



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM

WASHINGTON, D.C. 20551

DIVISION OF
SUPERVISION AND REGULATION

DIVISION OF CONSUMER AND
COMMUNITY AFFAIRS

SR 21-13

CA 21-10

July 29, 2021

**TO THE OFFICER IN CHARGE OF SUPERVISION
AT EACH FEDERAL RESERVE BANK**

**SUBJECT: Revised Special Post-Employment Restriction for Senior Examiners and Work
Paper Reviews for Departing Examiners**

Applicability: This letter applies to: (1) examiners who have served as a safety and soundness or consumer affairs senior examiner (as defined in this letter) for a depository institution or depository institution holding company for two or more months during the examiner's final twelve months of employment with a Reserve Bank, and (2) any examiner or Reserve Bank supervision staff who accepts employment with a depository institution or depository institution holding company that they examined in the twelve months prior to their departure from the Reserve Bank.

This letter's provisions related to the senior examiner designation are not applicable to examiners working on firms within the Community Banking Organization portfolio.

This letter supersedes SR letter 16-16 / CA letter 16-7, *Special Post-Employment Restriction for Senior Examiners*, and clarifies the process for identifying, designating, and tracking the senior examiners subject to the special post-employment restrictions of section 10(k) of the Federal Deposit Insurance Act (FDI Act) as implemented by 12 CFR 264a.¹ This letter is intended to promote consistency across the Federal Reserve System in identifying examiners subject to the post-employment ethics restrictions of section 10(k).

Summary of the Special Post-Employment Restriction and Definition of Senior Examiner

In 2005, the federal bank regulatory agencies² issued rules to implement the special post-employment restriction set forth in section 10(k) of the FDI Act, as amended by the Intelligence Reform and Terrorism Prevention Act of 2004. The special post-employment restriction prohibits an examiner who served as a senior examiner for a depository institution or depository

¹ 12 CFR 264a - Post-Employment Restrictions for Senior Examiners, available at https://www.ecfr.gov/cgi-bin/text-idx?SID=2586f06f4df5925891173c6d7e122a6e&mc=true&node=pt12.4.264a&rgn=div5#se12.4.264a_13

² The federal bank regulatory agencies are the Board of Governors of the Federal Reserve System (Board), Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation.

institution holding company for two or more months during the examiner’s final twelve months of employment with a Reserve Bank from knowingly accepting compensation for service as an employee, officer, director, or consultant from that depository institution or depository institution holding company, or from certain related entities for one year after leaving Federal Reserve System employment.³

For purposes of this restriction, an officer or employee of the Federal Reserve is considered to be a senior examiner⁴ for a particular depository institution or depository institution holding company⁵ if the officer or employee meets all of the following criteria:

- The officer or employee has been authorized by the Board to conduct examinations or inspections on behalf of the Board.
- The officer or employee has been assigned *continuing*, *broad*, and *lead* responsibility for examining or inspecting that depository institution or depository institution holding company.
- The officer’s or employee’s responsibilities for examining, inspecting, and supervising the depository institution or depository institution holding company:
 - represent a *substantial portion* of the officer’s or employee’s assigned responsibilities, and
 - require the officer or employee to interact routinely with officers or employees of the depository institution or depository institution holding company.
- The depository institution or depository institution holding company to which the officer or employee has been assigned is not considered to be a Community Banking Organization, under the threshold established in the Commercial Bank Examination Manual (CBEM).

With respect to the application of the special post-employment restriction, the terms “continuing”, “broad”, “lead”, and “substantial portion” are defined as follows⁶:

- *Continuing*—an ongoing role projected to extend beyond one examination or inspection cycle (e.g., an individual is assigned to examine an institution or group of affiliated institutions for the next 3 years); for the purposes of this criterion an assignment should be expected to last longer than 2 months as required by section 10(k) of the FDI Act.

³ See Table 1 for details of the post-employment restrictions.

⁴ Per the criteria outlined in this letter, the determination of whether or not an individual should be considered a senior examiner for a particular depository institution or depository institution holding company should be based on the job duties being performed by the individual regardless of official job title.

⁵ This is applicable to financial market utilities (FMUs) and nonbank financial companies (NFCs) that are designated by the Financial Stability Oversight Council (FSOC) for supervision by the Federal Reserve only to the extent that these entities are depository institutions or depository institution holding companies.

