

FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC)

5 CFR Chapter XXII

12 CFR Part 336

Supplemental Requirements for Financial Disclosure, Qualified Trusts, and Certificates of Divestiture for Employees of the Federal Deposit Insurance Corporation

RIN 3064-AA07, 3209-AA00 and 3209-AA16

58 FR 39625

July 26, 1993

ACTION: Interim rule with request for comments.

SUMMARY: The Federal Deposit Insurance Corporation (the Corporation), with the concurrence of the Office of Government Ethics (OGE), is issuing interim financial disclosure requirements for officers and employees of the Corporation. This interim rule revokes the Corporation's current financial disclosure regulations and promulgates substantially similar regulations, which are designed to supplement the Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture requirements issued by OGE.

DATES: This interim rule is effective July 26, 1993. Comments are invited and must be received on or before September 24, 1993.

ADDRESSES: Send comments to Hoyle L. Robinson, Executive Secretary, Attention: Room F-400, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to room F-402, 1776 F Street, NW., Washington, DC between 8:30 a.m. and 5 p.m. on business days. [FAX number: (202) 898-3838.] Comments will be available for inspection in the FDIC Reading Room, room 7118, 550 17th Street, NW., Washington, DC on business days between 9 am and 4:30 pm.

FOR FURTHER INFORMATION CONTACT: Katherine A. Corigliano, Assistant Executive Secretary (Ethics), (202) 898-7272, or Richard M. Handy, Ethics Program Manager, (202) 898-7271, Office of the Executive Secretary, 1776 F Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

On April 7, 1992, OGE published, for codification at 5 CFR part 2634, an interim rule pertaining to Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture, which revised the public and confidential financial disclosure systems for executive branch employees, pursuant to title I of the Ethics in Government Act of 1978 (Pub. L. 95-521, as amended). See *57 FR 11800-11830* (April 7, 1992), as corrected at *57 FR 21854-21855* (May 22, 1992) and *57 FR 62605* (December 31, 1992). Pursuant to *5 CFR 2634.103*, executive agencies are authorized to publish supplemental regulations as necessary to address special or unique agency circumstances, subject to OGE concurrence. This interim rule is necessary to supplement, for the Corporation, the financial disclosure requirements issued by OGE because it implements statutory restrictions which, though not generally applicable to employees of the executive branch, are expressly applicable to certain holdings and financial interests of Corporation officers and employees. In addition to implementing statutory restrictions, the interim rule addresses reporting relating to potential conflicts of interest unique to the Corporation's role as an insurer of Federal depository institutions and as primary and secondary regulator of member institutions of the Bank Insurance Fund and the Savings Association Insurance Fund. Also accomplished by the interim rule is the added designation of FDIC Form 2410/05 to the new SF 450, Confidential Financial Disclosure Report for purposes of meeting the operational needs of the Corporation's Employee Ethics Program.

The interim rule continues the Corporation's Employee Ethics Program requirements for disclosure:

- (1) By all employees of interests in securities of Corporation insured depository institutions;
- (2) By covered employees of indebtedness; and
- (3) By covered employees of credit card obligations in insured state nonmember banks. The interim rule provides for the discontinuation of a requirement that covered employees file a report of employment upon resignation from the Corporation to accept employment in the private sector.

Unique Corporation specific circumstances exist in the provisions of *12 U.S.C. 1812(e)(2)(B)*, which prohibits any member of the Corporation's Board of Directors from holding stock in any insured depository institution or depository institution holding company as well as from holding a position as an officer or director of any insured depository institution, depository institution holding company, Federal Reserve bank, or Federal home loan bank. Although not driven by statute, the Corporation's Board of Directors, because of the Corporation's role as insurer and primary and secondary regulator of depository institutions, has historically made applicable to all employees a prohibition against the acquisition, during the terms of their employment, of securities of depository institutions insured by the Corporation and a requirement for recusal from matters affecting an institution, the securities of which an employee acquired prior to his or her Corporation employment or, in certain instances, the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). Enforcement of the aforementioned prohibitions is accomplished by a requirement for the completion by all the Corporation's new entrants of FDIC Form 2410/07, "Interest in Securities of FDIC Insured Depository Institutions." This requirement will be continued under this interim rule.

