

for inclusion into an expanded definition of universal service are presently classified by the FCC as enhanced services, e.g., protocol conversion, voice mail, and videotext gateways.<sup>157</sup> As such, they are not subject to regulation and can be offered by competitive providers. To what extent are such services "universally" available? To the extent that they are not, would entry by LECs into those unserved markets on a deregulated basis be preferable to a regulation/cross-subsidization approach? What impediments (e.g. technical, economic, regulatory) exist to making such services more available?

151. With respect to those components of an expanded universal service that are "basic" local network services, the proper role for competition is less clear. To what degree could competitive alternatives to LECs (e.g., cable television, MANs, STS providers) help promote the availability of an expanded version of universal service to residential subscribers? Would similar competitive alternatives also be available in rural and remote areas? Under a competitive environment, however, might services be made available only to those subscribers that offer the greatest revenue potential? If so, should LECs be obligated, even in markets where local competition generally exists, to serve all potential subscribers?

152. Another approach to promoting the availability of a redefined universal service could be for government to provide incentives to carriers and alternative service providers to expand service. Many of the options discussed earlier for infrastructure development generally could be applied in this context. For example, investment tax credits might be employed to promote service development in those areas identified as having network facilities that are inadequate to provide subscribers the same level of services offered to subscribers elsewhere. Removing restrictions on BOC provision of information services could also provide those carriers with additional incentives to upgrade facilities, and thereby offer new services throughout their operating areas. Would such mechanisms be effective in promoting universal service?

<sup>157</sup> NYNEX has filed a petition with the FCC for a ruling that its particular gateway offering should be classified as a basic service. *NYNEX Petition for Declaratory Ruling*, CC Docket 88-2, Phase I (filed Jan. 17, 1989). The FCC's Common Carrier Bureau has determined that the gateway service offered by Bell Atlantic is an enhanced service. *Bell Atlantic Telephone Companies*, 3 FCC Rcd 6045, 6046 (1988).

## 2. Affordability

153. We request parties that propose new forms of universal service to discuss how such service will be financed. As noted earlier, over the years, both Federal and state regulators have created an elaborate system of interservice subsidies in an effort to promote affordable residential service rates, and thus, increase telephone subscribership.

154. With this longstanding subsidy mechanism under scrutiny in recent years, in light of the emergence of competition in those markets that traditionally were the source of local service subsidies, the FCC and the states established new programs to ensure affordable basic telephone service. Twenty-two states and the District of Columbia presently participate in the FCC's "Lifeline" and "Link Up America" programs.<sup>158</sup> These programs are targeted to low-income subscribers and are designed to reduce one-time installation charges and monthly rates for local telephone service, respectively.

155. Additionally, the FCC and many states have established assistance programs to keep down the costs of basic service in high cost areas. Both the FCC and states have established universal service funds, supported through the access charges paid by interexchange carriers.<sup>159</sup> In addition, those LECs which no longer choose to participate in the interstate common line pool must provide long-term financial support to those carriers remaining in the pool.

156. We are also interested in the effects, if any of a reformulated universal service definition on present subsidy programs designed to promote telephone subscribership. Since the demand for basic telephone service is very inelastic, any increase in the price of that service resulting from the inclusion of new capabilities in the "basic" package should not have a large adverse impact on overall telephone penetration levels. As is the case today, however, there may be some segment of the population for which the cost of service will be prohibitive in the absence of some form of subsidized rate

<sup>158</sup> See *Telephone Trends*, supra note 21, at 24-25, Table 17.

<sup>159</sup> In at least one state (New Mexico), the universal service fund is supported in part by a uniform surcharge imposed on all local exchange service customers.

*Telecommunications Competition in Michigan and Regulatory Alternatives, A Report to the Michigan Divestiture Research Fund Board*, Vol. II, at 88 (June 1988).

or direct assistance. What targeted subsidies, if any, would be needed?

157. If the new components of a redefined universal service are provided as optional, separately priced features, should lifeline programs be retargeted to include, when necessary, those services or capabilities encompassed in the expanded definition? This approach was recommended by the Intelligent Network Task Force.<sup>160</sup> However, as noted above, regulators often have required that rates for new network features (e.g., touchtone, custom calling services) be priced above cost so as to provide subsidies for basic telephone service. If those features are included in an expanded definition of universal service and priced at (or even below) cost, who should pay for the lost subsidies?

158. Redefining universal service also calls into question the role of the present assistance programs to high cost areas. For example, should LECs and their customers in low cost areas contribute to invest in network infrastructure development that principally will benefit customers in high cost areas? If competition fully emerges in local exchange markets, will such methods of subsidizing basic rates be sustainable?

159. Should new local exchange competitors, such as MANs and STS providers, have some type of universal service obligation? The New York Public Service Commission recently suggested a universal service fund and also a new equal access tariff structure, derived on a non-discriminatory basis from New York Telephone and other carriers, that would contribute toward the support of basic services.<sup>161</sup> Parties are requested to address both the policy and the implementation issues raised if competitive alternatives to the LECs were required to contribute towards some sort of universal service fund.

## VII. Conclusion

160. Comments in this proceeding should be filed on or before March 19, 1990. Reply comments should be filed on or before April 23, 1990.

Dated: January 3, 1990.

Janice Obuchowski,  
Assistant Secretary of Commerce for  
Communications and Information.

[FR Doc. 90-421 Filed 1-8-90; 8:45 am]

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<sup>160</sup> Task Force Report, supra note 147, at 32.

<sup>161</sup> *Proceeding on Motion of the Commission to Review Regulatory Policies for Segments of the Telecommunications Industry Subject to Competition*, Case 29469, Opinion No. 89-12, at 27 (N.Y. Pub. Serv. Comm'n May 18, 1989).

# **federal register**

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**Tuesday  
January 9, 1990**

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## **Part III**

### **Oversight Board**

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**12 CFR Part 1505**

**Employee Responsibilities and Conduct;  
Proposed Rule**

**OVERSIGHT BOARD****12 CFR Part 1505****Employee Responsibilities and Conduct****AGENCY:** Oversight Board.**ACTION:** Proposed rule.

**SUMMARY:** This rule is proposed to set standards of responsibility and conduct to which all employees of the Oversight Board will be required to adhere in the performance of their duties. The Oversight Board ("Board") was established as an instrumentality of the United States by section 501(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (hereinafter referred to as "FIRREA"), Public Law 101-73 of August 9, 1989, by adding a new section 21A to the Federal Home Loan Bank Act, 12 U.S.C. 1421 *et seq.* The principal duties of the Board are to oversee and direct the Resolution Trust Corporation (RTC), whose mission is to carry out a program for the management and resolution of cases involving failed financial institutions, including disposal of residual assets. The Board is to set overall strategies, policies, goals and procedures for RTC's activities, but will not be involved in case-specific matters involving individual case resolutions, asset liquidations or the day-to-day operations of the RTC.

**DATE:** Comments must be received on or before February 8, 1990.

**ADDRESS:** Comments may be mailed to Nadine J. Hartke, Oversight Board, 1825 Connecticut Avenue, NW., Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Miklos L. Lonkay, Senior Counsel for Ethics, (202) 566-2327, Treasury Department, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

**SUPPLEMENTARY INFORMATION:** Section 21A(p)(2) of FIRREA requires the Oversight Board to promulgate rules and regulations within 180 days governing conflicts of interest, ethical responsibilities, and post-employment restrictions applicable to members, officers, and employees of the Board that shall be no less stringent than those applicable to the Federal Deposit Insurance Corporation. That section of FIRREA also imposes the same requirement for the RTC concerning its members, officers, and employees. FIRREA further requires the Oversight Board to prescribe procedures for ensuring that any individual who performs any function or service on behalf of the RTC meets minimum

standards of competence, experience, integrity, and fitness, and that the procedures so prescribed shall prohibit any person who fails to meet such criteria from being employed by the RTC.

At the Oversight Board's first meeting on August 9, 1989, in order to assure adherence to the standards set out in FIRREA until final regulations can be published, the Board established interim ethics and conflict of interests policies for itself and the RTC. To govern the conduct of those employees who are detailed from other Federal agencies, the Board adopted their existing agency standards of conduct regulations until the Board's own regulations are issued. For those employees who are not covered by any other agency regulations, the Board adopted the FDIC's standards of conduct regulations. The proposed rule, when adopted, will replace the Board's interim policies for its employees.

To develop the regulations required by FIRREA, the Board appointed an inter-agency task force consisting of senior ethics officials of the Treasury Department, the Board of Governors of the Federal Reserve System, the Department of Housing and Urban Development, and the Federal Deposit Insurance Corporation. The proposed rule, which sets standards for the Oversight Board's members, officers, and employees, and for such special government employees as the two independent Board members appointed by the President and the members of the National and Regional Advisory Boards, is the result of the task force's efforts. To a considerable extent, the proposed rule is similar to the rule separately proposed by the RTC for its members, officers, and employees.

Consistent with the requirements of FIRREA, and given the Board's statutory mission and responsibilities, the proposed rule sets forth the minimum standards of conduct which all employees of the Board will be required to follow. These rules will also apply to employees detailed to the Board from other agencies, and whenever there are inconsistencies between the agency's rules and the Board's rules, the latter will govern whenever they are performing services for the Board.

