States Secret Service are subject to additional limitations on outside employment and activities that are set in out in bureau-specific rules contained in this part.

(b) *Bureau responsibilities.* Each bureau, which for the purposes of this section includes the Departmental Offices and the Office of the Inspector General, shall issue instructions or manual issuances governing the submission of requests for approval of outside employment or business activities and designating appropriate officials to act on such requests. The instructions or manual issuances may exempt categories of employment or activities from the prior approval requirement based on a determination that employment or activities within those categories would generally be approved and are not likely to involve conduct prohibited by statute, part 2635 of this title or any provision of this part. Bureaus may include in their instructions or issuances examples of outside employment or activities that are permissible or impermissible consistent with this part and part 2635 of this title. Bureaus shall retain in employees' Official Personnel Folders (temporary side) all requests for approval whether granted or denied.

### **§ 3101.105 -- Additional rules for Bureau of Alcohol, Tobacco and Firearms employees.**

The following rules apply to the employees of the Bureau of Alcohol, Tobacco and Firearms and are in addition to §§ 3101.101-3101.104:

(a) *Prohibited financial interests.* Except as provided in this section, no employee of the ATF, or spouse or minor child of an ATF employee, shall have, directly or indirectly, any financial interest, including compensated employment, in the alcohol, tobacco, firearms or explosives industries. The term financial interest is defined in § 2635.403(c) of this title.

(b) *Waiver.* An agency designee, with the advice and legal clearance of the DAEO or Office of the Chief Counsel, may grant a written waiver of the prohibition in paragraph (a) of this section on a determination that the financial interest is not prohibited by 26 U.S.C. 7214(b) and that, in the mind of a reasonable person with knowledge of the particular circumstances, the financial interest will not create an appearance of misuse of position or loss of impartiality, or call into question the impartiality and objectivity with which the ATF's programs are administered. A waiver under this paragraph may require appropriate conditions, such as execution of a written disqualification.

### **§ 3101.106 -- Additional rules for Internal Revenue Service employees.**

The following rules apply to the employees of the Internal Revenue Service and are in addition to §§ 3101.101-3101.104:

(a) *Prohibited recommendations.* Employees of the IRS shall not recommend, refer or suggest, specifically or by implication, any attorney, accountant or firm of attorneys or accountants to any person in connection with any official business which involves or may involve the IRS.

(b) *Prohibited outside employment.* Involvement by an employee of the IRS in the following types of outside employment or business activities is prohibited and shall constitute a conflict with the employee's official duties pursuant to 5 CFR 2635.802:

(1) Performance of legal services involving Federal, State or local tax matters;

(2) Appearing on behalf of any taxpayer as a representative before any Federal, State, or local government agency, in an action involving a tax matter except on written authorization of the Commissioner of Internal Revenue;

(3) Engaging in accounting, or the use, analysis, and interpretation of financial records when such activity involves tax matters;

(4) Engaging in bookkeeping, the recording of transactions, or the record-making phase of accounting, when such activity is directly related to a tax determination; and

(5) Engaging in the preparation of tax returns for compensation, gift or favor.

(c) *Seasonal employees.* Seasonal employees of the IRS while in non-duty status may engage in outside employment or activities, other than those prohibited by paragraph (b) of this section, without obtaining prior written permission.

#### **§ 3101.107 -- Additional rules for Legal Division employees.**

The following rules apply to the employees of the Legal Division and are in addition to §§ 3101.101-3101.104:

(a) *Application of rules of other bureaus.* In addition to the rule contained in paragraph (b) of this section, employees in the Legal Division shall be covered by the rules contained in this part that are applicable to employees of the bureaus or offices in which the Legal Division employees serve, subject to any instructions which the General Counsel or appropriate Chief or Legal Counsel may issue in accordance with § 3101.101(b).

(b) *Prohibited outside employment.* Pursuant to 5 CFR 2635.802, it is prohibited and shall constitute a conflict with the employee's official duties for an attorney employed in the Legal Division to engage in the outside practice of law that might require the attorney to:

(1) Take a position that is or appears to be in conflict with the interests of the Department of the Treasury which is the client to whom the attorney owes a professional responsibility; or

(2) Interpret any statute, regulation or rule administered or issued by the Department.

#### **§ 3101.108 -- Additional rules for Office of the Comptroller of the Currency employees.**

The following rules apply to the employees of the Office of the Comptroller of the Currency and are in addition to §§ 3101.101-3101.104:

(a) *Prohibited financial interests-(1) Prohibition.* Except as provided in paragraphs (a)(3) and (g) of this section, no OCC employee, or spouse or minor child of an OCC employee, shall own,

directly or indirectly, securities of any commercial bank (including both national and State-chartered banks) or commercial bank affiliate, including a bank holding company.