In addition, sections 212 and 213 of title 18 of the United States Code prohibit the offer of certain loans and gratuities to, and the acceptance of certain loans and gratuities by, examiners of federally insured depository institutions, including those employed by the Corporation. The Corporation's Board of Directors has historically required that certain employees recuse themselves from participation in any matter involving an insured depository institution from which they have extensions of credit and prohibited certain employees from borrowing from certain classes of creditors. Enforcement of these restrictions and prohibitions is accomplished by requiring appointive directors, officers, certain senior employees, all bank examiners, and other designated employees to file FDIC Form 2410/06, "Confidential Report of Indebtedness" and designated employees of the Division of Supervision to file FDIC Form 2410/10, "Statement of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions for Retention-Notice of Disqualification."

Pursuant to *12 U.S.C. 1819(a)*, the Corporation has independent statutory authority to issue regulations to implement the prohibitions set forth in section 2 of the Federal Deposit Insurance Act and *18 U.S.C. 212* and *213*. Nevertheless, the Corporation has determined, because of the obvious relationship of these prohibitions to regulations implemented by OGE, to include the collection of disclosure forms necessary to enforce the prohibitions in supplemental regulations issued under 5 CFR part 3202, an approach with which OGE agrees. The Corporation is also hereby revoking its old reporting requirements contained in 12 CFR 336.24-336.28. Until issuance of a separate supplemental standards regulation, the Corporation is temporarily retaining, in 12 CFR part 336, its existing standards of conduct regulations (with an updated authority citation), which for the most part have been superseded by OGE's Standards of Ethical Conduct for executive branch employees, as codified at 5 CFR part 2635.

In addition to the aforementioned reporting requirements, the Corporation has in the past required that employees resigning from the Corporation to accept employment in the private sector complete a "Confidential Report Of Employment Upon Resignation," FDIC Form 2410/08. The report required the disclosure of information concerning an employee's prospective employer, the nature of its business or activities, the position to be occupied by the employee, the dates of negotiation for the employment, and the employee's official involvement, if any, with the prospective employer. The purpose of the report was to ensure employee compliance with criminal conflict of interest provisions governing the negotiation of employment (*18 U.S.C. 208*) and post-employment activities (*18 U.S.C. 207*). However, the Corporation has learned from experience that enforcement of the reporting requirement is difficult and that the information obtained has little value. Since the burden of this particular information collection has outweighed its benefits, the interim rule, by its revocation of 12 CFR 336.26, discontinues the requirement for filing a confidential report of employment upon resignation.

II. Analysis of Regulation

Section 3202.101 General Provisions

Section 3202.101 sets forth general information regarding the purpose of this supplemental Corporation regulation, identifies with whom the reports required by this part must be filed, and provides notice of the retention schedule for the reports collected and their lack of availability to the general public.

Section 3202.102 Confidential Financial Disclosure Reports (SF 450, FDIC Form 2410/05)

Section 3202.102 adds the designation of FDIC Form 2410/05 to the SF 450, Executive Branch Personnel Confidential Financial Disclosure Report, to accommodate the Corporation's need for a three-part document.

Section 3202.103 Confidential Report of Interest in FDIC-Insured Depository Institution Securities (FDIC Form 2410/07)

Section 3202.103 imposes upon all Corporation employees a requirement to file a report of any direct or indirect interest in the securities of depository institutions insured by the Corporation. In addition, this section identifies the circumstances which give rise to the filing requirement, briefly describes the type of information which is required to be disclosed, and requires a certification that the employee has read and understands the rules governing ownership.

Section 3202.104 Confidential Report of Indebtedness (FDIC Form 2410/06)

Section 3202.104 identifies those Corporation employees who are required to file a confidential report of indebtedness, specifies when the report must be filed, and briefly describes the type of information which must be disclosed.

Section 3202.105 Confidential Statement of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions of Retention-Notice of Disqualification (FDIC Form 2410/10)

Section 3202.105 identifies the employees who must meet the filing requirement, the circumstances which give rise to the reporting requirement, the time period within which the reporting requirement must be met, and a brief description of the information which must be disclosed.

III. Matters of Regulatory Procedure

Administrative Procedure Act

The Board of Directors has found good cause pursuant to 5 *U.S.C.* 553(b) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to these interim rules and repeal. The reason for this determination is that it is important to a smooth transition from the Corporation's prior disclosure rules to the new executive branch-wide financial disclosure regulations that these rulemaking actions take place as soon as possible. Furthermore, this rulemaking is related to the Corporation's organization, procedure and practice.

Nonetheless, this is an interim rulemaking, with provision for a 60 day public comment period. The Federal Deposit Insurance Corporation will review all comments received during the comment period and will consider any modifications that appear appropriate in adopting these rules as final, with the concurrence of the Office of Government Ethics.

