

## APPENDIX B

This Appendix contains a description of the rules adopted by the Board of Governors ("Board") that are applicable to examiners and also to other employees who participate in supervision or regulation matters other than examinations and inspections, such as an attorney or economist who reviews bank holding company applications or an employee who has a substantive role in discount/lending decisions, regardless of reporting relationships within the Bank.

The rules described in this Appendix are a condensed version of the rules set forth in the document entitled "Banking Supervision and Regulation Administrative Policy Statements" [SR-05-02 dated February 3, 2005, which is set forth in Sections 5-035 and 5-041 of Part 5 of the Federal Reserve Administrative Manual ("FRAM")]. For more detailed information, you should review the SR-letter or FRAM.

The Board's rules supplement the Bank's Code of Conduct ("Code"). To the extent the rules set more stringent standards for employees covered by this Appendix than those contained in the Code, the Board's rules are to be followed.

Part I contains a description of the rules for examiners; Part II contains a description of the rules for other employees with substantive responsibilities relating to supervision or regulation matters.

When used in this Appendix:

- The word "examine" or "examination" refers both to examining a depository institution and to inspecting a bank holding company (including a financial holding company) or any non-bank subsidiary.
- "Supervisory matter" includes, but is not limited to, an application, audit, review (including report review), institution-specific analysis or surveillance, enforcement action, investigation, credit review, collateral analysis, or lending decision. However, supervisory matter does not include an examination.

An employee who needs assistance in interpreting the Board's rules or who desires additional information, for example about a waiver, should contact the Bank's Ethics Officer.

## PART I. RULES FOR CREDENTIALLED STAFF

The rules in this Part apply to all employees holding a Board issued standard, special, temporary or ad hoc credential. However, paragraph 1(B), concerning prohibited borrowing relationships, applies only to employees holding a standard or special credential.

### 1. Prohibited Borrowing

A. *Criminal Prohibition.* It is a crime under federal law (18 U.S.C. § 213) for an examiner to accept a loan or gratuity from an institution the examiner examined. It is also a federal crime (18 U.S.C. § 212) for an employee or director of a member bank or certain other institutions which an examiner examines or has authority to examine to grant a loan or gratuity to the examiner. Under these provisions, the term "loan" does not include any credit card account established under an open end consumer credit plan or a loan secured by residential real property that is the principal residence of the examiner, if –

1. the applicant satisfies any financial requirements for the credit card account or residential real property loan that are generally applicable to all applicants for the same type of credit card account or residential real property loan;
2. the terms and conditions applicable with respect to such account or residential real property loan, and any credit extended to the examiner under such account or residential real property loan, are no more favorable generally to the examiner than the terms and conditions that are generally applicable to credit card accounts or residential real property loans offered by the same financial institution to other borrowers or cardholders in comparable circumstances under open end consumer credit plans or for residential real property loans; and
3. with respect to residential real property loans, the loan is with respect to the primary residence of the applicant.

B. *Borrowings Prohibited by the Federal Reserve System for Employees Holding Standard or Special Credentials.*

1. *General prohibition.* An examiner holding a standard or special credential may not borrow from any entity for which the Federal Reserve System ("System") is the primary supervisor<sup>1</sup> other than through certain credit cards or home

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<sup>1</sup> The System is the primary supervisor for state member banks, bank holding companies, nonbank subsidiaries

mortgage loans (see paragraph B(2)(a) below). Debt incurred by the examiner's spouse or dependent child is attributed to the examiner for purposes of this prohibition unless the debt: (a) is supported solely by the income or independent means of the spouse or child; (b) was not provided on terms more favorable than those available to the public (i.e., was not offered or enhanced because of the examiner's position at the Bank); and (c) was not negotiated, endorsed, guaranteed or co-signed by the examiner.

An examiner may borrow from a national bank, state nonmember bank or savings and loan association even if it is an affiliate of a bank holding company or state member bank. An examiner may also borrow from a functionally regulated subsidiary of a bank holding company, for example an insurance or securities broker/dealer subsidiary.<sup>2</sup> In these cases, the borrowing may result in recusal from an examination or inspection of that entity or an affiliate of that subsidiary.

