



FEDERAL RESERVE BANK  
OF DALLAS

WILLIAM H. WALLACE  
FIRST VICE PRESIDENT  
AND CHIEF OPERATING OFFICER

June 10, 1987

DALLAS, TEXAS 75222

Circular 87-39

**TO:** The Chief Executive Officer of all state member banks, bank holding companies and others concerned in the Eleventh Federal Reserve District

**SUBJECT**

**Proposed Guidelines Regarding the Bank Bribery Act**

**DETAILS**

The Bank Bribery Amendments Act of 1985 requires that the federal agencies with responsibility for regulating financial institutions establish guidelines to assist financial institutions in complying with this law. Draft guidelines have been developed by the Interagency Bank Fraud Enforcement Working Group and are being proposed by the Board of Governors of the Federal Reserve System upon the recommendation of the Federal Financial Institutions Examination Council. The proposed guidelines encourage all state member banks and bank holding companies to adopt codes of conduct or written policies that are consistent with the bank bribery law. The guidelines further identify situations which are believed not to constitute violations of the federal bank bribery law. The Board of Governors is seeking comments by July 21, 1987 on the proposal and on various alternatives which might be adopted. Interested parties are invited to submit written comments as instructed in the enclosed materials.

**ATTACHMENTS**

A copy of the Federal Register document explaining the proposed guidelines is attached.

**MORE INFORMATION**

For further information, please contact this Bank's Legal Department at (214) 651-6228.

Sincerely yours,

[Docket No. R-0603]

**Proposed Guidelines Regarding the Bank Bribery Act**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Proposed guidelines.

**SUMMARY:** the Bank Bribery Amendments Act of 1985 requires that Federal agencies with responsibility for regulating financial institutions establish guidelines to assist financial institution officials in complying with this law. The proposed guidelines were developed by the Interagency Bank Fraud Enforcement Working Group. In accordance with a recommendation from the Federal Financial Institutions Examination Council, the guidelines proposed by the Board of Governors of the Federal Reserve System (the "Board of Governors") encourage all state member banks and bank holding companies to adopt codes of conduct or written policies that describe the prohibitions of the bank bribery law. The guidelines also identify situations that, in the opinion of the Board of Governors, do not constitute violations of the Federal bank bribery law.

The proposed guidelines suggest, *inter alia*, that state member banks and bank holding companies themselves establish, in their own codes of conduct or written policies, a range of internally acceptable dollar amounts for the various benefits that their officials may receive from those doing or seeking to do business with them. In the proposed guidelines, the Board of Governor has not set any specific dollar amounts for entertainment, meal or gift expenses. With regard to this issue, the Board of Governors seeks comment from the public concerning whether the establishment by the Board of Governors of specific dollar limits or ranges will further assist compliance with the requirements of the Bank Bribery Act and, if so, what amounts should be set. The Board of Governors would also be interested in knowing whether the location, size and nature of a financial institution's business should be taken into consideration in the establishment of appropriate dollar limits or ranges.

**DATE:** Comments must be received on or before July 21, 1987.

**ADDRESS:** Interested parties are invited to submit written comments to William W. Wiles, Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551, or to deliver such comments to the guard station in the Eccles Building Courtyard on 20th Street, NW. (between Constitution Avenue and C Street, NW.). Written comments should refer to Docket No. R-0603. Comments received may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays, except as provided in section 261.6(a) of the Board's Rules Regarding Availability of Information (12 CFR 261.6(a)).

**FOR FURTHER INFORMATION CONTACT:** Herbert A. Biern, Assistant Director, Enforcement Section, Division of Banking Supervision and Regulation (202/452-2620); Mary P. Johannes, Attorney, Enforcement Section, Division of Banking Supervision and Regulation (202/452-3953); or for the hearing impaired *only*, Telecommunications Device for the Deaf ("TDD"), Earnestine Hill or Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Comprehensive Crime Control Act of 1984 (Pub. L. 98-473, Title 11, October 12, 1984) amended the Federal Bank bribery law, 18 U.S.C. 215, to prohibit employees, officers, directors, agents and attorneys of financial institutions from seeking or accepting anything of value in connection with any transaction or business of their financial institution. (The definition of a "financial institution" under the law includes a bank and a bank holding company.) The amended law also prohibited anyone from offering or giving anything of value to employees, officers, directors, agents or attorneys of financial institutions for or in connection with any transaction or business of the financial institution. Because of its broad scope, the 1984 Act raised concerns that it might have made what is acceptable conduct unlawful.