⁶ To be considered a senior examiner under this letter, an examiner must meet all four criteria outlined in this letter (*continuing*, *broad*, *lead*, and *substantial portion*).

- *Broad*—the individual has accountability for more than one supervisory component rating or responsibility for final approval of multiple supervisory component ratings, the composite rating, consumer compliance rating, CRA rating, and/or annual assessment ratings as part of their Reserve Bank’s examination or inspection report signoff procedures.
- *Lead*—an individual with discretionary, point-in-time authority to assign a supervisory component or composite rating, consumer compliance rating, or CRA rating, or responsibility for final approval of a supervisory component, composite, or annual assessment ratings during the report signoff process.
- *Substantial Portion* – the individual is projected to spend a considerable majority of their official time (in excess of 70%) during at least two consecutive months supervising the depository institution or depository institution holding company.

The special post-employment restriction applies only to an examiner serving in a leadership role who is dedicated to supervising a *single* depository institution (or group of affiliated depository institutions) or depository institution holding company.⁷ Specifically, the restriction applies to examiners serving in principal roles requiring meaningful engagement with an institution, such as senior supervisory officers (SSOs), deputy SSOs, enterprise risk officers (EROs),⁸ central points of contact (CPCs), deputy CPCs, and supervisory team leaders.⁹ The preceding titles should be treated solely as examples of roles that could be considered a senior examiner under this letter as the application of this restriction should be determined based on the roles and responsibilities of individuals rather than their specific job title. An individual does not need to carry the job title of examiner or senior examiner to meet the criteria to be deemed a senior examiner for the purposes of this letter. Questions regarding applicability and interpretation of this guidance and 12 CFR 264a should be directed to Reserve Bank conflicts staff.

The restriction does *not* cover an individual who:

- is dedicated to supervising a single depository institution (or group of affiliated depository institutions) or depository institution holding company, but does not have leadership responsibilities in conjunction with this role;
- serves in a leadership role for *multiple* unaffiliated depository institutions or depository institution holding companies at the same time;
- does not have routine interactions with an institution for purposes of examining or

⁷ An employee may be considered a senior examiner for only one institution or group of affiliated institutions at a time.

⁸ SSOs, Deputy SSOs, and EROs are job titles used by the Federal Reserve Bank of New York for senior officers serving on dedicated teams for large financial institutions. For comparative purposes, the SSO job title is considered equivalent to the CPC job title, while the ERO job title is equivalent to the deputy SSO/CPC job title.

⁹ A supervisory team leader is defined as any Reserve Bank officer or employee who serves in a leadership role as part of a dedicated supervisory team (DST). Examples of supervisory team leaders may include risk team leaders, business line team leaders, and the chief operating officers assigned to or supporting a dedicated supervisory team. In the LISCC portfolio, only the roles of DST Lead and Deputy DST Lead are covered by the definition of a senior examiner.

- inspecting the institution's operations; or
- performs only periodic, short-term examinations of a depository institution or depository institution holding company, dedicating less than two months in a year to that institution; or only longer-term examinations related to specific, unplanned events (e.g., fraud investigations) outside the normal supervisory cycle.

Table 1 summarizes how the post-employment restriction timeline should be applied and how the restriction applies to senior examiner of the different types of organizations within the Federal Reserve's jurisdiction. For additional information on how to implement this restriction, see Attachment 1 of this letter.

Table 1 -- Summary of Prohibited Employment Based on Examination Responsibility

Senior Examiner Assignment	Corresponding Prohibition
<i>If, during two or more months of your last twelve months of service, you served as a senior examiner [for example, as an SSO, deputy SSO, ERO, CPC, deputy CPC, or supervisory team leader] for a:</i>	<i>Then, for one year after leaving the Federal Reserve System, you may not knowingly accept compensation as an officer, director, employee, or consultant from:</i>
State member bank	<ul style="list-style-type: none"> • The state member bank (including any subsidiary of the state member bank), or • Any company (including a bank holding company) that controls the state member bank.
Bank holding company (BHC) or savings and loan holding company (SLHC)	<ul style="list-style-type: none"> • The BHC or SLHC, or • Any depository institution controlled by the BHC or SLHC (including any subsidiary of the depository institution).
Foreign bank	<ul style="list-style-type: none"> • The foreign bank, • Any U.S. branch or agency of the foreign bank, or • Any U.S. depository institution controlled by the foreign bank (including any subsidiary of the depository institution).
Financial market utility (FMU)	<ul style="list-style-type: none"> • The FMU, but only if it is a depository institution or depository institution holding company, or • Any entity controlled by the FMU, but only if the FMU is a depository institution holding company (including any subsidiary of the entity).
Nonbank financial company (NFC) that is designated by the Financial Stability Oversight Council (FSOC) for supervision by the Federal Reserve	<ul style="list-style-type: none"> • The NFC if it is a depository institution or depository institution holding company, or • Any entity controlled by the NFC, but only if the NFC is a depository institution holding company (including any subsidiary of the institution).