The proposed rule is based on the Federal Deposit Insurance Corporation regulations governing Employee Responsibilities and Conduct published at 12 CFR part 336 and, in fact, adopts many of its provisions without substantive change. In addition, it reflects the requirements of Executive Order 12674 of April 12, 1989; 18 U.S.C. Chapter 11; the Ethics Reform Act of

1989, Public Law 101-194; the Office of Personnel Management regulations on Employee Responsibilities and Conduct at 5 CFR part 735; and some of the Treasury regulations on Employee Responsibilities and Conduct at 31 CFR part 0. The proposed rule complies with the requirements of FIRREA that the restrictions imposed on the Board's employees be no less stringent than those applicable to the Federal Deposit Insurance Corporation.

The proposed rule reflects the general statutory and regulatory requirements that apply to all employees in the Executive branch. In addition, although Board employees are not expected to have any involvement with specific matters concerning institutions, entities, assets, contracts or other specific activities under the RTC's program, it contains restrictions on investments and loans involving certain financial institutions. The proposed rule would not require divestiture of securities or termination of existing loans. The rule would, however, generally prohibit acquiring new equity interests in any insured depository institutions and also prohibit extensions of credit from any institution that is involved with the RTC as a conservator or as an assisted or assuming entity. In addition, it would prohibit investment in any securities of open-end or closed-end funds that are designed to acquire thrifts or other insured depository institutions; or the holding of stock or other interests in limited real estate partnerships, joint ventures, or other investments involving firms, which, to the employee's knowledge have been qualified to do business with the Board or the RTC.

The proposed rule would impose certain restrictions on former Board employees' postemployment activities involving not only the Board, but, in view of the Board's oversight responsibilities, also the RTC. In addition to the statutory postemployment prohibitions, such restrictions would include a one-year prohibition on aiding or advising any other person (except the United States) with regard to any particular matter in which the former employee participated personally and substantially if such aiding or advising is based on nonpublic information. This administrative restriction is patterned after 18 U.S.C. 207(b) as added by the Ethics Reform Act of 1989 to the criminal conflict statutes, which prohibits aiding or advising as to ongoing trade or treaty negotiations.

Since FIRREA requires the Oversight Board to appoint members of the National and Regional Advisory Boards,

who are expected to be serving as special government employees, the proposed rule sets out in detail the statutory restrictions applicable to special government employees and the regulatory standards applicable to their conduct. The regulations do not bar the employer of such special government employee from doing business with the Board or RTC as long as the special government employee is fully recused from participating in any particular matter that his or her employer has pending before the Board or RTC.

Finally, consistent with the requirements of FIRREA, the proposed regulations would require the RTC to establish policies and procedures to ensure that all individuals who are employed by, or otherwise perform any service for, the RTC will meet minimum standards of competence, experience, integrity and fitness. These standards will also apply to the members appointed to the National and Regional Advisory Boards in view of the provision in the FIRREA that extends the conflict of interests provisions to such Boards.

These proposed regulations reflect the current status of the law and regulations. The Oversight Board is aware, however, that significant changes may be necessary once the Office of Government Ethics issues regulations to implement the Ethics Reform Act of 1989 of November 30, 1989 and Executive Order 12674 of April 12, 1989.

#### Executive Order 12291 and Regulatory Flexibility Act

Because this proposed rule relates solely to the internal management, operations, and personnel of the Oversight Board, it has been determined that it does not constitute a major rule for purposes of Executive Order 12291. Accordingly, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply and a regulatory flexibility analysis is not required. For similar reasons, and although the Board is soliciting public comments, no notice of proposed rulemaking is required by 5 U.S.C. 553 or any other law.

#### List of Subjects in 12 CFR Part 1505

Conflict of interests, Government contracts.

Chapter XV of title 12 of the Code of Federal Regulations is proposed to be amended by adding new part 1505 to subchapter A to read as follows:

### PART 1505—EMPLOYEE RESPONSIBILITIES AND CONDUCT

#### Subpart A—General Provisions

- Sec.
- 1505.1 Purpose and scope.
  - 1505.2 Definitions.
  - 1505.3 Designated agency ethics official and alternate.
  - 1505.4 Employee responsibility, counseling, and distribution of regulation.
  - 1505.5 Sanctions and remedial actions.
  - 1505.6 Review of remedial actions.

#### Subpart B—Ethical and Other Conduct and Responsibilities of Employees

- 1505.7 General rules.
- 1505.8 Gifts, entertainment, favors, and loans.
- 1505.9 Travel expenses.
- 1505.10 Use of official information.
- 1505.11 Lectures, speeches, and manuscripts.
- 1505.12 Employment of relatives.
- 1505.13 Use of property and resources owned or controlled by the Board or RTC.
- 1505.14 Indebtedness, gambling, and other conduct.

#### Subpart C—Financial Interests and Obligations; Outside Employment

- 1505.15 General rules.
- 1505.16 Extensions of credit.
- 1505.17 Securities of insured depository institutions.
- 1505.18 Other investments.
- 1505.19 Purchase of assets of institutions in conservatorship or receivership.
- 1505.20 Purchase of Board or RTC property.
- 1505.21 Providing goods or services to the Board or RTC.
- 1505.22 Outside employment and other activity.
- 1505.23 Employment of family members by persons other than the Board or RTC.

#### Subpart D—Confidential Statements of Employment and Financial Interests; Public Financial Disclosure Reports; and Report of Employment Upon Resignation.

- 1505.24 Confidential statement of employment and financial interests.
- 1505.25 Public Financial Disclosure Reports.
- 1505.26 Report of employment upon resignation.

#### Subpart E—Limitations on Activities of Former Employees, Including Special Government Employees

- 1505.27 Limitations on representation.
- 1505.28 Limitations on aiding or advising.
- 1505.29 Consultation as to property of appearance before the board or RTC.
- 1505.30 Suspension of appearance privilege.

#### Subpart F—Ethical and Other Conduct and Responsibilities of Special Government Employees

- 1505.31 General.
- 1505.32 Applicability of 18 U.S.C. 203 and 205.
- 1505.33 Applicability of 18 U.S.C. 207.
- 1505.34 Applicability of 18 U.S.C. 208.
- 1505.35 Use of Board employment.
- 1505.36 Use of inside information.

- 1505.37 Coercion.
- 1505.38 Advice on rules of conduct and conflicts of interest statutes.
- 1050.39 Disclosure of employment and financial interests.

#### Subpart G—Competence, Experience, Integrity, and Fitness of Resolution Trust Corporation Employees

- 1505.40 Minimum competence, experience, integrity and fitness requirements for Resolution Trust Corporation employees.

Authority: 12 U.S.C. 1441a(a)(13) and (p)(2); 5 CFR part 735.

#### Subpart A—General Provisions

##### § 1505.1 Purpose and scope.

(a) This part establishes the standards of responsibility and conduct for all employees of the Oversight Board.

(b) The following subject areas are covered:

(1) Subpart A of this part provides the definitions to be applied in implementing these standards and sets forth general procedures on employee responsibilities, counseling, distribution of the regulation, sanctions, and remedial actions;

(2) Subpart B of this part sets forth basic conflict of interest rules on receiving gifts, entertainment, favors, loans, and travel expenses and rules of conduct on speaking, publications, employment of relatives, use of Board and RTC property, and indebtedness and gambling applicable to all employees;

(3) Subpart C of this part contains rules on credit, investments, purchase of Oversight Board and Resolution Trust Corporation property and assets in conservatorship or receivership, outside employment, and employment of family members applicable to all employees;

(4) Subpart D of this part requires reports of financial interests and employment;

(5) Subpart E of this part sets forth rules on representing others before the Oversight Board and Resolution Trust Corporation;

(6) Subpart F of this part prescribes rules for special government employees; and

(7) Subpart G of this part requires the Resolution Trust Corporation to prescribe policies and procedures setting forth minimum standards of competency, experience, integrity, and fitness for its employees.

##### § 1505.2 Definitions.

For the purposes of this part:

(a) "Affiliate" means any depository institution holding company, of which an insured bank or insured savings association is a subsidiary and any

other subsidiary of such depository institution holding company. Any entity which is a subsidiary of an insured bank or insured savings association shall be deemed to be an affiliate of that insured bank or insured savings association.

(b) "Appearance" means an individual's physical presence before the United States, including the Board or RTC, in any formal or informal setting or conveyance of material to the United States in connection with a formal proceeding or application. A communication is broader than an appearance and includes, for example, correspondence or telephone calls.

(c) "Assisted entity" means (1) any insured depository institution which has received financial assistance from the RTC to prevent its failure, (2) any insured depository institution resulting from a merger or consolidation with any insured depository institution described in paragraph (k) of this section, or (3) any parent depository institution holding company of an insured depository institution described in paragraph (k) of this section: *Provided*, That an ongoing financial relationship, including, but not limited to, the repayment of a loan, the servicing of assets, or the existence of stock or warrants, exists between such insured depository institution or insured depository institution holding company and the RTC.

(d) "Assuming entity" means any insured depository institution or insured depository institution holding company which has entered into a transaction with the RTC to purchase some or all of the assets and assume some or all of the liabilities of a failed insured depository institution for a period of one year following the closing of such failed insured depository institution.

(e) "Board" means the Oversight Board.

(f) "Chairperson" means the Chairperson of the Board.