(2) *Definition of "securities"*. For purposes of paragraphs (a)(1) and (a)(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 an OCC employee, or spouse or minor child or an OCC employee, from:

(i) Investing in a publicly traded or publicly available investment fund, provided that the investment fund does not invest more than 20 percent of its funds in securities of commercial banks (including both national and State-chartered banks) and commercial bank affiliates (including bank holding companies) nor more than 5 percent of its funds in the securities of any one such bank or affiliate, 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 the publicly traded securities of a holding company of a nonbank bank or of a retailing firm that owns or sponsors a credit card bank as defined by the Competitive Equality Banking Act of 1987, except that an employee who owns such an interest must be disqualified from participating in the regulation or supervision of the nonbank bank or the credit card bank;

(iii) Using a commercial bank or commercial bank affiliate 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.

(b) *Prohibited borrowing*-(1) *Prohibition on employee borrowing*. Except as provided in this section, no covered OCC employee shall seek or obtain any loan or extension of credit, including credit obtained through the use of a credit card, from any national bank or from an officer, director, employee, or subsidiary of any national bank.

(2) *Prohibition on borrowing by a spouse or minor child*. The prohibition in paragraph (b)(1) of this section shall apply to the spouse or minor child of a covered OCC 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 OCC employee does not participate in the negotiation for the loan or serve as co-maker, endorser or guarantor of the loan.

(3) *Covered OCC employee*. For purposes of the prohibitions on borrowing contained in paragraphs (b)(1) and (b)(2) 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 borrowing contained in this section to ensure public confidence that the OCC's programs are conducted impartially and objectively.

(4) *Exceptions.* Nothing in this section prohibits a covered OCC employee, or the spouse or minor child of a covered OCC employee, from obtaining a loan or extension of credit described in paragraphs (b)(4)(i) through (b)(4)(iii) of this section from a national bank 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 bank 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 bank. The exceptions provided by this paragraph are for loans or extensions of credit obtained:

(i) Through use of a credit card issued by a national bank where:

(A) The employee is assigned to a district office and the bank is not headquartered in the employee's district;

(B) The employee is assigned to the Multinational Division and the bank is not supervised by that Division; or

(C) The employee is assigned to the Washington office (other than the Multinational Division);

(ii) Through use of a national bank credit card sponsored by a retailing firm (e.g., Nordstrom, Lord and Taylor, Amoco Oil Company); 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.

(5) *Pre-existing credit.* This section does not prohibit a covered OCC employee, or spouse or minor child of a covered OCC employee, from retaining a loan from a national bank on its original terms if the loan was incurred prior to employment by the OCC, or as a result of the sale or transfer of a loan to a national bank or the conversion or merger of the lender into a national bank. Any renewal or renegotiation of a pre-existing loan or extension of credit will be treated as a new loan subject to the prohibitions in paragraphs (b)(1) and (b)(2) of this section.

(c) *Restrictions arising from third party relationships.* If any of the entities listed in paragraphs (c)(1) through (c)(7) of this section have securities that an OCC employee would be prohibited from having by paragraph (a) of this section, or loans or extensions of credit that a covered OCC employee would be prohibited from obtaining under paragraph (b) of this section, the employee shall promptly report such interests to the Chief Counsel or designee. The Chief Counsel or designee may require the employee to terminate the third party relationship, undertake an appropriate disqualification, or take other appropriate action necessary, under the particular circumstances, to avoid a statutory violation or a violation of part 2635 of this title, or this part, including an appearance of misuse of position or loss of impartiality. This paragraph applies to any:

(1) Partnership in which the employee, or spouse or minor child of the employee, is a general partner;

(2) Partnership in which the employee, or spouse or minor child of the employee, individually or jointly holds more than a 10 percent limited partnership interest;

(3) Closely held corporation in which the employee, or spouse or minor child of the employee, individually or jointly holds more than a 10 percent equity interest;

(4) Trust in which the employee, or spouse or minor child of the employee, has a legal or beneficial interest;

(5) Investment club or similar informal investment arrangement between the employee, or spouse or minor child of the employee, and others;

(6) Qualified profit sharing, retirement or similar plan in which the employee, or spouse or minor child of the employee, has an interest; or

(7) Other entity if the employee, or spouse or minor child of the employee, individually or jointly holds more than a 25 percent equity interest.