Questions regarding applicability and interpretation should be directed to Reserve Bank’s conflicts staff.

Penalty for Violating Senior Examiner Restriction

If an individual violates the post-employment restriction as defined in Table 1, section 10(k) of the FDI Act requires the appropriate federal bank regulatory agency to seek an order of removal

and industry-wide employment prohibition for up to five years, a civil money penalty of up to \$250,000, or both. In special circumstances, the Chair of the Board of Governors may waive the restriction for a senior examiner of the Federal Reserve by certifying in writing that granting the individual a waiver of the restriction would not affect the integrity of the Federal Reserve's supervisory program.

Administrative Procedures for Implementing the Senior Examiner Restriction and Additional Guidelines for Work Paper Reviews

Reserve Banks shall adopt the following procedures to ensure proper implementation of the senior examiner restriction:

Identification of senior examiners: Reserve Banks shall develop and maintain procedures for determining which individuals meet the senior examiner criteria. This procedure should include a mechanism for routine reevaluation of senior examiner assignments at least annually, to ensure the designation is being applied appropriately. Reserve Banks may consult with Board staff if questions arise as to whether an examiner would be considered a "senior examiner."

Notification to senior examiners: Reserve Banks shall establish procedures to regularly review the duties of officers and examiners at least annually, and promptly notify individuals in writing when a change in duties would cause an officer or examiner to be considered a senior examiner or cease to be considered a senior examiner with respect to an institution or holding company for purposes of section 10(k) of the FDI Act.

Officer and examiner responsibility: Officers and examiners are responsible for complying with the restriction. Individuals should direct any questions they may have regarding the interpretation of the restriction to the Reserve Bank's designated ethics officers. Questions regarding the implementation of the restrictions within the conflicts of interest program should be directed to Reserve Bank conflicts of interest staff.

Monitoring of senior examiner" assignments: Reserve Banks shall maintain electronic records of individuals covered by section 10(k) of the FDI Act. These records shall include:

- the name of each "senior examiner;"
- the name of the depository institution or depository institution holding company for which the examiner is considered a "senior examiner;"
- the qualifying role of the individual;
- the start and end dates of the individual's assignment as a senior examiner for the depository institution or depository institution holding company; and
- if the senior examiner ends employment with the Reserve Bank, the last date of Reserve Bank employment, the reason for leaving, and if the reason for leaving is employment with a financial institution, the name of the organization with which the examiner has accepted employment, if available.

Work Paper review¹⁰: If *any* individual, regardless of whether he or she is designated as a “senior examiner,” accepts employment with a depository institution or depository institution holding company that he or she examined in the twelve months prior to his or her departure from Federal Reserve employment, the Reserve Bank shall review the work papers related to his or her assignment supervising that institution.

The work paper review should be performed within 60 days of the examiner’s departure or the date the Reserve Bank learned that the individual had accepted employment with a supervised institution should the Reserve Bank learn of this after the individual’s departure.

The review should assess whether applicable examination procedures were followed for the examiner’s assignment on the examination, and consider whether the examiner compromised examination findings or supervisory proceedings to enhance the prospect of being employed by the relevant supervised institution (for example, an EIC who overruled or removed a proposed MRA or MRIA during the examination process without substantiation, or omitted important examination processes or elements of the examination scope). The work paper review should be conducted by staff independent from the respective examination. Reserve Banks should establish an internal process for reviewing the results of the work paper review and informing appropriate parties of the findings.

Board Supervision and Regulation (S&R) staff, and DCCA staff in applicable situations, must be notified of the results of all work paper reviews conducted by the Reserve Banks. The Reserve Bank is responsible for accurately tracking and storing all materials associated with the work paper review. In addition, the Reserve Bank is responsible for maintaining processes and procedures for determining:

- Whether a work paper review is required;
- How and by whom the work paper review will be conducted;
- How and to whom the results of a work paper review will be communicated; and
- Where and how the materials for a work paper review will be stored.