(g) "Contractor" means any entity or person who, pursuant to a contract, performs functions or activities for the Board or RTC under the direct supervision of an officer or employee of the Board or RTC. The term does not include independent contractors retained by the RTC whose conduct is regulated under 12 CFR 1606.

(h) "Covered employee" means any entity or employee required to file a confidential statement of employment and financial interests pursuant to § 1505.24(a) or a public Financial Disclosure Report (SF 278) pursuant to 1505.25.

(i) "Dependent child" means a son, daughter, stepson, or stepdaughter who either:

(1) Is unmarried, under 21, and living in the employee's household; or

(2) Has received over half of his or her support from the employee in the preceding calendar year.

(j) "Employee" means any member, officer, or employee of the Board including any personnel detailed from any executive department or agency, but does not include special government employees.

(k) "Insured depository institution" means any bank or savings association the deposits of which are insured by the Bank Insurance Fund or the Savings Association Insurance Fund.

(l) "FIRREA" means the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101-73 of August 9, 1989 (103 Stat. 183).

(m) "Member of the employee's immediate household" means a person who is related to the employee by blood, marriage, or adoption and who resides in the same household as the employee.

(n) "Person" means an individual, insured depository institution, corporation, company, association, partnership, firm, society, or any other organization or institution.

(o) "President" means the President and Chief Executive Officer of the Board or his or her delegate.

(p) "RTC" means the Resolution Trust Corporation.

(q) "Security" means any note, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement, pre-organization certificate or subscription, investment contract, voting trust certificate, or, in general, any interest or instrument commonly known as a security, but does not include a deposit.

(r) "Senior employee" means any member or other officer or employee of the Oversight Board named in or designated by the Director of the Office of Government Ethics pursuant to 18 U.S.C. 207(d).

(s) "Special government employee" means any employee performing temporary duties either on a full time or intermittent basis, with or without compensation, for a period estimated not to exceed 130 days during any period of 365 consecutive days. Independent members of the Oversight Board and members of the National and Regional Advisory Boards who perform duties on this basis will be special government employees.

(t) "Subsidiary" means a company the voting stock of which is 50 percent or more owned or controlled by another company.

#### § 1505.3 Designated agency ethics official and alternate.

(a) The Board's ethics program shall be coordinated and managed by the Designated Agency Ethics Official (hereinafter referred to as the DAEO) who will be appointed by the Oversight Board.

(b) An Alternate Designated Agency Ethics Official (hereinafter referred to as the Alternate DAEO) will also be appointed by the Board, to act for the DAEO when he or she is unavailable. When acting for the DAEO, the Alternate DAEO may perform all of the duties and functions of the DAEO. All references in these regulations to the DAEO shall mean the Alternate DAEO whenever he or she is acting for the DAEO.

#### § 1505.4 Employee responsibility, counseling, and distribution of regulation.

(a) Each employee is responsible for being familiar with and complying with the provisions of this part. The DAEO shall be available for counseling and guidance as to the statutes and regulations affecting employee responsibility and conduct, including interpretation of this part.

(b) The DAEO shall assure that a copy of this part is provided to each new Board employee within 30 days of commencement of employment and each such employee shall complete and file a certification acknowledging receipt of the regulations. The DAEO shall annually distribute a reminder of the basic provisions of this part to each employee.

(c) An employee who believes that any assignment to a matter may result in a conflict of interest or the appearance of a conflict of interest shall report immediately all relevant facts to his or her immediate supervisor.

#### § 1505.5 Sanctions and remedial actions.

(a) Any violation of this part by an employee, or special government employee, may be cause for disciplinary or remedial action, which may be in addition to any penalty prescribed by law.

(b) Disciplinary action may include, but is not limited to, an oral or written warning or admonishment, reprimand, suspension, or removal from office.

(c) Remedial action may include divestment of conflicting interests, change in assigned duties, or disqualification from a particular assignment or a particular matter.

(d) Unless there is a request for review, pursuant to § 1505.6, of an order of remedial action, such order of remedial action, other than

disqualification, shall take effect 20 days after receipt of notice thereof, and disqualification shall take effect immediately. Any order of remedial action reviewed and approved pursuant to § 1505.6 shall take effect immediately upon receipt of notice of the determination of the President.

#### § 1505.6 Review of remedial actions.

When remedial action is ordered pursuant to § 1505.5, the affected Board employee, or special government employee, may request the President to review such order. Any request for review shall be made in writing, within 20 days of receipt of notice of the order, and shall contain a statement of reasons for such request. The President will promptly review the matter and provide a written determination which shall be final.

### Subpart B—Ethical and Other Conduct and Responsibilities of Employees

#### § 1505.7 General rules.

Employees are expected to maintain high standards of honesty, integrity, impartiality, and conduct and to avoid misconduct and conflicts of interest, or the appearance of conflicts of interest. No employee shall engage in any action, whether or not specifically prohibited by this part, which might result in, or create the appearance of:

- (a) Using public office for private gain;
- (b) Giving preferential treatment to any person;
- (c) Impeding the Board's or RTC's efficiency or economy;
- (d) Losing complete independence or impartiality;
- (e) Making a Board decision outside official channels; or
- (f) Adversely affecting the public's confidence in the integrity of the Board or RTC.

#### § 1505.8 Gifts, entertainment, favors, and loans.

(a) Except as provided in paragraph (b) of this section, no employee may solicit or accept, for himself or herself or for another person, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or other thing of monetary value from a person who:

- (1) Has or seeks contractual or other business or financial relationships with the Board or RTC;
- (2) Is supervised or regulated by any federal financial regulatory agency;<sup>1</sup>

<sup>1</sup> A professional, trade, or business association, a substantial majority of whose members are regulated by or do or seek to do business with the Board or RTC or any federal financial regulatory agency, is itself a prohibited source for purposes of this section. (Memorandum 87×13, OCE, issued 1987)

(3) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duties; or

(4) Is an officer, director, or employee of any insured depository institution or trade organization comprising of members who seek to do business with the Board or RTC.

(b) The prohibitions of paragraph (a) of this section do not apply:

(1) To the solicitation or acceptance of anything of monetary value from a friend, parent, spouse, child, or other close relative where it is clear from the circumstances that personal or family relationships rather than the business of the persons concerned are the motivating factors;

(2) To the acceptance of unsolicited advertising or promotional material such as pens, pencils, note pads, calendars, and other items of nominal value;

(3) Except as otherwise provided in § 1505.16, to the acceptance of loans from insured depository institutions or other financial institutions on the customary terms and conditions offered to the general public;

(4) To the acceptance of food, refreshments, and accompanying entertainment of nominal value on infrequent occasions in the ordinary course of a conference, meeting, or other function at which an employee is properly in attendance in his or her official capacity; and

(5) To the acceptance of food, refreshments, and accompanying entertainment of nominal value offered in the course of a group function or widely attended gathering at which the attendance of the employee is in the interest of the Board.

(c) Whenever an employee receives a gift or other item of monetary value the acceptance of which is prohibited by paragraph (a) of this section, or whenever a gift or other item of monetary value is received from a source other than a source described in paragraph (a) of this section and is given because of the employee's official position or in conjunction with official duties carried out by the employee, the employee shall notify the DAEO within ten days of receipt of such gift or item. The gift or item shall be promptly returned to the sender or otherwise disposed of as directed by the DAEO. The cost of returning such gift or item shall be borne by the Board.

(d) An employee may not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself or herself, unless it is a voluntary gift or

donation of nominal value made on a special occasion such as marriage, illness, or retirement.

(e) An employee may not request or accept a gift, present, or decoration from a foreign government, except as permitted by law.

(f) Procurement officials shall not, during the conduct of a procurement of goods or services under the Federal Procurement laws and regulations, knowingly solicit or accept any money, gratuity, or other thing of value from any officer, employee, representative, agent, or consultant of any competing contractor for such procurement.

#### § 1505.9 Travel expenses.

(a) Expenses of travel, lodging, and subsistence incurred by an employee while on official duty shall be paid for or reimbursed by the Board and an employee shall not accept payment or reimbursement for such expenses from any private source except as provided in this § 1505.9(d).

(b) On rare occasions where there is no practical alternative to acceptance, an employee may accept travel, lodging, or subsistence from a private source while on official duty. The employee must report the acceptance, value, and circumstances thereof to his or her immediate supervisor and the DAEO within 30 days of such acceptance. When appropriate, the Board will reimburse the private source for the fair market value of such travel, lodging, or subsistence.

(c) For the purpose of this section, "subsistence" does not include food or refreshments accepted on infrequent occasions in the ordinary course of an official function or a widely attended gathering as permitted by § 1505.8 (b)(4) and (b)(5).

(d) Under the provisions of 5 U.S.C. 4111, an employee may accept reimbursement for travel, lodging, or subsistence expenses from an organization which is exempt from taxation under 26 U.S.C. 501(c)(3), if no U.S. Government payment or reimbursement is made for the expense, and acceptance does not result in, or create the appearance of, a conflict of interest; and in the case of employees who are permanent employees of any executive department or agency, being utilized by the Board on a reimbursable basis, where acceptance would be consistent with the other federal agency's travel policies and regulations.

#### § 1505.10 Use of official information.

(a) Except as permitted in § 1505.11, an employee may not, directly or indirectly, use or allow the use of

information which is obtained as a result of his or her Board employment but which is not available to the general public in order to engage in any financial transaction or to further a private interest.