## 2. *Exceptions.*

*a. Credit cards and Residential mortgage loans.* The prohibition in paragraph B(1) above shall not apply to any credit card account established under an open-end consumer credit plan or a loan (including a home equity line of credit) secured by residential real property that is the principal residence of the examiner, if –

- i. the applicant satisfies any financial requirements for the credit card account or residential real property loan that are generally applicable to all applicants for the same type of credit card account or residential real property loan; and
- ii. the terms and conditions applicable with respect to such account or residential real property loan, and any credit extended to the examiner under such account or residential real property loan, are no more favorable generally to the examiner than the terms and conditions that are generally applicable to credit card accounts or residential real property loans offered by the same financial institution to other cardholders or

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of a bank holding company (except thrift and functionally regulated subsidiaries), Edge and Agreement corporations, and state licensed U.S. branches and agencies, representative offices and nonbank subsidiaries of foreign banks having a U.S. banking presence.

<sup>2</sup> "Functionally regulated subsidiary" means a registered broker or dealer, registered investment advisor, investment company, insurance company, or entity engaged in commodities activities as these entities are defined by section 5(c)(5) of the Bank Holding Company Act.

borrowers in comparable circumstances under open-end consumer credit plans or residential real property loans.

b. *Loan acquired.* If a debt that was permissible when it was originated becomes impermissible under paragraph B(1) above as a result of having been acquired by an institution for which the System is the primary supervisor, the debt may be retained if:

- i. the debt is amortizing;
- ii. the debt is not renewed, renegotiated or increased;
- iii. payments are current; and
- iv. the examiner is restricted from examining the institution which currently holds the debt.

A loan originated at an entity for which the System becomes the primary supervisor as a result of a charter conversion, a change in membership, or merger is treated in the same manner as a loan acquired.

An examiner may not retain debt extended under a revolving line of credit, other than a consumer credit card or home equity loan, which is sold or transferred to, or acquired by an impermissible credit source. Such debt must be eliminated or converted to an amortizing facility within six months after the date the examiner is notified of the sale or transfer of the debt.

c. *Preexisting debt.* An examiner may retain any debt that is prohibited under paragraph B(1) above if it was incurred prior to appointment as an examiner so long as:

- i) the debt is amortizing;
- ii) the debt is not renewed, renegotiated or increased;
- iii) payments are current;
- iv) the examiner's credential specifically excludes authority to examine the creditor institution and any affiliate;
- v) the examiner does not participate in any examination of the institution or any affiliate; and
- vi) the examiner indicates, in writing, that the examiner understands and will comply with the foregoing conditions while the debt is outstanding.

An examiner with other types of preexisting debt that are prohibited under paragraph B(1) above, such as credit extended under a revolving line of credit (other than a consumer credit card or home equity loan) or nonamortizing debt, must retire the debt or convert it to an amortizing facility within six months after appointment as an examiner. Until then, (i) the debt may not be increased; (ii) the examiner's credential must

specifically exclude authority to examine the creditor institution and any affiliate; and (iii) the examiner may not examine the institution or any affiliate.

3. *Waiver.* The Board's Director of the Division of Banking Supervision and Regulation is authorized to waive the prohibitions described in paragraph B(1) above in certain limited circumstances. However, it is anticipated that a waiver will be rarely given.

## 2. Instances Where Recusal Is Required

### A. *Recusal from Examinations and Inspections Based Upon Borrowing Relationship/Seeking Credit.*

1. *Recusal required.* An examiner may not examine any entity, or an affiliate of any entity, from which the examiner or the examiner's spouse or dependent child, or a related entity,<sup>3</sup> is borrowing, leasing, or seeking credit.

2. *Exceptions.*

a. An examiner may examine any entity, including any affiliate of such entity, from which the examiner, the examiner's spouse or dependent child has obtained a credit card in accordance with paragraph 1(B)(2)(a) above.

b. An examiner may examine the affiliate of any entity from which the examiner, the examiner's spouse or dependent child:

- i. has a loan secured by residential real property in accordance with paragraph 1(B)(2)(a) above;
- ii. has an overdraft protection line; or
- iii. is borrowing against the cash value of a life insurance policy.

The credit card, loan secured by residential real property, overdraft protection line, or insurance policy loan must not have been provided on terms more favorable than those available to the public.