Disciplinary procedures: If a Reserve Bank becomes aware that a former senior examiner has violated section 10(k) of the FDI Act, the Reserve Bank shall promptly notify the Reserve Bank’s officer-in-charge of supervision, its ethics officer, and the Board’s designated agency ethics officer.

Restrictions after a merger or buyout: If an individual has an active restriction for an institution that is part of a merger or buyout, then the Reserve Bank should consult its ethics officer to determine whether the restriction should remain active. If the parties are unable to reach a decision, the question can be referred to the Board. The Board’s S&R Division, or DCCA as applicable, and the Legal Division will work together to make a final determination in these circumstances. Each case will be handled individually and determined on its own merits.

¹⁰ Work paper review requirements apply to all examiners within the Federal Reserve System. This includes examiners in safety and soundness and consumer affairs. A work paper review should be conducted for all examiners leaving the system.

Implementation

Reserve Banks are expected to implement this policy within 90 days from the date of this letter. Questions regarding this supervisory letter may be submitted via the Board's public website.¹¹

Michael S. Gibson
Director
Division of Supervision
and Regulation

Eric S. Belsky
Director
Division of Consumer and Community
Affairs

Attachment

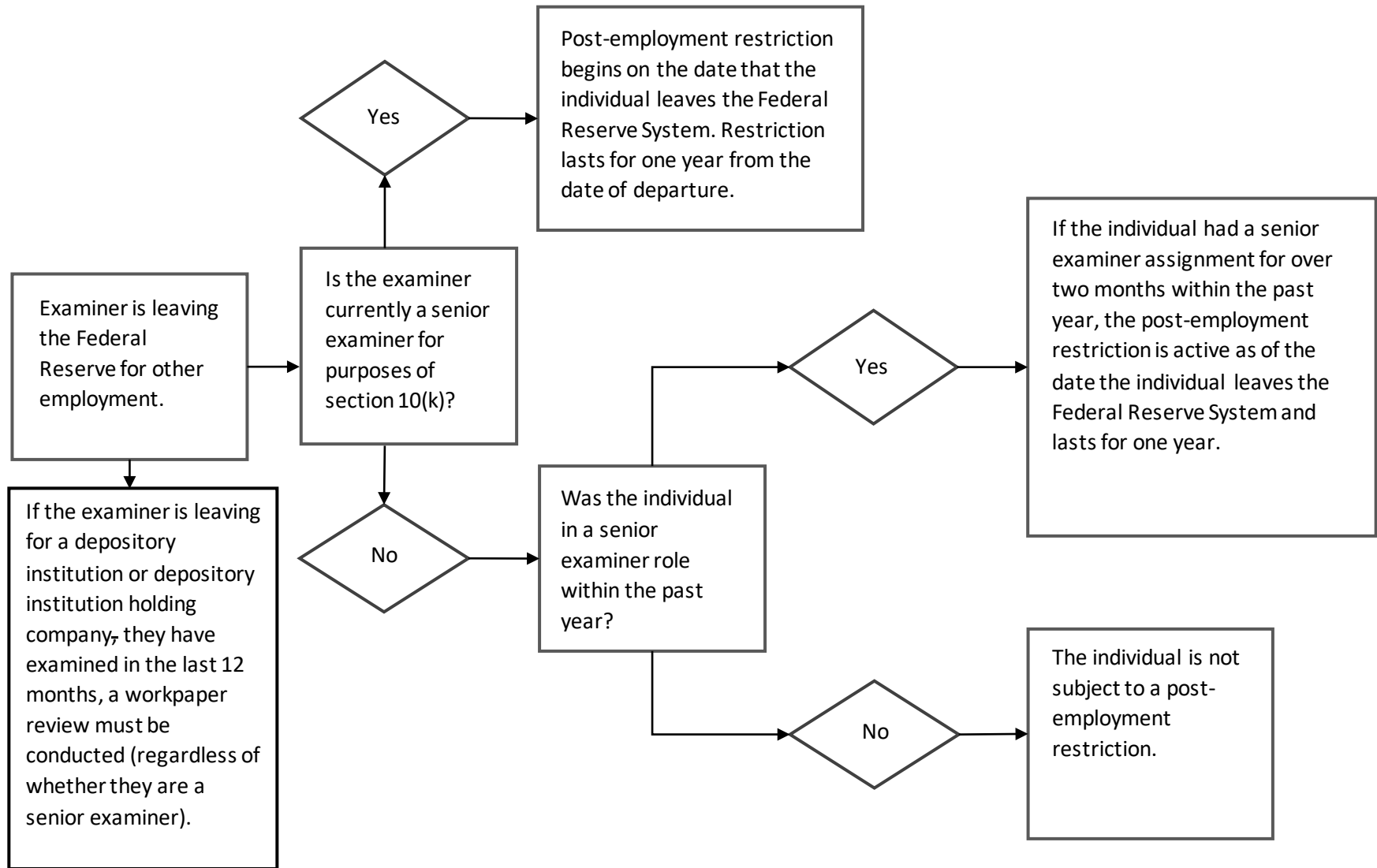
- *Process Map for Implementing the Post-Employment Restriction on "Senior Examiners"*
- *Sample Form for Notice of Post-Employment Restriction*