(b) An employee may not maintain, disclose, or otherwise use information in a manner which violates the Privacy Act of 1974, 5 U.S.C. 552a.

(c) An employee may not disclose confidential business information obtained in the course of his or her employment or official duties except as authorized by law. (See 18 U.S.C. 1905).

#### § 1501.11 Lectures, speeches, and manuscripts.

(a) No employee shall publish any material or speak before insured depository institutions or public organizations on matters involving the Board or RTC unless the employee receives prior approval, and prior clearance of material to be published, by the President.

(b) Any employee shall not use his or her title in connection with writing for publication, or other distribution not in connection with his or her Board employment, unless the writing contains a statement indicating that the views contained therein are those of the employee as an individual and do not necessarily represent the views of the Board or RTC or unless such use is approved in advance by the President.

(c) An employee shall not use in any teaching, lecturing, speaking, or writing engagement information obtained as a result of his or her Board employment unless the information is available to the general public or the President gives authorization for such use, upon the determination that the use of the information is in the public interest.

(d) No employee may receive any compensation, honorarium, or other thing of monetary value for any speech, lecture, publication, or similar engagement, the subject matter of which relates specifically to matters involving the Board or RTC or contains information that is not otherwise available to the general public. No employee may accept an honorarium of more than \$2,000 for any appearance, speech, or article in connection with non-Board related activities. (See 2 U.S.C. 441i).

#### § 1505.12 Employment of relatives.

(a) For the purposes of this section:

(1) A "relative" is any person related to an Oversight Board official, an RTC official, or a special Government employee of the Board or RTC as parent, stepparent, child, stepchild, brother, sister, stepbrother, stepsister, half-

brother, half-sister, spouse, uncle, aunt, first cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law.

(2) An "official" is any employee who has authority to appoint, employ, promote, or advance employees or who recommends anyone for appointment, employment, promotion, or advancement at the Oversight Board or the RTC.

(3) A "supervisor" is any employee whose position requires independent judgment to appoint, employ, promote, advance, assign, direct, reward, transfer, suspend, discipline, remove, adjust grievances, or furlough any person or to recommend any such action.

(b) A Board official may not:

(1) Appoint, employ, promote, or advance any relative to a position at the Oversight Board or the RTC;

(2) Advocate a relative's appointment, employment, promotion, or advancement at the Oversight Board or RTC; or

(3) Appoint, employ, promote, or advance a relative of another Oversight Board or RTC official if such other official has advocated the relative's appointment, employment, promotion, or advancement.

(c)(1) No employee may be a supervisor of any relative.

(2) Whenever any employee becomes a supervisor of a relative, the employee shall report in writing that fact to his or her supervisor. The appropriate management official, in consultation with the DAEO, shall determine whether the relative's position may be removed from the scope of the supervisor's authority, taking into consideration the nature of the supervisor's position, the operational needs of the work unit, and the potential for conflicts of interest or the appearance thereof. If it is determined that it is not feasible to remove the relative's position from the scope of the supervisor's authority, the appropriate management officials shall determine whether the relative may be assigned to another position at the Board which is outside the scope of the supervisor's authority.

#### § 1505.13 Use of property and resources owned or controlled by the Board or RTC.

An employee shall not, directly or indirectly, use or allow the use of any property or resources, owned or controlled by the Board or RTC for other than officially approved activities. An employee has a duty to protect and conserve property, including equipment, supplies, and other property entrusted or issued to the employee.

#### § 1505.14 Indebtedness, gambling, and other conduct.

(a) *Indebtedness.* An employee is expected to meet all just financial obligations, whether imposed by law or contract. For the purpose of this section, a "just financial obligation" is one acknowledged by the employee or reduced to judgment by a court or one imposed by law such as federal, state, or local taxes.

(b) *Gambling.* An employee shall not participate in any gambling activity, including use of gambling devices, lotteries, pools, games for money or property, or numbers tickets, while on property owned or leased by the Board or the government, or while on duty for the Board.

(c) *Crimes and dishonesty.* An employee shall not engage in criminal or dishonest, or any other conduct prejudicial to the Board. Any employee who has information indicating that another employee engaged in any criminal conduct or violated any of the rules of these Standards of Conduct shall promptly convey such information to the DAEO.

(d) *Discrimination.* An employee shall not discriminate against any other employee, or applicant for employment, nor exclude any person from participating in, or deny to any person the benefits of, any program or activity administered by the Board or RTC on the basis of race, color, religion, national origin, sex, age or handicap.

(e) *Political Activity.* Employees have the right to vote as they may choose and to express their opinions on all political subjects and candidates, but are forbidden to take active part in political management or campaigns except as permitted by law. Prohibitions concerning political activities may be found in 5 U.S.C. 7321 *et seq.* (the Hatch Act) and 18 U.S.C. 602, 603, and 607.

(f) *Miscellaneous.* Other provisions with which an employee should be familiar include:

(1) The "Code of Ethics for Government Service," which prescribes general standards of conduct (Pub. L. No. 96-303, 94 Stat. 855-856);

(2) Prohibitions relating to bribery, conflicts of interest, and graft (18 U.S.C. 201-209);

(3) Prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918);

(4) Prohibitions against the disclosure of classified information (18 U.S.C. 798);

(5) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352);

(6) Prohibition against the misuse of a government vehicle (31 U.S.C. 1349(b));

(7) Prohibition against the misuse of the franking privilege (*i.e.*, prepaid postage) (18 U.S.C. 1719);

(8) Prohibition against the use of deceit in an examination or personnel action in connection with government employment (18 U.S.C. 1917);

(9) Prohibition against fraud or false statements in a government matter (18 U.S.C. 1001);

(10) Prohibition against mutilating or destroying a public record (18 U.S.C. 2071);

(11) Prohibitions against embezzlement of government money or property (18 U.S.C. 641); failing to account for public money (18 U.S.C. 643); and embezzlement of the money or property of another person in the possession of an employee by reason of his or her employment (18 U.S.C. 654);

(12) Prohibition against unauthorized use of documents relating to claims from or by the government (18 U.S.C. 285); and

(13) Prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

#### Subpart C—Financial Interests and Obligations; Outside Employment

##### § 1505.15 General rules.

(a) No employee shall have any direct or indirect financial interest or obligation that conflicts or appears to conflict with the employee's duties and responsibilities.

(b) No employee may negotiate or have any arrangement concerning prospective employment with a person whose financial interests may be directly and substantially affected by the employee's performance of his or her Board duties and responsibilities while the employee is personally and substantially engaged, as part of his or her official duties, in any matter affecting that person. (See 18 U.S.C. 208.)

(c) No employee may participate personally and substantially, by decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other action, in any matter in which the employee, the employee's spouse, minor child, partner, or organization in which the employee serves as an officer, director, trustee, partner, or employee, has a financial interest (other than a deposit). (See 18 U.S.C. 208.)

(d) No partner of an employee or a special government employee may act as agent or attorney for any person other than the United States before the Board or RTC in a matter in which the employee participates or has participated, personally and substantially, by decision, approval, disapproval, recommendation, the

rendering of advice, investigation, or otherwise or which is the subject of the employee's official responsibility. (See 18 U.S.C. 207.)

(e) An employee shall disqualify himself or herself from participation in any matter in which he or she has a financial interest by notifying his or her supervisor and the DAEO in writing of such matter and financial interest.

(f) The prohibitions of paragraphs (a), (b), (c), and (e) of this section shall not apply if the employee receives the prior written determination by the President, after consultation with the DAEO and the Office of Government Ethics, that the interest is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Board. (See 18 U.S.C. 208(b)(1).)

##### § 1505.16 Extensions of credit.

Unless the credit is extended through the use of a credit card under the same terms and conditions as are offered to the general public and the total line of credit from any one institution does not exceed \$10,000:

(a) Employees may not, directly or indirectly, accept or become obligated on any extension of credit from any institution which the RTC manages as conservator or an assisted or assuming entity, for as long as the institution remains in conservatorship or one year following the end of RTC's involvement with an assisted or assuming entity. Such an institution will hereafter be referred to as a "prohibited creditor".

(b) If the adoption of this regulation, change in marital status, commencement of employment, or an action affecting the status of the creditor<sup>2</sup> results in an extension of credit prohibited by paragraph (a) of this section, such extension of credit may be retained by the employee if it is liquidated under its original terms, without renegotiation. If an otherwise prohibited extension of credit is retained in accordance with this paragraph, the employee shall be disqualified from participating in any particular matter having a direct and predictable impact on the creditor; *Provided*, That the President, after consultation with the DAEO and the Office of Government Ethics, may determine that the obligation will not affect the integrity of the employee's services to the Board.

(c) An employee otherwise required to liquidate a nonconforming extension of credit under its original terms may

<sup>2</sup> Such actions include, but are not limited to, mergers, acquisitions, transactions under section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823) or similar actions beyond the employee's control.

request permission to renegotiate the loan. Any such request shall be made, in writing, to the President, with a copy provided to the DAEO, stating:

(1) The purpose of the renegotiation;

(2) The terms and conditions of the original loan;

(3) The terms and conditions now available to the general public;

(4) The terms and conditions now offered the employee;

(5) What action the employee has taken to move the loan to an otherwise nonprohibited creditor; and

(6) The financial hardship, if any, denial of the request will cause.