Regulatory Flexibility Act

The Board of Directors has concluded that the interim rule will not impose a significant economic hardship on small institutions. The Board of Directors therefore hereby certifies pursuant to section 605 of the Regulatory Flexibility Act (*5 U.S.C. 605*) that the interim rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (*5 U.S.C. 601 et. seq.*).

Paperwork Reduction Act

The Board of Directors has determined that this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (*44 U.S.C. chapter 35*).

List of Subjects

5 CFR Part 3202

Administrative practice and procedure, Conflict of interests, Financial disclosure, Privacy, Reporting and recordkeeping requirements.

12 CFR Part 336

Conflict of interests.

For the reasons set forth in the preamble, the Federal Deposit Insurance Corporation, in concurrence with the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations and title 12, chapter III, part 336, of the Code of Federal Regulations, as follows:

TITLE 5-[AMENDED]

1. A new chapter XXII consisting of Part 3202 is added to title 5 of the Code of Federal Regulations to read as follows:

5 CFR CHAPTER XXII-FEDERAL DEPOSIT INSURANCE CORPORATION

PART 3202-SUPPLEMENTAL FINANCIAL DISCLOSURE REQUIREMENTS FOR EMPLOYEES OF THE FEDERAL DEPOSIT INSURANCE CORPORATION

Sec.

3202.101 General Provisions.

3202.102 Confidential Financial Disclosure Reports (SF 450, FDIC Form 2410/05).

3202.103 Confidential Report of Interest in FDIC Insured Depository Institution Securities (FDIC Form 2410/07).

3202.104 Confidential Report of Indebtedness (FDIC Form 2410/06).

3202.105 Confidential Statement of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions of Retention-Notice of Disqualification (FDIC Form 2410/10).

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 12 U.S.C. 1819(a); 26 U.S.C. 1043; 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 2634.103.

§ 3202.101 -- General provisions.

(a) *Purpose.* This part establishes for officers and employees of the Federal Deposit Insurance Corporation (the Corporation) financial disclosure requirements in addition to the public and confidential financial disclosure reports required pursuant to 5 CFR part 2634, subparts B and I. This part also provides for the added designation of FDIC Form 2410/05 to the SF 450, Confidential Financial Disclosure Report.

(b) *Filing requirements.* The reporting individual shall file the financial disclosure and other reports required under 5 CFR part 2634 and §§ 3202.102-3202.105 with his or her assigned Deputy Ethics Counselor.

(c) *Custody and denial of public access.*

(1) Any report filed with the Corporation under §§ 3202.102-3202.105 shall be retained by the Corporation for a period of six years after receipt. After the six-year period, the report shall be destroyed unless needed in an ongoing investigation. See also FDIC Employee Financial Disclosure Statements Privacy Act system of records (1 FDIC Law, Regulations, and Related Acts (FDIC) 2209); see also the OGE/GOVT-2 Privacy Act system of records, for the reports filed under § 3202.102.

(2) The reports filed pursuant to §§ 3202.102-3202.105 are confidential. No member of the public shall have access to such reports, except pursuant to the order of a Federal court or as otherwise provided under the Privacy Act. See 5 U.S.C. 552a and the FDIC Employee Financial Disclosure Statements Privacy Act system of records.

§ 3202.102 -- Confidential Financial Disclosure Reports (SF 450, FDIC Form 2410/05).

The SF 450, Executive Branch Personnel Confidential Financial Disclosure Report, will also carry FDIC Form Number 2410/05. The structure and operations of the Corporation's Employee Ethics Program dictate that the form be printed in three parts, consisting of an original and two self copies.

§ 3202.103 -- Confidential Report of Interest in FDIC Insured Depository Institution Securities (FDIC Form 2410/07).

(a) *Who must file/when.* All FDIC employees shall file an FDIC Form 2410/07 (Report of Interest in FDIC Insured Depository Institution Securities) within 30 days of the date of entrance on duty. Thereafter, an updated FDIC Form 2410/07 shall be filed only if:

(1) An interest in an FDIC insured depository institution is acquired subsequent to the commencement of employment through a change in marital status or by gift, inheritance, or other

personal circumstances beyond an employee's control, in which case an employee shall file FDIC Form 2410/07 within 30 days of acquiring the interest; or

(2) A previously acquired interest in a non-FDIC insured entity becomes an interest in an FDIC insured depository institution as the result of merger, acquisition, or other change in corporate ownership, or change in insurance status, in which case an employee shall file FDIC Form 2410/07 within 30 days of the entity's conversion to an FDIC insured status; or

(3) An employee divests himself or herself of a previously reported interest in FDIC decision or an FDIC insured depository institution, in which case an employee shall file FDIC Form 2410/07 as soon as possible after divestiture to facilitate the removal of any related disqualifications.