In July 1985, the Department of Justice issued a Policy Concerning Prosecution Under the New Bank Bribery Statute. In that Policy, the Department of Justice discussed the basic elements of the prohibited conduct under section 215, and indicated that cases to be considered for prosecution under the new bribery law entail breaches of fiduciary duty or dishonest efforts to undermine financial institution

transactions. Because the statute was intended to reach acts of corruption in the banking industry, the Department of Justice expressed its intent not to prosecute insignificant gift giving or entertaining that does not involve a breach of fiduciary duty or dishonesty.

Congress decided that the broad scope of the statute provided too much prosecutorial discretion. Consequently, Congress adopted the Bank Bribery Amendments Act of 1985 (Pub. L. 99-370, August 4, 1986) to narrow the scope of 18 U.S.C. section 215 by adding a new element, namely, an intent to corruptly influence or reward an officer in connection with financial institution business. As amended, section 215 provides in pertinent part:

Whoever—

"(1) corruptly gives, offers, or promises anything of value to any person, with intent to influence or reward an officer, director, employee, agent, or attorney of a financial institution in connection with any business or transaction of such institution; or

(2) as an officer, director, employee, agent, or attorney of a financial institution, corruptly solicits or demands for the benefit of any person, or corruptly accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business or transaction of such institution; shall be guilty of an offense"

The law now specifically excepts the payment of bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business. This exception is set forth in subsection 215(c).

The penalty for a violation remains the same as it was under the 1984 Act. If the value of the thing offered or received exceeds \$100, the offense is a felony punishable by up to five years imprisonment and a fine of \$5,000 or three times the value of the bribe or gratuity. If value does not exceed \$100, the offense is a misdemeanor punishable by up to one year imprisonment and a maximum fine of \$1,000.

In addition, the law now requires the financial institution regulatory agencies to publish guidelines to assist employees, officers, directors, agents and attorneys of financial institutions to comply with the law. The legislative history of the 1985 Act makes it clear that the guidelines would be relevant to but not dispositive of any prosecutive decision the Department of Justice may make in any particular case. 132 Cong. Rec. 5944 (daily ed. Feb. 4, 1986). Therefore, the guidelines developed by the financial regulatory agencies are not a substitute for the legal standards set forth in the statute. Nonetheless, in adopting its own prosecution policy

under the bank bribery statute, the Department of Justice can be expected to take into account the financial institution regulatory agency's expertise and judgment in defining those activities or practices that the agency believes do not undermine the duty of an employee, officer, director, agent or attorney to the financial institution. *United States Attorneys' Manual* section 9-40.439.

#### Proposed Guidelines

The proposed guidelines encourage all state member banks and bank holding companies to adopt internal codes of conduct or written policies or amend their present codes of conduct or policies to include provisions that explain the general prohibitions of the bank bribery law. The proposed guidelines relate only to the bribery law and do not address other areas of conduct that a state member bank or bank holding company would find advisable to cover in its code of conduct or written policy. The code or policy should prohibit, consistent with the statute, any employee, officer, director, agent or attorney of a state member bank or bank holding company (hereinafter "Bank or Bank Holding Company Official" or "Bank or Bank Holding Company Officials") from (1) soliciting for themselves or for a third party (other than the bank or bank holding company itself) anything of value from anyone in return for any business, service or confidential information of the bank or bank holding company and from (2) accepting anything of value (other than normal authorized compensation) from anyone in connection with the business of the bank or the bank holding company, either before or after a transaction is discussed or consummated.

The state member banks' and bank holding companies' codes or policies should be designed to alert Bank or Bank Holding Company Officials about the bank bribery statute, as well as to establish and enforce standards relating to acceptable business practices.

In its code of conduct or written policy, the state member bank or bank holding company may, however, specify appropriate exceptions to the general prohibition of accepting something of value in connection with bank or bank holding company business. There are a number of instances where a Bank or Bank Holding Company Official, without risk of corruption or breach of trust, may accept something of value from one doing or seeking to do business with the bank or bank holding company. The most common examples are the business luncheon or the holiday season gift from a customer. In general, there is

no threat of a violation of the statute if the acceptance is based on a family or personal relationship existing independent of any business of the institution; if the benefit is available to the general public under the same conditions on which it is available to the Bank or Bank Holding Company Official; or if the benefit would be paid for by the bank or bank holding company as a reasonable business expense if not paid for by another party. Indeed, by adopting a code of conduct or written policy with appropriate allowances for such circumstances, a state member bank or bank holding company recognizes that acceptance of certain benefits by its Bank or Bank Holding Company Officials does not amount to a corrupting influence on the bank's or bank holding company's transactions.

In issuing guidance under the statute in the area of business propose entertainment or gifts, it is not advisable for the Board of Governors to establish rules about what is reasonable or normal in fixed dollar terms. What is reasonable in one part of the country may appear lavish in another part of the country. A state member bank or bank holding company should seek to embody the highest ethical standards in its code of conduct or written policy. In doing this, a state member bank or bank holding company may establish in its own or policy a range of dollar values which cover the various benefits that its Bank or Bank Holding Company Officials may receive from those doing or seeking to do business with the bank or bank holding company.