(d) No employee may renegotiate a loan from a prohibited creditor without the prior written approval of the President, after consultation with the DAEO.

(e) Notwithstanding the restrictions of this section, an employee may assume a mortgage loan made by a prohibited creditor under the following circumstances:

(1) The loan is for the employee's personal residence;

(2) The employee is unable to arrange, without undue financial hardship, a loan from a nonprohibited creditor;

(3) The terms of the assumption are no more favorable than those made available to the general public by the same creditor;

(4) The employee receives the prior approval of the appropriate approving official, who shall have consulted with the DAEO; and

(5) The employee is disqualified from participating in any particular matter having a direct and predictable impact on the creditor.

(f) An extension of credit to an employee's spouse or dependent child shall constitute an extension of credit to the employee.

##### § 1505.17 Securities of insured depository institutions.

(a) While employed by the Board an employee may not purchase, own, or control, directly or indirectly, any securities of an insured depository institution or affiliate thereof, except as permitted in this section.

(b)(1) Except as provided in paragraph (b)(2) of this section, an employee may own or control securities of an insured depository institution, or affiliate thereof, whenever:

(i) Ownership or control was acquired prior to commencement of Board employment, or after commencement of employment, through a change in marital status or through circumstances beyond the employee's control, such as

inheritance, gift, or merger, acquisition or other change in corporate ownership;

(ii) The employee makes full, written disclosure on the prescribed form to the President and DAEO, within 30 days of commencing employment or acquiring the interest; and

(iii) The employee is disqualified from participating in any particular matter having a direct and predictable impact on the insured depository institution or affiliate; *Provided*, That the President, after consultation with the DAEO and the Office of Government Ethics, may determine that disqualification is not necessary because the employee's interest is too inconsequential to affect the integrity of the employee's services to the Board.

An employee may own or control additional securities which result from a stock split, stock dividend, or the exercise of options or preemptive rights arising out of the ownership of such securities.

(2) The President, after consultation with the DAEO, may require that an employee divest his or her interest in securities whenever disqualification under paragraph (b)(1) of this section might impair the employee's ability to perform his or her Board duties and responsibilities.

(c) An employee may have an indirect interest in securities of an insured depository institution, or affiliate thereof which arises through ownership of shares (or other investment units) of publicly held holding companies, mutual funds, or investment trusts but only if:

(1) The assets of the holding company, mutual fund, or investment trust consist primarily of securities of nonbank entities; and

(2) The employee does not own or control 5 percent or more of the shares (or other investment units) of the holding company, mutual fund, or investment trust.

Such an indirect interest in securities of an insured bank or affiliate is deemed too inconsequential to affect the integrity of the employee's services to the Board. (This provision, which represents a statutory waiver pursuant to former 18 U.S.C. 208(b)(2), is adopted from the FDIC regulations at 12 CFR 336.17(c)).

#### § 1505.18 Other investments.

(a) While employed by the Board an employee may not purchase, own, or control, directly or indirectly, any securities issued by any bridge bank or other institution organized under § 21A(b)(11) of the Federal Home Loan Bank Board Act as added by section 501(a) of FIRREA.

(b) While employed by the Board an employee may not purchase securities of, or otherwise invest in, any open- or closed-end fund designed to acquire thrifts or other insured depository institutions.

(c) While employed by the Board an employee may not acquire, directly or indirectly, any financial interest which conflicts or potentially conflicts with his or her official duties and responsibilities. Such interests include, but are not limited to, the voluntary acceptance, acquisition or holdings of: Stock or other interests in limited real estate partnerships, joint ventures, or other investments for the production of income, which involve firms or institutions which, to the employee's knowledge, have been qualified to conduct business with the Board or RTC.

(d)(1) Except as provided in paragraph (d)(2) of this section, an employee may own or control investments described in paragraph (c) of this section whenever:

(i) Ownership or control was acquired prior to commencement of Board employment, or after commencement of employment, through a change in marital status or through circumstances beyond the employee's control, such as inheritance, gift, or merger, acquisition or other change in corporate ownership;

(ii) The employer makes full, written disclosure on the prescribed form to the DAEO within 30 days of commencing employment or acquiring the interest; and

(iii) The employee is disqualified from participating in any decision or other action having a direct and predictable impact on the employee's financial interest; *Provided*, That the President, after consultation with the DAEO and the Office of Government Ethics, may determine that disqualification is not necessary because the employee's interest is too inconsequential to affect the integrity of the employee's services to the Board.

(2) The employee may be required to dispose of his or her interest in securities whenever disqualification under paragraph (d)(1) of this section might impair the employee's ability to perform his or her Board duties and responsibilities.

(e) An employee may have an indirect interest in otherwise prohibited investments which arises through ownership of shares (or other investment units) of publicly held companies, mutual funds, or investment trusts which have broadly diversified portfolios not specializing in any particular industry and which are:

(1) Widely held and are not under the employee's control; or

(2) Limited partnership interests in large public partnerships (i.e., one which has at least 39 partnership interests) and less than 25% of the gross revenues of the limited partnership is derived from firms doing business with the RTC.

The employee is disqualified, however, from participating in any particular matter having a direct and predictable impact on the employee's financial interest in such investments; *Provided*, That the President, after consultation with the DAEO and the Office of Government Ethics, may determine that disqualification is not necessary because the employee's interest is too inconsequential to affect the integrity of the employee's services to the Board.

#### § 1505.19 Purchase of assets of institutions in conservatorship or receivership.

(a) An employee, the employee's spouse or dependent child, or members of the employee's immediate household shall not, directly or indirectly, purchase any property which, to the employee's knowledge, the RTC manages as conservator of an insured depository institution or holds in its capacity as receiver, liquidator, or liquidating agent of the assets of an insured depository institution, regardless of how the property is sold.

(b) An employee who is involved in the disposition of conservatorship or receivership assets shall disqualify himself or herself from participation in the disposition of such assets when the employee becomes aware that any relative, or any organization or partnership with which the employee, the employee's spouse or dependent child is associated, has submitted a bid for purchase of such assets. The employee shall advise the President and the DAEO in writing of the self-disqualification.

(c) An employee shall not, directly or indirectly, use or release to persons outside the Board confidential information regarding the sale or disposition of assets.

#### § 1505.20 Purchase of Board or RTC property.

An employee, the employee's spouse or dependent child, or members of the employee's immediate household shall not, directly or indirectly, purchase or bid on any property owned by the Board or owned or held by the RTC in its corporate capacity.

#### § 1505.21 Providing goods or services to the Board or RTC.

An employee, the employee's spouse or dependent child, or members of the employee's immediate household shall

not, directly or indirectly, provide any goods or services for compensation to the Board or RTC unless the President determines, subject to the prohibitions in 18 U.S.C. 203 and 205, that there is a most compelling reason to do so, such as where the Board's or RTC's needs cannot be otherwise met. For the purposes of this section, the term "services" does not include services as required by the employee's position with the Board.

**§ 1505.22 Outside employment and other activity.**

(a) An employee shall not engage in employment or other activity outside the scope of his or her Board employment which is not compatible with the full and proper discharge of the employee's duties and responsibilities to the Board. Employment or activity which is not compatible with the employee's duties and responsibilities to the Board includes, but is not limited to, that which results in, or creates an appearance of, a conflict of interest or impairs the employee's physical or mental capacity to perform the duties and responsibilities of his or her position with the Board. Such employment or activity may involve:

(1) Service, with or without compensation, as an organizer, incorporator, director, officer, trustee, or representative of, or advisor or consultant to, or in any other capacity with, any insured depository institution, including a credit union;

(2) Service, with or without compensation, in any capacity with an investment advisor, investment company, investment fund, mutual fund, insurance company, stockbroker, underwriter, or any other person engaged in providing financial services; or

(3) Active participation in or conduct of a business dealing with or related to real estate including, but not limited to, real estate brokerage, management and sales, property insurance and appraisal services.

(b) An employee shall not engage in outside employment or other activity, with or without compensation, with any person or entity doing business with the Board or RTC.

(c) An employee shall not accept any money or anything of monetary value from a private source as compensation for the employee's service to the Board or RTC. (See 18 U.S.C. 209.)

(d) An employee shall not, directly or indirectly, receive compensation for representational services rendered by himself or herself or another before an agency of the Federal or District of Columbia Government on matters in

which the United States has an interest. (See 18 U.S.C. 203.)

(e) Except as provided in paragraph (f) of this section, an employee shall not represent anyone before an agency or court of the Federal or District of Columbia Government, with or without compensation, in matters in which the United States has an interest, other than in the proper discharge of the employee's official duties. (See 18 U.S.C. 205.)

(f) An employee must obtain the prior written approval of the President, after consultation with the DAEO, in order to represent a parent, spouse, child, or person or estate for which he or she serves as a guardian, executor, administrator, trustee, or personal fiduciary, with or without compensation. (See 18 U.S.C. 205.)

(g) This section does not preclude an employee from participating in the activities of:

(1) Charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organizations, so long as such participation does not violate § 1505.16 or 18 U.S.C. 203 or 205; or

(2) National or state political parties, if not prohibited by law.

(h) Any employee who engages in, or intends to engage in, outside employment or other activity must obtain the prior written approval of the President who, after consultation with the DAEO, will determine whether such employment or activity is compatible with the purposes of this part.