(b) *Report contents.* Each report filed pursuant to this section shall include:

(1) In part I:

(i) A brief description of any direct or indirect interest in the securities of an FDIC insured depository institution or affiliate, including a depository institution holding company, and the date and manner of acquisition or divestiture; and

(ii) A brief description of any direct or indirect continuing financial interest through a pension or retirement plan, trust or other arrangement, including arrangements resulting from any current or prior employment or business association, with any FDIC insured depository institution, affiliate, or depository institution holding company; and

(2) In part II, a certification acknowledging that the employee has read and understands the statements and instructions contained therein.

§ 3202.104 -- Confidential Report of Indebtedness (FDIC Form 2410/06).

(a) *Who must file/when.* Within 30 days of entrance on duty and annually thereafter, a confidential report of indebtedness must be filed:

(1) As a supplement to the Public Financial Disclosure Report (SF 278), by:

(i) Members of the Board of Directors, except the Comptroller of the Currency and the Director of the Office of Thrift Supervision;

(ii) Any assistant or deputy to the Board of Directors or to an individual board member or any assistant to assistant or deputies to the Board of Directors or to individual Board members except persons employed by the Office of the Comptroller of the Currency or the Office of Thrift Supervision; and

(iii) Division and office heads and persons immediately subordinate thereto;

(2) As a supplement to the Executive Branch Personnel Confidential Financial Disclosure Report (SF 450, FDIC Form 2410/05), by:

(i) Persons employed by the Division of Supervision as bank examiners in job series 570; compliance examiners in job series 301; and

(ii) All other employees of the Division of Supervision and the Division of Resolutions at or above the grade 13.

(b) *Report contents.* Each confidential report of indebtedness filed pursuant to this section shall include:

(1) In part I, information on any indebtedness of the employee, his or her spouse, and/or dependent child, which is evidenced by a credit card issued by an FDIC insured depository institution, including the type of card, the year of receipt, the name and location of the issuer, and the total line of credit, regardless of the amount outstanding; and

(2) In part II, information on other indebtedness of the employee, his or her spouse, and/or dependent child, at any time during the reporting period and regardless of amount, to a federally insured financial institution, or any subsidiary or affiliate thereof, including mortgages and other consumer debt not reported in part I. With respect to each creditor, an employee shall disclose the type of liability, the name and location of the creditor, the year the debt was incurred, the term of the loan, and either the original or outstanding balance.

§ 3202.105 -- Confidential Statement of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions of Retention-Notice of Disqualification (FDIC Form 2410/10).

(a) *Who must file/when.* Within 30 days of acquiring a credit card obligation to an insured state nonmember bank headquartered outside of the employee's region of employment, a "Statement of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions of Retention-Notice of Disqualification," FDIC Form 2410/10, must be filed by:

(1) The Executive Director of the Divisions of Supervision and Resolutions;

(2) The Director of Supervision;

(3) The holder of any position immediately subordinate to the Director of Supervision;

(4) An Assistant Director, Regional Director, Deputy Regional Director, or an Assistant Regional Director; and

(5) An examiner, assistant examiner, compliance examiner, or other covered employee of the Division of Supervision at or above a grade 13 level.

(b) *Report contents.* Each statement filed pursuant to this section shall disclose the name of any Corporation insured state nonmember depository institution outside of the employee's region of assignment from which he or she has received a credit card and shall include certification that the credit cards listed were obtained only under such terms and conditions as are available to the general public, that the line of credit does not exceed \$ 10,000, and that the employee is aware of and understands the requirement for self-disqualification from participation in matters affecting the creditors identified.

By Order of the Board of Directors.

Dated at Washington, DC this 24th day of November, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

Approved: July 14, 1993.

Stephen D. Potts,

Director, Office of Government Ethics.

12 CFR CHAPTER III-[AMENDED]

PART 336-EMPLOYEE RESPONSIBILITIES AND CONDUCT

1. The authority citation for part 336 is revised to read as follows:

Authority: *5 U.S.C. 7301; 12 U.S.C. 1819(a); sec. 502(a), 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; E.O. 11222, 3 CFR, 1964-1965 Comp., p. 306, as modified; 5 CFR 2635.403(a), 2635.803, 2637.101(a).*

2. Part 336 is amended by removing and reserving subpart D, §§ 336.24-336.28.

By Order of the Board of Directors.

Dated at Washington, DC this 24th day of November, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.