#### *Example*

An examiner has an overdraft protection line on their checking account at a national bank subsidiary of a bank holding company. The examiner may

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<sup>3</sup> A "related entity" means an entity in which the examiner, the examiner's spouse or dependent child owns or controls more than ten percent of its equity, or a partnership in which the examiner or their spouse is a general partner.

examine any affiliate of the national bank, including the parent bank holding company. However, as pointed out in paragraph 2(A)(1) of this Part, the examiner may not examine the national bank.

Another example is borrowing against the cash value of a life insurance policy issued by an insurance subsidiary of a financial holding company. The examiner may participate in an examination or inspection of an affiliate that is supervised by the Federal Reserve.

3. *Servicing relationships.* An examiner may participate in an examination of, or a supervisory matter involving, an organization that services a loan of the employee or the employee's spouse or dependent child, unless the examiner knows the servicer has retained a financial interest in the underlying value of the credit.
4. *Waiver.* In limited circumstances, the examiner's supervising officer, in consultation with the Bank's Ethics Officer, may provide written authorization for an examiner to examine an institution, or an affiliate of an institution, with which the examiner, their spouse, dependent child or a related entity has a borrowing relationship, although participation in the examination otherwise would be prohibited under paragraph 2(A)(1) above.

B. *Recusal from Supervisory Matters (Other Than Examination/Inspection) Based on Borrowing Relationship.*

1 *Recusal requirement.* An examiner may not participate in any supervisory matter involving an institution or any affiliate if the examiner, or the examiner's spouse or dependent child, or a related entity, is indebted to the institution or any affiliate.

2 *Exceptions.*

a. Recusal is not required if the debt was not extended on terms more favorable than those available to the public, all payments are current, and the debt is extended through:

- i. a line of credit extended through a credit card;
- ii. an amortizing consumer credit loan (including a first or second mortgage on a personal residence) or a home equity line of credit;
- iii. an overdraft protection line;
- iv. a student loan;
- v. a car lease; or

- vi. a loan against the cash value of an insurance policy.
- b. In addition, recusal is not required with respect to any debt of the examiner's spouse or dependent child, or a related entity of the spouse or dependent child if:
  - i. the debt is the sole responsibility of the spouse, child or related entity, and is not derived from the examiner's income, assets or activities; and
  - ii. the examiner has no knowledge of the identity of the lender.

*Example*

The following illustrates how the recusal standards described in paragraphs 2(A) and 2(B) are based on the type of assignment, rather than if the person is credentialed.

An examiner with a student loan from a national bank may not participate in an examination of the bank, its parent or any affiliate as such participation would violate System policy and could be a violation of criminal law. On the other hand, System policy allows the examiner to be assigned to handle a supervisory matter concerning the bank, the parent company or an affiliate, so long as payments on the student loan with the national bank are current, and it was obtained on terms not more favorable than those available to the public. If, instead, the examiner has a business loan with the bank, System policy requires that the examiner be restricted from handling any supervisory matter involving the bank, the parent company or an affiliate.

*C. Prohibition Against Seeking Credit if Handling Supervisory Matter (Other Than Examination/Inspection).*

- 1. *General Prohibition.* An examiner may not, on their own behalf, or on behalf of anyone else, seek or accept a loan from, or renew or renegotiate a loan with, an institution or any affiliate if the examiner is working on or knows they will be assigned a supervisory matter which involves the institution or any affiliate.

Furthermore, an examiner must disqualify themselves from handling a supervisory matter involving an institution or any affiliate if the examiner learns that their spouse or dependent child or a related entity is seeking or has sought or accepted a loan from, or has renewed or renegotiated a loan with, the institution or any affiliate while the matter is pending before the Bank or the Board.

The foregoing prohibitions continue for three months after the examiner's participation in the matter ends.

2. *Exceptions.* These prohibitions do not apply to: i) obtaining or using a credit card, ii) borrowing against the cash value of a life insurance policy, or iii) an overdraft protection plan. The credit card, overdraft protection line, or insurance policy loan must not have been provided on terms more favorable than those available to the public.
3. *Waiver.* A written waiver from the prohibitions of this paragraph 2(C) may, in some limited circumstances, be obtained from the examiner's supervising officer, in consultation with the Bank's Ethics Officer.