**§ 1505.23 Employment of family members by persons other than the Board or RTC.**

(a) In order to avoid a conflict of interest or the appearance of a conflict, a covered employee shall report to the President the employment of the employee's spouse, child, parent, brother, sister, or a member of the employee's immediate household, within 30 days of when the employee becomes aware of it, by:

(1) An insured depository institution or its affiliate;

(2) A firm or business with which, to the employee's knowledge, the Board or RTC has a contractual or other business or financial relationship; or

(3) A firm or business which, to the employee's knowledge, is seeking a business or contractual relationship with the Board or RTC.

(b) A covered employee will not be assigned to any matter directly involving the family member's employer unless the President, after consultation with the DAEO, makes a prior determination that the nature of the family member's employment makes it

unlikely that the employee's services to the Board will be affected by participation in the matter. In making determinations under this section, significant weight shall be given to the policy-making character of the family member's position. Under most circumstances, positions which are clerical or lacking policy-making character would not require disqualification.

**Subpart D—Confidential Statements of Employment and Financial Interests; Public Financial Disclosure Reports; and Report of Employment Upon Resignation.**

**§ 1505.24 Confidential statement of employment and financial interests.**

(a) *General.* All Board employees, including employees of other agencies detailed to the Board, classified at GS-13 to GS-15, or at a comparable pay level under the Board's personnel authority, shall be deemed to be covered employees for the purpose of filing confidential statements of employment and financial interests pursuant to this section. The President, after consultation with the DAEO and the Office of Government Ethics, may require the filing of such statements by employees at pay levels below GS-13, or a comparable pay level under the Board's personnel authority, when it is determined to be essential to protect the integrity of the Government and avoid possible conflict of interest situations.

(b) *Submission of Statements.* (1) Covered employees will be required to file statements of employment and financial interests within 30 days of initial employment, and each reappointment thereto and annually thereafter with information as of June 30. Covered employees who have commenced employment within 90 days of June 30 need not submit another statement for such reporting period.

(2) Statements shall be made upon forms prescribed by the Board. Instructions accompanying the forms will indicate where the statement is to be submitted. Each covered employee required to file shall be notified of their obligation.

(3) Each statement of employment and financial interests and its instructions will require the covered employee to supply information on:

(i) All other employment; and

(ii) The financial interests of the employee which have been determined to be relevant in light of the duties he or she is to perform, including, but not limited to, the name of companies in

which he or she has a financial interest, and the nature of such financial interest.

(c) *Confidentiality of statements.*

Statements of employment and financial interests shall be held in confidence. Statements shall be received, reviewed, and retained in the office of the DAEO, who shall be responsible for maintaining the statements in confidence.

**§ 1505.25 Public Financial Disclosure Reports.**

Officers and employees (including special Government employees, who are expected to serve in excess of 60 days out of a 365-day period) whose positions are classified at GS-16 or above of the General Schedule, or whose basic rate of pay (excluding "step" increases) under other pay schedules is equal to or greater than the rate for GS-16 (step 1), and employees whose positions are excepted from competitive service by reason of being of a confidential or policymaking character (unless otherwise excluded by the Office of Government Ethics) must file Financial Disclosure Reports (SF 278) upon appointment, termination, and annually in accordance with the regulations of the Office of Government Ethics, 5 CFR part 2634 (formerly 5 CFR part 734). Oversight Board members who are employees of other government agencies will file their reports with their employing agency, and pursuant to FIRREA, file a copy with the RTC ethics counselor.

**§ 1505.26 Report of employment upon resignation.**

Each covered employee shall report to the DAEO on a prescribed form his or her resignation to accept employment in the private sector. Such report shall include pertinent information regarding the prospective employment and shall be made as soon as possible but in no event less than two weeks prior to the effective date of resignation.

**Subpart E—Limitations on Activities of Former Employees, Including Special Government Employees**

**§ 1505.27 Limitations on representation.**

(a) No former employee or special government employee, after terminating government employment, shall knowingly act as agent or attorney for, or otherwise represent any other person, except the United States, in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person other than the United States:

- (1) To any department, agency, or court of the United States;

(2) In connection with any particular government matter involving a specific party; and

(3) In which such employee or special government employee participated personally and substantially as an employee or special government employee through decision, approval, disapproval, recommendation, advice, investigation, or otherwise.

See 18 U.S.C. 207(a) and 5 CFR 2637.201 (formerly 5 CFR 737.5(a)).

(b) No former employee or special government employee, within two years after termination of employment with the Board, shall knowingly act as agent or attorney for, or otherwise represent any other person, except the United States, in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person other than the United States:

- (1) To any department, agency, or court of the United States;

(2) In connection with any particular government matter involving a specific party; and

(3) If such matter was actually pending under the employee's responsibility as an officer or employee within a period of one year prior to the termination of such responsibility.

See 18 U.S.C. 207(b)(i) and 5 CFR 2632.202 (formerly 5 CFR 737.7(a)).

(c) The provisions of paragraphs (a) and (b) of this section shall not apply to the participation of a former employee or special government employee, other than those persons described in paragraph (e) of this section, in matters of general application, such as rulemaking, proposed legislation or regulations, and the formulation of general policy standards or objectives but shall apply to rulemaking having a specialized effect on a certain party or group of parties. (See 5 CFR 2637.201 (formerly 5 CFR 737.5(c)).

(d) No former senior employee, within two years after termination of employment with the Board or RTC, shall knowingly represent or aid, counsel, advise, consult, or assist in representing any other person, except the United States, by personal presence at any formal or informal appearance:

- (1) Before any department, agency, or court of the United States;

(2) In connection with any particular government matter involving a specific party; and

(3) In which matter he or she participated personally and substantially while an employee.

See 18 U.S.C. 207(b)(ii) and 5 CFR 2637.203 (formerly 5 CFR 737.9(a)).

(e) For a period of one year after termination of employment with the Board, no former senior employee (other than a special government employee who serves for fewer than sixty (60) days in a calendar year) shall knowingly act as an agent or attorney for, or otherwise represent any other person, except the United States, in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person other than the United States to the Board or RTC or any of its officers or employees in connection with any particular government matter, whether or not involving a specific party, which is pending before the Board or RTC, or in which the Board or RTC has a direct and substantial interest. See 18 U.S.C. 207(c) and 5 CFR 2637.204 (formerly 5 CFR 737.11).

**§ 1505.28 Limitations on aiding or advising.**

(a) For a period of one year after termination of employment with the Oversight Board, no former covered employee, including a former senior employee, shall knowingly act as agent or attorney for, or otherwise aid or advise any other person (except the United States), concerning any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, or other particular matter:

- (1) In which the former employee knows that the United States is a party or has a direct and substantial interest;

(2) That involves the same specific party or parties; and

(3) In which matter he or she participated personally and substantially while an employee.

(b) For purposes of paragraph (a) of this section, the limitations on aiding and advising shall only apply to particular matters about which the former employee had access to information which is exempt from disclosure under section 552 of title 5 of the United States Code, and which is so designated by the Oversight Board or RTC and which information is the basis for the aid or advice.

**§ 1505.29 Consultation as to propriety of appearance before the Board or RTC.**

Any former employee who wishes to appear before the Board or RTC on behalf of any person other than the United States, or an agency thereof, at any time after termination of employment with the Board, may consult the DAEO as to the propriety of such appearance.

**§ 1505.30 Suspension of appearance privilege.**

Any former employee or special government employee who, knowingly fails to comply with the provisions of this subpart, may be prohibited from making an appearance before or an oral or written communication to the Board or RTC for such period of time as provided in procedures to be adopted by the Board or RTC.

**Subpart F—Ethical and Other Conduct and Responsibilities of Special Government Employees****§ 1505.31 General.**

(a) Special government employees are those serving the Board by performing temporary duties either on a full time or intermittent basis, with or without compensation, for a period not to exceed 130 days during any period of 365 consecutive days. The two independent members of the Board and members of the National and Regional Advisory Boards are expected to be special government employees.

(b) The rules of conduct contained in subparts A, B, C, D, and E of this part shall also apply to special government employees insofar as their employment with the Board is concerned, except as otherwise indicated in this subpart F. Thus, for example, the prohibition in § 1505.14(e), concerning active participation in political management or campaigns (5 U.S.C. 7321 *et seq.*, the Hatch Act), only applies to special government employees on days that they serve the Board, and the general restrictions imposed on outside employment and investments by subpart C of this part do not apply to special government employees as long as they are disqualified from dealing with particular matters affecting their employers or financial interests.

**§ 1505.32 Applicability of 18 U.S.C. 203 and 205.**

(a) The prohibitions in 18 U.S.C. 203 and 205 applicable to special government employees are less stringent than those which affect regular employees. These two sections in general operate to preclude a regular Government employee, except in the discharge of his or her official duties, from representing another person before a department, agency or court, whether with or without compensation, in a matter in which the United States is a party or has a direct and substantial interest. However, the two sections impose only the following major restrictions upon a special government employee:

(1) He or she may not, except in the discharge of his or her official duties represent anyone else (or receive compensation from another's representation) before a court or Government agency in a particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and in which he or she has at any time participated personally and substantially in the course of his or her Government employment. What constitutes personal and substantial participation in a matter is discussed in § 1505.34(b).