Supersedes:

- SR letter 16-16/CA letter 16-7, "Special Post-Employment Restriction for Senior Examiners"

¹¹ See, <http://www.federalreserve.gov/apps/contactus/feedback.aspx>.

Attachment 1: Process Map for Implementing the Post-Employment Restriction for “Senior Examiners”



SR letter - Attachment
Notice of Post-Employment Restriction

TO: _____

DATE: _____

You have been identified by this Federal Reserve Bank as a “senior examiner” as described by section 10(k) of the Federal Deposit Insurance Act for the financial organization listed below.

Under the statute and the Board’s implementing rule (12 CFR 264a), an examiner who served as the “senior examiner” for a depository institution or depository institution holding company for two or more months during the examiner’s final twelve months of employment with a Reserve Bank is prohibited from knowingly accepting compensation as an employee, officer, director, or consultant from that institution or holding company, or from certain related entities.

For covered examiners, the restriction applies for one year after terminating employment with the Reserve Bank. If an examiner violates the one-year restriction, the statute requires the appropriate federal bank regulatory agency to seek an order of removal and industry-wide employment prohibition for up to five years, a civil money penalty of up to \$250,000, or both.

Name of Institution: _____ is a (check one below):

- state member bank bank holding company foreign bank
 savings and loan holding company
 financial market utility nonbank financial company

Use the following table to determine the applicable prohibition.

<u>Senior Examiner Assignment</u> <i>If, during two or more months of your last twelve months of service, you served as the senior supervisory officer (SSO), central point of contact (CPC), deputy SSO/CPC, enterprise risk officer, or supervisory team</i>	<u>Corresponding Prohibition</u> <i>Then, for one year after leaving, you may not knowingly accept compensation as an officer, director, employee or consultant from:</i>
State member bank	<ul style="list-style-type: none"> • The state member bank (including any subsidiary of the state member bank), or • Any company (including a bank holding company) that controls the state member bank.
Bank holding company (BHC) or savings and loan holding company (SLHC)	<ul style="list-style-type: none"> • The BHC or SLHC, or • Any depository institution controlled by the BHC or SLHC (including any subsidiary of the depository institution).
Foreign bank	<ul style="list-style-type: none"> • The foreign bank; • Any U.S. branch or agency of the foreign bank; or • Any U.S. depository institution controlled by the foreign bank (including any subsidiary of the depository institution).
Financial market utility (FMU)	<ul style="list-style-type: none"> • The FMU if it is a depository institution or a depository institution holding company, or • Any entity controlled by the FMU (including any subsidiary) if the FMU is a depository institution or a depository institution holding company.
Nonbank financial company (NFC) that is designated by the Financial Stability Oversight Council (FSOC) for supervision by the Federal Reserve	<ul style="list-style-type: none"> • The NFC if it is a depository institution or a depository institution holding company, or • Any entity controlled by the NFC (including any subsidiary) if the NFC is a depository institution or a depository institution holding company.

By signing below (either in paper or electronic PDF form), you acknowledge receipt of this letter and affirm that you have read the rule and understand your responsibilities under it. Please retain a copy for your records.

Signature: _____ Date: _____

Return completed signed form to: [designate appropriate Reserve Bank contact and phone]. Questions about this rule should be directed to: [designate appropriate Reserve Bank contact and phone].