### **3. Recusal Based Upon Past Employment, Family Relationships or Financial Interests**

- A. *Past Employment.* An examiner may not examine, or participate in a supervisory matter involving, an institution or any affiliate if the examiner was employed by the institution within the preceding 12 months. The examiner's supervising officer, in consultation with the Bank's Ethics Officer, may determine that recusal should be required for a longer period.
- B. *Continuing Participation in Pension/Retirement Plan.* If an examiner continues to participate in a pension or retirement plan obtained through prior employment at an institution or any affiliate, the examiner may not participate in an examination of that institution or any affiliate, nor may the examiner participate in a supervisory matter involving the institution or any affiliate unless the examiner receives a written opinion from the Bank's General Counsel authorizing such participation.
- C. *Family Relationships.* An examiner may not examine an institution or any affiliate, or participate in a supervisory matter involving the institution or any affiliate if the examiner's spouse, child, parent, or sibling is employed by the institution or any affiliate. The examiner's supervising officer, in consultation with the Bank's Ethics Officer, may require recusal in other situations that might give rise to an appearance of a conflict of interest—for example, if the examiner's sister-in-law is employed by the institution.
- D. *Financial Interests.* Under Section 5.2 of the Code and federal criminal law (18 U.S.C. § 208), a Bank employee is prohibited from participating personally and substantially in an official capacity in any particular matter in which, to the employee's knowledge, the employee has a financial interest if the particular matter



will have a direct and predictable effect on that interest. Participation in a particular matter may include making a decision or recommendation, providing advice, or taking part in an investigation. See Section 5.2 and Appendix A of the Code for more information.

*Example*

An examiner may not participate in the review of a credit file during an examination, inspection, or a shared national credit examination, if the examiner or the examiner's spouse, minor child, general partner, or any organization for which the examiner serves as an employee, director or trustee, has a financial interest in the borrower, or if the examiner is negotiating for or has an agreement concerning future employment with the borrower.

An insurance policy may be a financial interest under the Federal conflicts of interest statute and an examiner holding an insurance policy should not participate in any particular matter affecting a company that issued the policy unless the examiner's participation is approved in advance and in writing by the Reserve Bank's legal department.

*Example*

An examiner who has an insurance policy from an insurance subsidiary of a financial holding company is generally permitted to examine an affiliate. However, cases may arise that require an examiner to recuse themselves from all matters involving the financial holding company or its affiliates. For example, recusal may be appropriate if an examiner is filing or appealing a claim under the policy or if the insurance company is experiencing financial difficulties. Such situations should be discussed with the Bank's Ethics Officer to determine if recusal is appropriate.

- E. *Waiver*. In certain cases, the prohibitions described in paragraphs 3(A) and 3(C) may be waived by the examiner's supervising officer, in consultation with the Bank's Ethics Officer. The prohibition described in paragraph 3(D) may be waived only in accordance with the federal statute, and the examiner should consult with the Bank's Ethics Officer if such a waiver is desired.

#### **4. Acceptance of Meals and Gratuities**

- A. *Gifts or Meals from Examined Entity*. Notwithstanding anything to the contrary in the Code, under federal criminal law an examiner may not accept a gift from an entity

that the examiner examined. As a matter of policy, the Board has decided that an examiner may not accept a gift or meal from an entity that the examiner has examined, examines or is authorized to examine. However, an examiner may:

1. eat in the entity's cafeteria provided the examiner pays for the meal at the rate charged the general public;
  2. accept refreshments such as soft drinks, coffee and donuts offered other than as part of a meal; and
  3. accept items with little intrinsic value, such as a pen or calendar, provided such items are also offered to the general public.
- B. *Gifts or Meals from other "Covered Sources"*. All Bank employees are subject to the provisions in the Code concerning acceptance of gifts and meals from "covered sources." Under the Code, the term covered source includes other entities in addition to institutions subject to examination by the System (See Section 5.4 of the Code).
- C. *Exceptions*. The Code provides limited exceptions under which an employee may accept a gift or meal from a covered source. However, an examiner may never use the \$20 "de minimis" exception (see Section 5.4(A)(2)(a)(i) of the Code) to accept a gift or a meal from an institution for which the System is the primary supervisor (see footnote 1 to this Appendix). An examiner may accept a gift or a meal from a covered source pursuant to one of the other exceptions, provided that the covered source is not an entity that the examiner is examining, has examined, or is authorized to examine.