(2) He or she may not, except in the discharge of his or her official duties, represent anyone else (or receive compensation from another's representation) in a matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and which is pending before the agency he or she serves. However, this restraint is not applicable if he or she has served the agency no more than 60 days during the past 365. He or she is bound by the restraint, if applicable, regardless of whether the matter is one in which he or she has ever participated personally and substantially.

(b) These restrictions prohibit both paid and unpaid representation and apply to a special government employee on the days when he or she does not serve the Government as well as on the days when he or she does.

(c) A special government employee who undertakes service with the Board, and another Federal entity, including the RTC, shall inform each of his or her arrangements with the other.

(d) There may be situations where a special government employee has a responsible position with his or her regular employer which requires the employee to participate personally in a particular matter before the Board or RTC. In this situation, assuming that such representation is not prohibited by 18 U.S.C. 203 or 205, the special government employee should participate in the matter for his or her regular employer only with the knowledge and approval of the President, after consultation with the DAEO. However, an independent member of the Oversight Board or a member of a National or Regional Advisory Board may not participate on behalf of his or her regular employer in, and must be fully recused from, any contract or other particular matter such regular employer has before or involving the Oversight Board or RTC. Thus employers of those who serve as independent members of

the Oversight Board or members of a National or Regional Advisory Board are not barred from contracting with the Oversight Board or RTC provided that such members are in full compliance with this section.

(e) Section 205 of title 18, U.S.C., permits a special government employee to represent, with or without compensation, a parent, spouse, child, or another person or an estate he or she serves as a fiduciary, but only if he or she has the approval of the official responsible for appointments to his or her position and the matter involved is neither one in which he or she has participated personally or substantially nor one under his or her official responsibility. What constitutes personal and substantial participation in a matter is discussed in § 1505.34(b). The term "official responsibility" is defined in 18 U.S.C. 202 to mean the direct administrative or operating authority, whether immediate or final and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct action in the Board or RTC.

**§ 1505.33 Applicability of 18 U.S.C. 207.**

Section 207 of title 18, U.S.C., applies to individuals who have left Government service, including former special government employees. It prevents a former employee or special government employee from representing another person in connection with certain matters (or making oral or written communications, with the intent to influence, to the Government or a court) in which he or she participated personally and substantially on behalf of the Government. The matters are those involving a specific party or parties in which the United States is also a party or has a direct and substantial interest. What constitutes personal and substantial participation in a matter is discussed in § 1505.34(b). In addition, section 207 of title 18, U.S.C. prevents a former employee for a period of two years after his or her responsibility for a matter has ceased, from representing another person (or making oral or written communications with the intent to influence) in such matter before a court, department or agency if the matter was actually pending within the area of his or her official responsibility at any time in the last year prior to termination of the employee's responsibility.

**§ 1505.34 Applicability of 18 U.S.C. 208.**

(a) Section 208 of title 18, U.S.C., bears on the activities of Government

personnel, including special government employees in the course of their official duties. In general, it prevents an employee or special Government employee from participating personally and substantially as a Government officer or employee in a particular matter in which, to his or her knowledge, the employee, the employee's spouse, minor child, partner, or a profit or nonprofit organization with which the employee has or is serving as officer, director, trustee, partner or employee, or any person or organization with whom the employee is negotiating or has any arrangement concerning prospective employment, has a financial interest. Waivers may be granted subject to the provisions of regulations to be issued by the Office of Government Ethics. Until such regulations are issued, and waivers, thereunder, granted, special government employees are disqualified from participating in any matter in which such a financial interest exists.

(b) For the purposes of 18 U.S.C. 208, the phrase "participates personally and substantially in a particular matter" applies to participating through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter. Accordingly, a special government employee should in general be disqualified from participating as such in a matter of any type the outcome of which will have a direct and predictable effect upon the financial interests covered by section 208.

#### § 1505.35 Use of Board employment.

A special government employee shall not use his or her Board employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or herself or another person, particularly one with whom he or she has family, business, or financial ties.

#### § 1505.36 Use of inside information.

(a) A special government employee shall not use any inside information obtained as a result of his or her Board employment for private gain for himself or herself or another person, either by direct action on his or her part or by counsel, recommendation, or suggestion to another person, particularly one with whom he or she has family, business, or financial ties. For the purpose of this

section, "inside information" means information obtained under Board or RTC authority which has not become part of the body of public information.

(b) The provisions of § 1505.11(a) through (d) with regard to employees shall be applicable to special government employees.

#### § 1505.37 Coercion.

A special government employee shall not use his or her Board employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or herself or another person particularly one with whom he or she has family, business, or financial ties.

#### § 1505.38 Advice on rules of conduct and conflicts of interest statutes.

Any special government employee having any doubt as to the ethics of any conduct falling within the conflicts of interest statutes, or regulations, should confer with the DAEO. Assistance in interpreting the conflicts of interest statutes, these regulations, and any other instructions involving conduct and conflicts of interest, will also be provided by the DAEO to any special government employee, prospective special government employee, and their appointing officials and supervisors desiring it.

#### § 1505.39 Disclosure of employment and financial interests.

Special government employees will be required to file a confidential statement of employment and financial interests in accordance with § 1505.24, or a Financial Disclosure Report (SF 278) in accordance with § 1505.25.

### Subpart G—Competence, Experience, Integrity, and Fitness of Resolution Trust Corporation Employees

#### § 1505.40 Minimum competence, experience, integrity, and fitness requirements for Resolution Trust Corporation employees.

(a) For the purposes of this section:

(1) "Default on a material obligation" means any transaction in which an insured depository institution failed to receive the principal and/or interest payments, to which it is entitled, and there is a loss to the institution, and with respect to which the insured depository institution has a continuing legal claim, and which exceed \$50,000.

(2) "Pattern or practice of defalcation" means there are two or more instances of uncured defaults as to which there are continuing legal claims, resulting in losses to one or more insured depository institutions, which, in

the aggregate, exceed \$50,000.

(3) "Substantial loss to the Federal deposit insurance funds" means a loss of more than \$50,000 to the funds for the protection of depositors maintained and administered by the FDIC or the former FSLIC which was occasioned by or is represented by:

(i) A loss to the insurer as a result of the disposition of, or the failure to satisfy, an obligation at its full value;

(ii) An outstanding final judgment obtained by the FDIC, the FSLIC, or the RTC against the maker, endorser, or guarantor of a note or other obligation or arising from a legal action on any theory including fraud, negligence, or breach of fiduciary duty; or

(iii) An outstanding final judgment obtained in favor of an insured depository institution which is now held by the FDIC, the FSLIC, or the RTC as successor.

(b) The RTC shall prescribe policies and procedures which, at a minimum, ensure that any individual (not subject to the regulations at 12 CFR part 1506 or 12 CFR part 1606) who is performing, directly or indirectly, any function or service on behalf of the RTC meets minimum standards of competency, experience, integrity, and fitness and that only persons meeting such minimum standards:

(1) Enter into any contract with the RTC; or

(2) Are employed by the RTC or otherwise perform any service for or on behalf of the RTC.

(c) The standards established by the RTC in its policies and procedures issued pursuant to paragraph (a) of this section shall, at a minimum, prohibit from service on its behalf any person who has:

(1) Been convicted of any felony;

(2) Been removed from, or prohibited from participation in the affairs of, any insured depository institution pursuant to any final enforcement action by any appropriate Federal banking agency;

(3) Demonstrated a pattern or practice of defalcation regarding obligations to insured depository institutions; or

(4) Caused a substantial loss to Federal deposit insurance funds.

(d) The RTC shall prescribe policies and procedures which require that any offer (not subject to the regulations at 12 CFR part 1506 or 12 CFR part 1606), and any employment application submitted to the RTC, include a list and description of any instance during the preceding 5 years in which the person or company under such person's control