(d) *Prohibited recommendations.* Employees of the OCC shall not make recommendations or suggestions, directly or indirectly, concerning the acquisition, or sale or other divestiture of securities of any commercial bank or commercial bank affiliate, including a bank holding company.

(e) *Prohibited purchase of assets.* No employee of the OCC, or spouse or 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 §§ 3101.101-3101.104:

(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 investment funds, provided that the investment fund does not invest more than 20 percent of its funds in securities of OTS-regulated savings associations or savings association holding companies nor more than 5 percent of its funds in the securities of any one such savings association or holding company, 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 district office and the savings association is not headquartered in the employee's district; 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.

(4) *Pre-existing credit.* This section does not prohibit a covered OTS employee, or spouse or minor child of a covered OTS employee, from retaining a loan from an OTS-regulated savings association on its original terms if the loan was incurred prior to employment by the OTS or as a result of the sale or transfer of the loan to a savings association or the conversion or merger of the lender into an OTS-regulated savings association. Any renewal or renegotiation of a pre-existing loan or extension of credit is covered by paragraphs (c)(1) and (c)(2) of this section.

(d) *Restrictions arising from third party relationships.* If any of the entities listed in paragraphs (d)(1) through (d)(7) of this section have securities that a covered OTS employee would be prohibited from having by paragraph (b) of this section, or loans or extensions of credit that a covered OTS employee would be prohibited from obtaining under paragraph (c) of this section, the employee shall promptly report such interests to the Chief Counsel or designee may require the employee to terminate the third party relationship, undertake an appropriate disqualification, or take other appropriate action necessary, under the particular circumstances, to avoid a statutory violation or a violation of part 2635 of this title or this part, including an appearance of misuse of position or loss of impartiality. This paragraph applies to any:

- (1) Partnership in which the employee, or spouse or minor child of the employee, is a general partner;
- (2) Partnership in which the employee, or spouse or minor child of the employee, individually or jointly holds more than a 10 percent limited partnership interest;

(3) Closely held corporation in which the employee, or spouse or minor child of the employee, individually or jointly holds more than a 10 percent equity interest;

(4) Trust in which the employee, or spouse or minor child of the employee, has a legal or beneficial interest;

(5) Investment club or similar informal investment arrangement between the employee; or spouse or minor child of the employee; and others;

(6) Qualified profit sharing, retirement or similar plan in which the employee, or spouse or minor child of the employee, has an interest; or

(7) Other entity if the employee, or spouse or minor child of the employee, individually or jointly holds more than a 25 percent equity interest.

(e) *Prohibited recommendations.* Employees of the OTS shall not make recommendations or suggestions, directly or indirectly, concerning the acquisition or sale, or other divestiture of securities of any OTS-regulated savings association or savings association holding company.

(f) *Prohibited purchase of assets.* No employee of the OTS, or spouse or minor child of an OTS employee, shall purchase, directly or indirectly, an asset (e.g., real property, automobiles, furniture, or similar items) from a savings association or savings association affiliate, including a savings association 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.

(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.

### **§ 3101.110 -- Additional rules for United States Customs Service employees.**

The following rules apply to the employees of the United States Customs Service and are in addition to §§ 3101.101-3101.104:

(a) *Prohibition on outside employment.* No employee of the USCS shall work for a customs broker, international carrier, bonded warehouse, foreign trade zone, cartman, law firm engaged in the practice of customs law or importation department of a business, nor be employed in any private capacity related to the importation or exportation of merchandise.

(b) *Restrictions arising from employment of relatives.* If the spouse of a USCS employee, or other relative who is dependent on or resides with a USCS employee, is employed in a position that the employee would be prohibited from occupying by paragraph (a) of this section, the employee shall file a report of family member employment with his supervisor. Supervisors shall forward such reports to the appropriate Regional Counsel for transmittal to the Chief Counsel. The employee shall be disqualified from participation in any matter involving the relative or the relative's employer unless an agency designee, with the advice and legal clearance of the DAEO or Office of

the Chief Counsel, authorizes the employee to participate in the matter using the standard in § 2635.502(d) of this title.

**§ 3101.111 -- Additional rules for United States Secret Service employees.**

In addition to the rules contained in §§ 3101.101-3101.104, United States Secret Service Administrative Manual Section PER-5(2) prohibiting compensated outside employment in effect on February 2, 1993, will remain in effect until February 3, 1994, or until superseded by a new supplemental regulation published in this part, whichever occurs first. Administrative Manual Section PER-5(2) may be obtained from the Office of the Chief Counsel, United States Secret Service, 1800 G Street, NW., Washington, DC 20223.