*Example*

An examiner's spouse is a loan officer at a state member bank. The examiner has never examined the bank, and will not be authorized to examine the bank as long as their spouse is employed by the bank. The examiner may accompany their spouse to the commercial bank's annual dinner dance for its employees and their guests pursuant to Section 5.4(A)(2)(a)(iv) of the Code.

## **5. Special Post-Employment Restriction**

- A. **Coverage**. An examiner who has served as the "senior examiner" for a state member bank, bank holding company, or foreign bank for two or more months during the examiner's final twelve months of employment with the Bank may not knowingly accept compensation as an employee, officer, director, or consultant from such state member bank, bank holding company, or foreign bank, or from certain related entities, for one year following the termination of the examiner's employment with the Bank.

- B. **Definitions.** An “examiner” is considered to be a "senior examiner" for a particular state member bank, bank holding company<sup>4</sup>, or foreign bank if the examiner meets all of the following criteria:
- i. The examiner has been authorized by the Board to conduct examinations or inspections on behalf of the Board;
  - ii. The examiner has been assigned continuing, broad, and lead responsibility for examining or inspecting that state member bank, bank holding company, or foreign bank; and
  - iii. The examiner’s responsibilities for examining, inspecting, and supervising the state member bank, bank holding company, or foreign bank:
    - 1) represent a substantial portion of the examiner’s assigned responsibilities; and
    - 2) require the examiner to interact routinely with officers or employees of the state member bank, bank holding company, or foreign bank or their respective affiliates.

By "related entities," this restriction means:

- a. With respect to a state member bank, a subsidiary of the state member bank or a company that controls the state member bank;
- b. With respect to a bank holding company, any depository institution controlled by the bank holding company, including any subsidiary of the depository institution; and
- c. With respect to a foreign bank, any United States branch or agency of the foreign bank or any United States depository institution controlled by the foreign bank (including any subsidiary of the depository institution).

- C. **Limited Application of the Restriction.** This restriction on post-employment does not apply to an examiner who performs only periodic, short-term examinations of a depository institution or holding company and who does not have ongoing, continuing responsibility for the institution or holding company. Moreover, this restriction does not cover an examiner who spends a substantial portion of their time conducting or leading a targeted examination (such as a review of an institution’s credit risk management, information systems, or internal audit functions) and who does not have broad and lead responsibility for the overall examination program for the institution or holding company.

- D. **Penalty.** An examiner who violates this restriction shall be subject to (i) an order removing the examiner from the prohibited position and an industry-wide employment

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<sup>4</sup> This is applicable to financial market utilities (FMUs) and systemically important financial institutions (SIFIs) as designated by the Financial Stability Oversight Council only to the extent that they are (or are affiliated with) depository institutions or depository institution holding companies.

prohibition for not more than five years; (ii) a civil money penalty of not more than \$250,000; or both.

- E. **Waiver.** In exceptional circumstances, the Chairman of the Board may waive this restriction for a senior examiner by certifying in writing that granting the examiner a waiver would not affect the integrity of the Federal Reserve System's supervisory program.

## **PART II. RULES FOR OTHER EMPLOYEES WITH SUBSTANTIVE RESPONSIBILITIES RELATING TO SUPERVISION AND REGULATION MATTERS**

These rules apply to the Bank President and other senior Bank officials who have responsibilities relating to supervision or regulation of financial institutions, all non-credentialed professional staff, including officers and managers, who participate substantially in supervisory matters (e.g., attorneys and certain economists), and all professional staff, including officers and managers, who participate in the discount window function. These persons are referred to as a "covered employee(s)". Supervisory matter does not include participating in an examination. See the introduction to this Appendix for examples of what this term does cover.

### **1. Prohibition Against Seeking Credit If Handling Supervisory Matter**

- A. *General Prohibition.* A covered employee is generally not restricted from borrowing from any entity, including one for which the System is the primary supervisor. However, a covered employee may not, on their own behalf, or on behalf of anyone else, seek or accept a loan from, or renew or renegotiate a loan with, an institution or any affiliate if the covered employee is working on or knows they will be assigned a supervisory matter which involves the institution or any affiliate.

