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October 4, 2005

via email

Communications Division
Mailstop 1-5
Office of the Comptroller of the
Currency
250 E Street, SW
Washington, DC 20219
Re: Docket No. 05-12
regs.comments@occ.treas.gov

Robert E. Feldman, Executive Secretary
Attention: Comments
RIN 3064-AC92
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
comments@fdic.gov

Ms. Jennifer J. Johnson, Secretary,
Board of Governors of the
Federal Reserve System
20th Street & Constitution Avenue, NW
Washington, DC 20551
Re: Docket No. R-1230
regs.comments@federalreserve.gov

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Re: Docket No. 2005-27
regs.comments@ots.treas.gov

Re: **FDIC** RIN 3064-AC92; **FRB** Docket No. R-1230; **OCC** Docket No. 05-12;
OTS Docket No. 2005-27; One-Year Post-Employment Restrictions for Senior
Examiners; 70 Federal Register 45323; August 5, 2005

Ladies and Gentlemen:

Section 6303(b) of the Intelligence Reform and Terrorism Prevention Act of 2004 added a Section 10(k) to the Federal Deposit Insurance Act. Under section 10(k), a senior examiner employed or commissioned by the Federal Deposit Insurance Corporation, the Federal Reserve Board or any of its Reserve Banks, the Office of the Comptroller of the Currency and the Office of Thrift Supervision (the Agencies) may not knowingly accept compensation as an employee, officer, director, or consultant from certain depository institutions or depository institution holding companies he or she examined, or from certain related entities, for one year after the examiner leaves the employment or service of the Agency. This proposal would adopt implementing regulations for the statute. The American Bankers Association, on behalf of the more than two million men and women who work in the nation's banks, brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership--which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks--makes ABA the largest banking trade association in the country.

Definition of “Senior Examiner”

Congress provided in enacting this section that it was to apply only to “senior examiners” and not to less senior examiners who may examine dozens of institutions in a year. Therefore, the Agencies propose to define a “senior examiner” as an examiner who meets all of the following criteria:

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

Former agency examiners are often hired by depository institutions because of their particular expertise in bank regulatory compliance and/or bank safety and soundness. In fact, former examiners are an extremely important resource for depository institutions in meeting their regulatory obligations. However, creating a conflict of interest by hiring a former examiner poses a significant reputational risk for depository institutions, particularly if it would be in direct violation of a federal statute. Therefore, it is of concern to depository institutions that the final regulations implementing these post-examination employment restrictions are clear to examiners and depository institutions. It is also important that the regulations are not so overbroad so as to prevent depository institutions from being able to hire qualified former examiners for their unique banking and regulatory knowledge. The proposed regulations make clear that an examiner who may divide his or her time across a portfolio of depository institutions or holding companies, each of which does not represent a substantial portion of the examiner’s responsibilities, also would not be considered a “senior examiner” for the purposes of this prohibition. Such an examiner is not likely to develop the type and degree of relationship with any one institution that the post-employment restriction was designed to address. ABA believes that the definition of “senior examiner” proposed by the Agencies fully implements the Congressional intent in enacting the statute while at the same time clearly defines the coverage of the statute so that depository institutions will still be able to draw upon the pool of former examiners for necessary expertise.

In the proposed regulations, each Agency has provided tailored definitions and explanations that more precisely describe and detail how a depository institution or examiner under the Agency’s jurisdiction may know whether an examiner is a “senior examiner.” ABA finds this very helpful for depository institutions and appreciates the care that the Agencies have taken to be clear.

However, while the proposed definition provides some clarity, it still might leave situations in which a depository institution is not certain that a particular examiner is or is not a “senior examiner.” The Agencies, therefore, have further proposed to help examiners comply with the one-year post-employment restrictions by providing that the Agencies will notify an examiner in writing if the relevant Agency believes the examiner’s assigned responsibilities would cause the examiner to be considered a “senior examiner” with respect to any depository institution or depository institution holding company. Additionally, examiners who have questions concerning whether they may be considered a “senior examiner” for an institution or holding company may contact the appropriate persons at their respective Agency or Reserve Bank for a determination of whether the examiner is a senior examiner with respect to any particular depository institution or holding company. ABA

expects that a depository institution or holding company that is considering hiring a former examiner who might have been a senior examiner of the institution will require that the examiner request such a determination and provide documentation of the determination to the depository institution.

Additional Removal and Prohibition Procedures

The Agencies not only may penalize any senior examiner who violates the provisions of the statute but also may remove from employment and further prohibit the individual from employment in the depository institution or even from banking entirely. The Agencies have existing procedures for such steps and, rather than adopt additional procedures, simply amend their existing procedures to include removal and prohibition orders against senior examiners. ABA agrees with the Agencies that this is sufficient and that additional procedures are not needed.

Conclusion

The American Bankers Association commends the Agencies for the clarity that they provide to the application of the statute to examiners and depository institutions. In particular, the additional tailored explanations and the provision of a mechanism to obtain documentation that a prospective employee is not a senior examiner is well-done. ABA supports the adoption of the proposed regulations.

Sincerely,

A handwritten signature in black ink that reads "Paul Alan Smith". The signature is written in a cursive, flowing style.

Paul Smith
Senior Counsel