

Comments on Use of Plain Language

FDIC RIN 3209-AA15

§ 3201.102(b) – The introductory language of this paragraph is vague. If you know where the exceptions are located, you should provide a specific reference. From the reader’s perspective, a vague reference is not helpful.

§ 3201.102(b)(1) and (c)(3) – These two paragraphs duplicate each other almost verbatim. It is not a good drafting technique to have two virtually identical paragraphs in the same section. It unnecessarily lengthens the section, and the repetition has a mind-dulling effect on the reader. I suggest you find a way to eliminate one.

A related comment is whether the minor differences in wording of the two paragraphs amount to a substantive difference between them. For example, paragraph (b)(1) says “No FDIC employee may participate . . .,” while paragraph (c)(3) says, “A covered employee shall not participate. . . .” In both cases, you seem to be expressing a prohibition, but the different wording implies that there may be some esoteric shade of meaning not readily apparent to the reader. Wouldn’t it be clearer to express a prohibition in a consistent manner throughout the section?

§ 3201.102(c)(1) – The introductory language, “Except as provided below . . .” is vague. Why not provide a specific reference to paragraph (c)(2)?

§ 3201.102(c)(2)(i)(B) – This paragraph consists of a single 62-word sentence. Generally, in plain language writing, shorter sentences are preferred. Shorter sentences are easier to understand and don’t tend to overwhelm the reader. I suggest you revise the sentence to read as follows: The terms and conditions applicable to the account are no more favorable generally than those applicable to accounts offered by the same bank to comparable cardholders. (26 words)

§ 3201.102(c)(2)(ii)(D) – This paragraph consists of a single 64-word sentence. For the reasons mentioned above, I suggest you revise the sentence to read as follows: The terms and conditions applicable to the loan are no more favorable generally than those applicable to loans offered by the same bank to comparable borrowers. (26 words)

§ 3201.102(c)(4)(i) -- This paragraph consists of a single 63-word sentence. For the reasons mentioned above, I suggest you revise the sentence to read as follows: No covered employee may accept a loan if the disqualification arising from the loan would materially impair the employee’s ability to perform (A) his or her current official duties, or (B) future duties involving that institution that have been assigned to the employee. (43 words)

§ 3201.102(c)(5)(i) – The first sentence of this paragraph is 100 words long. By any measure or under any approach to writing, this is a long sentence. I suggest you revise

the sentence to read as follows: A covered employee may retain a loan from a State nonmember bank on its original terms if (A) the loan occurred before FDIC employment, (B) the loan was sold or transferred to a State nonmember bank, or (C) the lender was merged or converted into a State nonmember bank. (46 words)

§ 3201.102(c)(5)(ii) – The second sentence of this paragraph is 80 words long. This sentence includes information that is more closely related to the first sentence. I suggest you revise the first and second sentences to read as follows: If a covered employee would experience financial or other hardship unless allowed to renegotiate a pre-existing loan, the employee may request an exception to the prohibitions of paragraphs (c)(3) and (4) of this section. The request must be made in writing to the supervisor and the Ethics Counselor and include (A) the reasons for the renegotiation; (B) the original and proposed terms and conditions, including whether the terms are generally available to the public; and (C) any attempts by the employee to move the loan to a non-prohibited source.

§ 3201.102(d) – The first sentence of the paragraph is 69 words long. I suggest you revise it to read as follows: No FDIC employee may accept any credit from an FDIC-insured institution for two years from the date of the employee's last personal and substantial participation in any FDIC activity affecting that institution, its predecessor or successor. (36 words)

§ 3201.102(e) and 3201.103(d)– The first sentences of these paragraphs are identical and 88 words long. I suggest you divide them into two sentences and revise it to read as follows: The Ethics Counselor may waive in writing any provision of this section. That waiver must be based on a determination, subject to review and clearance by the Legal Division, that the waiver is (1) consistent with part 2635 of this title and not prohibited by law and (2) does not give the appearance of misuse of position or loss of impartiality in administering FDIC's programs. (12 and 53 words respectively)