Furthermore, a covered employee must disqualify themselves from handling a supervisory matter involving an institution or any affiliate if the covered employee learns that their spouse or dependent child or a related entity is seeking or has sought or accepted a loan from, or has renewed or renegotiated a loan with the institution or any affiliate while the matter is pending before the Bank or the Board.

The foregoing prohibitions continue for three months after the covered employee's participation in the matter ends.

- B. *Exceptions.* These prohibitions do not apply to a line of credit extended through a credit card, an overdraft protection plan, or a loan against the cash value of a life insurance policy that was obtained on terms not more favorable than those available

to the public (i.e., the terms were not offered or enhanced because of the covered employee's position at the Bank).

- C. *Waiver.* A written waiver from the prohibitions of this paragraph may, in some limited circumstances, be obtained from the covered employee's supervising officer, in consultation with the Bank's Ethics Officer.

## **2. Recusal from Supervisory Matter Based Upon Borrowing Relationship**

- A. *Recusal Requirement.* A covered employee may not participate in any supervisory matter involving an institution or any affiliate if the employee, their spouse or dependent child or a related entity<sup>5</sup> is indebted to the institution or any affiliate.

B. *Exceptions.*

1. Recusal is not required if the debt was not extended on terms more favorable than those available to the public, payment on the debt is current, and the debt is:

- a. a line of credit extended through a credit card;
- b. an amortizing consumer loan (including a first or second mortgage on a personal residence) or a home equity line of credit;
- c. an overdraft protection line;
- d. a student loan;
- e. a car lease; or
- f. a loan against the cash value of an insurance policy.

2. Recusal is not required with respect to any debt of the covered employee's spouse or dependent child, or a related entity of the spouse or child if:
  - a. the debt is the sole responsibility of the spouse, child or related entity, and is not derived from the covered employee's income, assets or activities; and
  - b. the covered employee has no knowledge of the identity of the lender.

- C. *Waiver.* A written waiver from the prohibitions of this paragraph may, in some limited circumstances, be obtained from the covered employee's supervising officer, in consultation with the Bank's Ethics Officer.

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<sup>5</sup> A "related entity" is an entity in which the covered employee, the covered employee's spouse or dependent child owns or controls more than ten percent of its equity, or a partnership in which the covered employee or their spouse is a general partner.

### 3. Recusal Based Upon Past Employment, Family Relationships or Financial Interests

- A. *Past Employment.* A covered employee may not participate in a supervisory matter involving an institution or any affiliate if the covered employee was employed by the institution within the preceding 12 months. The covered employee's supervising officer, in consultation with the Bank's Ethics Officer, may determine that recusal should be required for a longer period.
- B. *Continuing Participation in Pension/Retirement Plan.* If a covered employee continues to participate in a pension or retirement plan obtained through prior employment at an institution or any affiliate, the covered employee may not participate in a supervisory matter involving the institution or any affiliate unless the covered employee receives a written opinion from the Bank's General Counsel authorizing such participation.
- C. *Family Relationships.* A covered employee may not participate in a supervisory matter involving an institution or any affiliate if the covered employee's spouse, child, parent or sibling is employed by the institution or any affiliate. The covered employee's supervising officer, in consultation with the Bank's Ethics Officer, may require recusal in other situations that might give rise to an appearance of a conflict of interest—for example, if the covered employee's parent is a principal shareholder of the institution.
- D. *Financial Interests.* Under Section 5.2 of the Code and federal criminal law (18 U.S.C. §208), a Bank employee is prohibited from participating personally and substantially in an official capacity in any particular matter in which, to the employee's knowledge, the employee has a financial interest if the particular matter will have a direct and predictable effect on that interest. Participation in a particular matter may include making a decision or recommendation, providing advice, or taking part in an investigation. See, Section 5.2 and Appendix A of the Code for more information.
- E. *Waiver.* In certain cases, the prohibitions contained in paragraphs 3(A) and 3(C) may be waived by the covered employee's supervising officer, in consultation with the Bank's Ethics Officer.