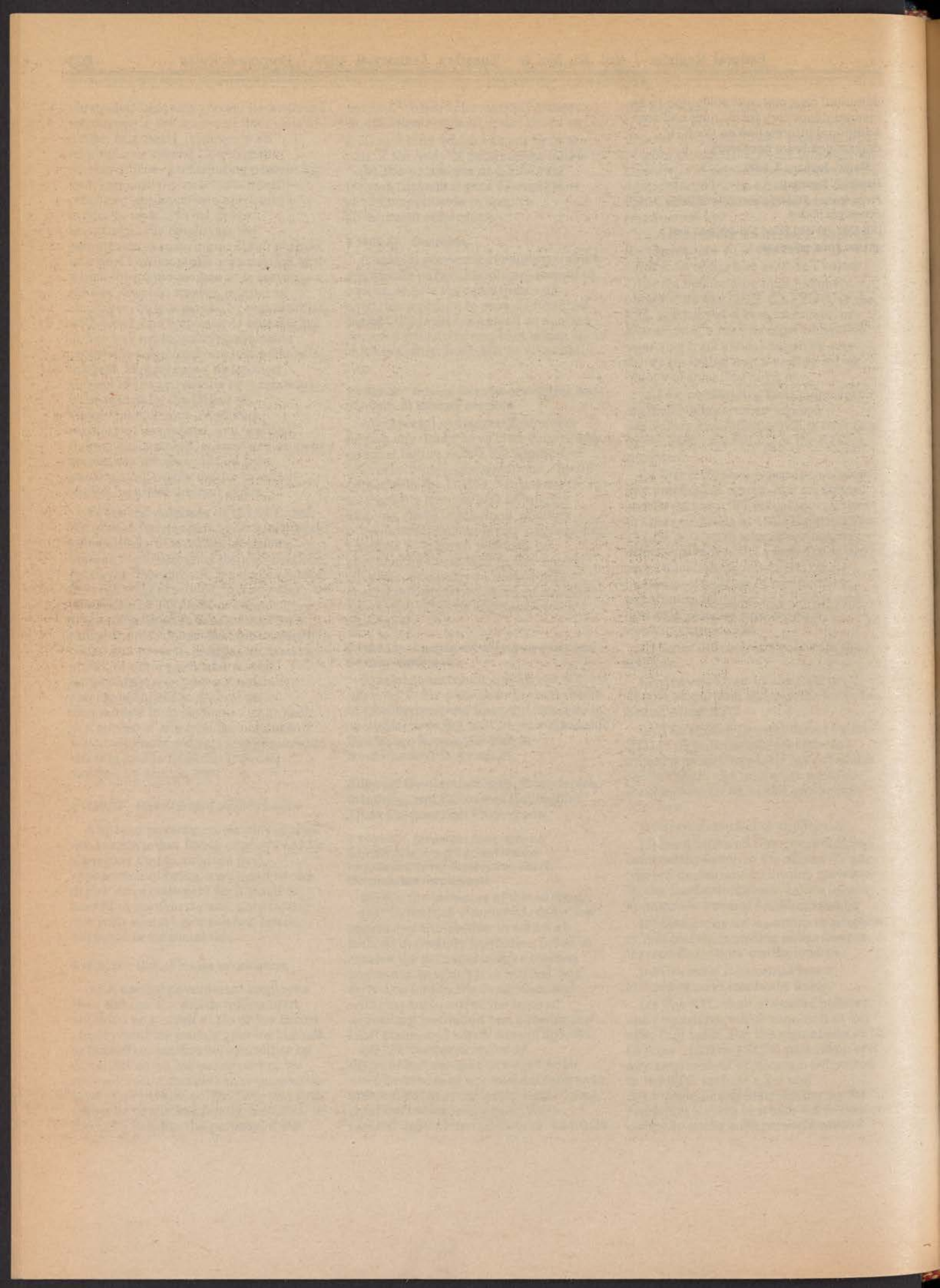
defaulted on a material obligation to an insured depository institution; and such additional information as the RTC determines to be necessary.

Dated: January 3, 1990.

**Daniel P. Kearney,**  
*President and Chief Executive Officer,*  
*Oversight Board.*

[FR Doc. 90-440 Filed 1-8-90; 8:45 am]

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# **Federal Register**

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Tuesday  
January 9, 1990

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## **Part IV**

### **The President**

**Executive Order 12699—Seismic Safety  
of Federal and Federally Assisted or  
Regulated New Building Construction**

1950

Part IV

# The President

Executive Order 12059 - Safety  
of Federal and Federal Assisted or  
Reimbursed New Building Construction

Robert L. Casper

# Presidential Documents

**Title 3—**

Executive Order 12699 of January 5, 1990

**The President****Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction**

By the authority vested in me as President by the Constitution and laws of the United States of America, and in furtherance of the Earthquake Hazards Reduction Act of 1977, as amended (42 U.S.C. 7701 *et seq.*), which requires that Federal preparedness and mitigation activities are to include "development and promulgation of specifications, building standards, design criteria, and construction practices to achieve appropriate earthquake resistance for new . . . structures," and "an examination of alternative provisions and requirements for reducing earthquake hazards through Federal and federally financed construction, loans, loan guarantees, and licenses. . . ." (42 U.S.C. 7704(f)(3, 4)), it is hereby ordered as follows:

**Section 1. Requirements for Earthquake Safety of New Federal Buildings.**

The purposes of these requirements are to reduce risks to the lives of occupants of buildings owned by the Federal Government and to persons who would be affected by the failures of Federal buildings in earthquakes, to improve the capability of essential Federal buildings to function during or after an earthquake, and to reduce earthquake losses of public buildings, all in a cost-effective manner. A building means any structure, fully or partially enclosed, used or intended for sheltering persons or property.

Each Federal agency responsible for the design and construction of each new Federal building shall ensure that the building is designed and constructed in accord with appropriate seismic design and construction standards. This requirement pertains to all building projects for which development of detailed plans and specifications is initiated subsequent to the issuance of the order. Seismic design and construction standards shall be adopted for agency use in accord with sections 3(a) and 4(a) of this order.

**Sec. 2. Federally Leased, Assisted, or Regulated Buildings.**

The purposes of these requirements are to reduce risks to the lives of occupants of buildings leased for Federal uses or purchased or constructed with Federal assistance, to reduce risks to the lives of persons who would be affected by earthquake failures of federally assisted or regulated buildings, and to protect public investments, all in a cost-effective manner. The provisions of this order shall apply to all the new construction activities specified in the subsections below.

(a) **Space Leased for Federal Occupancy.** Each Federal agency responsible for the construction and lease of a new building for Federal use shall ensure that the building is designed and constructed in accord with appropriate seismic design and construction standards. This requirement pertains to all leased building projects for which the agreement covering development of detailed plans and specifications is effected subsequent to the issuance of this order. Local building codes shall be used in design and construction by those concerned with such activities in accord with section 3(a) and 3(c) of this order and augmented when necessary to achieve appropriate seismic design and construction standards.

(b) **Federal Domestic Assistance Programs.** Each Federal agency assisting in the financing, through Federal grants or loans, or guaranteeing the financing, through loan or mortgage insurance programs, of newly constructed buildings

shall plan, and shall initiate no later than 3 years subsequent to the issuance of this order, measures consistent with section 3(a) of this order, to assure appropriate consideration of seismic safety.

(c) Federally Regulated Buildings. Each Federal agency with generic responsibility for regulating the structural safety of buildings shall plan to require use of appropriate seismic design and construction standards for new buildings within the agency's purview. Implementation of the plan shall be initiated no later than 3 years subsequent to the issuance of this order.

**Sec. 3. Concurrent Requirements.** (a) In accord with Office of Management and Budget Circular A-119 of January 17, 1980, entitled "Federal Participation in the Development and Use of Voluntary Standards," nationally recognized private sector standards and practices shall be used for the purposes identified in sections 1 and 2 above unless the responsible agency finds that none is available that meets its requirements. The actions ordered herein shall consider the seismic hazards in various areas of the country to be as shown in the most recent edition of the American National Standards Institute Standards A58, *Minimum Design Loads for Buildings and Other Structures*, or subsequent maps adopted for Federal use in accord with this order. Local building codes determined by the responsible agency or by the Interagency Committee for Seismic Safety in Construction to provide adequately for seismic safety, or special seismic standards and practices required by unique agency mission needs, may be used.

(b) All orders, regulations, circulars, or other directives issued, and all other actions taken prior to the date of this order that meet the requirements of this order, are hereby confirmed and ratified and shall be deemed to have been issued under this order.

(c) Federal agencies that are as of this date requiring seismic safety levels that are higher than those imposed by this order in their assigned new building construction programs shall continue to maintain in force such levels.

(d) Nothing in this order shall apply to assistance provided for emergency work essential to save lives and protect property and public health and safety, performed pursuant to Sections 402, 403, 502, and 503 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) (42 U.S.C. 5170a, 5170b, 5192, and 5193), or for temporary housing assistance programs and individual and family grants performed pursuant to Sections 408 and 411 of the Stafford Act (42 U.S.C. 5174 and 5178). However, this order shall apply to other provisions of the Stafford Act after a presidentially declared major disaster or emergency when assistance actions involve new construction or total replacement of a building. Grantees and subgrantees shall be encouraged to adopt the standards established in section 3(a) of this order for use when the construction does not involve Federal funding as well as when Federal Emergency Management Agency (FEMA) funding applies.

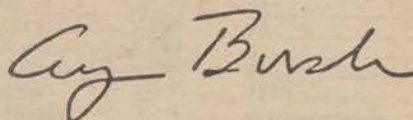
**Sec. 4. Agency Responsibilities.** (a) The Director of the Federal Emergency Management Agency shall be responsible for reporting to the President on the execution of this order and providing support for the secretariat of the Interagency Committee on Seismic Safety in Construction (ICSSC). The ICSSC, using consensus procedures, shall be responsible to FEMA for the recommendation for adoption of cost-effective seismic design and construction standards and practices required by sections 1 and 2 of this order. Participation in ICSSC shall be open to all agencies with programs affected by this order.

(b) To the extent permitted by law, each agency shall issue or amend existing regulations or procedures to comply with this order within 3 years of its issuance and plan for their implementation through the usual budget process. Thereafter, each agency shall review, within a period not to exceed 3 years, its regulations or procedures to assess the need to incorporate new or revised standards and practices.

**Sec. 5. Reporting.** The Federal Emergency Management Agency shall request, from each agency affected by this order, information on the status of its procedures, progress in its implementation plan, and the impact of this order on its operations. The FEMA shall include an assessment of the execution of this order in its annual report to the Congress on the National Earthquake Hazards Reduction Program.

**Sec. 6. Judicial Review.** Nothing in this order is intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

THE WHITE HOUSE,  
January 5, 1990.



[FR Doc. 90-720

Filed 1-8-90; 12:08 pm]

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