The code of conduct or written policy should provide that, if a Bank or Bank Holding Company Official is offered, receives, or anticipates receiving something of value from a customer beyond what is expressly authorized in the bank's or bank holding company's code of conduct or written policy, the Bank or Bank Holding Company Official must disclose that fact to an appropriately designated official of the financial institution. The state member bank or bank holding company should keep contemporaneous written reports of such disclosures. An effective reporting and review mechanism should serve to prevent situations that might otherwise lead to implications of corrupt intent or breach of trust and should enable the bank or bank holding company to better protect itself from self-dealing. However, a Bank or Bank Holding Company Official's full disclosure evidences good faith only when such disclosure is made in the context of properly exercised

supervision and control. Thus, the prohibitions of the bank bribery statute cannot be avoided by simply reporting to management the acceptance of various gifts unless management reviews the disclosures and determines that what is accepted is reasonable and does not pose a threat to the integrity of the state member bank or bank holding company.

The Board of Governors recognizes that a serious threat to the integrity of a state member bank or bank holding company occurs when its Bank or Bank Holding Company Officials become involved in outside business interests or employment that gives rise to a conflict of interest. Such conflicts of interest may evolve into corrupt transactions that are covered under the bank bribery statute. Accordingly, state member banks or bank holding companies are encouraged to prohibit, in their codes of conduct or policies, their Bank or Bank Holding Company Officials from self-dealing or otherwise trading on their positions with the bank or bank holding company or accepting from one doing or seeking to do business with the bank or bank holding company a business opportunity not generally available to the public. In this regard, a state member bank's or bank holding company's code of conduct or policy should require that its Bank or Bank Holding Company Officials disclose all potential conflicts of interest, including those in which they have been inadvertently placed due to either business or personal relationships with customers, suppliers, business associates, or competitors of the bank or bank holding company.

#### Exceptions

In its code of conduct or written policy, a state member bank or bank holding company may describe appropriate exceptions to the general prohibition regarding the acceptance of things of value in connection with bank or bank holding company business. These exceptions may include those that:

(a) Permit the acceptance of gifts, gratuities, amenities or favors based on obvious family or personal relationships (such as those between the parents, children or spouse of a Bank or Bank Holding Company Official) where the circumstances make it clear that it is those relationships rather than the business of the bank or bank holding company concerned which are the motivating factor;

(b) Permit acceptance of meals, refreshments or entertainment of reasonable value in the course of a meeting or other occasion the purpose of

which is to hold bona fide business discussions (the bank or bank holding company may establish a specific dollar limit for such an occasion);

(c) Permit acceptance of loans from other banks or financial institutions on customary terms to finance proper and usual activities of Bank or Bank Holding Company Officials, such as home mortgage loans, except where prohibited by law;

(d) Permit acceptance of advertising or promotional material of nominal value, such as pens, pencils, note pads, key chains, calendars and similar items;

(e) Permit acceptance of discounts or rebates on merchandise or services that do not exceed those available to other customers;

(f) Permit acceptance of gifts of modest value that are related to commonly recognized events or occasions, such as a promotion, new job, wedding, retirement, Christmas or bar or bat mitzvah (the bank or bank holding company may establish a specific dollar limit for such an occasion); or

(g) Permit the acceptance of civic, charitable, educational, or religious organizational awards for recognition of service and accomplishment (the bank or bank holding company may establish a specific dollar limit for such an occasion).

The policy or code may also provide that, on a case by case basis, a state member bank or bank holding company may approve of other circumstances, not identified above, in which a Bank or Bank Holding Company Official accepts something of value in connection with bank or bank holding company business, provided that such approval is made in writing on the basis of a full written disclosure of all relevant facts and is consistent with the bank bribery statute.

#### Disclosures and Reports

To make effective use of these guidelines, the Board of Governors recommends the following additional procedures:

(a) The state member bank or bank holding company should maintain a copy of any code of conduct or written policy it establishes for its Bank or Bank Holding Company Officials, including any modification thereof.

(b) The state member bank or bank holding company should require periodic written acknowledgment from its Bank or Bank Holding Company Officials of its code or policy and the Bank or Bank Holding Company Officials' agreement to comply therewith.

(c) The state member bank or bank holding company should maintain contemporaneous written reports of any disclosures made by its Bank or Bank Holding Company Officials in connection with a code of conduct or written policy.

Board of Governors of the Federal Reserve System.

William W. Wiles,  
Secretary of the Board.

May 18, 1987.

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