

OFFICE OF THRIFT SUPERVISION

Denial of Regulatory Exemption Request

Order No: 2010-74

Date: December 23, 2010

Docket No: H-0813

Cathy L. Johnson, Phoenix, Arizona (Applicant), has filed, pursuant to 12 C.F.R. § 585.110, a request that the Office of Thrift Supervision (OTS) grant an exemption from the prohibitions of Section 19(e) of the Federal Deposit Insurance Act (FDIA) to permit the Applicant to be employed as an automobile claims adjuster with United Services Automobile Association (USAA). Section 19(e)(1) of the FDIA and 12 C.F.R. § 585.30 prohibit certain persons from being an employee of a savings and loan holding company. Section 19(e)(2) of the FDIA and 12 C.F.R. § 585.110 permit OTS to grant exemptions from the prohibition.

The Applicant was convicted in 2002 of theft, a conviction covered by section 19(e) of the FDIA and 12 C.F.R. § 585.30. Accordingly, unless OTS grants the exemption request, the Applicant is prohibited from being an employee of USAA.

OTS regulations, at 12 C.F.R. § 585.120(a)(1), provide that in determining whether to approve an exemption application filed under § 585.110, OTS must consider the extent to which the position that is the subject of the exemption request enables a person to: (1) participate in the major policy-making functions of the savings and loan holding company; or (2) threaten the safety and soundness of any insured depository institution that is controlled by the savings and loan holding company, the interests of its depositors, or the public confidence in the insured depository institution. In addition, under 12 C.F.R. § 585.120(a)(2), OTS must consider whether the Applicant has demonstrated her fitness to hold the described position.

OTS regulations, at 12 C.F.R. § 585.120(b) provide that, in making the determination under 12 C.F.R. § 585.120(a), OTS will consider the following factors: (1) the position; (2) the amount of influence and control a person holding the position will be able to exercise over the affairs and operations of the savings and loan holding company and the insured institution; (3) the ability of the management of the savings and loan holding company to supervise and control the activities of a person holding the position; (4) the level of ownership that the person will have at the savings and loan holding company; (5) the specific nature and circumstances giving rise to the prohibition; (6) evidence of rehabilitation; and (7) any other relevant factor.¹

¹ 12 C.F.R. § 585.120(b) (2010). 12 C.F.R. § 585.130(b)(1) requires that OTS provide a summary of the relevant factors that OTS considered under 12 C.F.R. § 585.120. The following paragraphs constitute this summary.

With respect to the first factor, the Applicant seeks employment to investigate and settle non-injury claims for USAA members and third party claimants, as an automobile insurance claims adjuster. The position is not a senior position in the organization, and does not involve the supervision of others.

With respect to the second factor, influence and control, the position does not enable the Applicant to exercise any influence or control over the operations of USAA or its subsidiary savings bank, USAA Federal Savings Bank, San Antonio, Texas (Savings Bank).

With respect to the third factor, the ability of management to supervise the position, the application demonstrates that the position in question is subject to supervision. Nevertheless, it would be difficult for USAA to supervise the position so that a claims agent could not make a number of payments to various individuals.

With respect to the fourth factor, stock ownership, the Applicant does not own any stock or have any ownership interest in USAA or the Savings Bank.

With respect to the fifth factor, the circumstances relating to the offense, the actions giving rise to the prohibition are squarely within the scope of the prohibition. The activities involved dishonesty. The Applicant's age at the time demonstrates that the offense in question was not simply a matter of youthful indiscretion. Moreover, the circumstances involved misuse of a payment system, and as a claims adjuster, the Applicant would allocate funds under a payment system.

With respect to the sixth factor, evidence of rehabilitation, there is no specific evidence of rehabilitation other than the Applicant's payment of the applicable fine, completion of her probation period and restitution to her former employer, and the passage of eight years since the actions giving rise to the prohibition without the Applicant being charged with other criminal offenses.

The regulations do not require that the factors be weighed in any particular manner. OTS believes that it is appropriate for particular weight to be afforded the circumstances relating to the offense, particularly when the position that is the subject of the application involves a payment system that bears similarities to the payment system involved in the offense.


The regulation provides that OTS's consideration of the factors set forth in 12 C.F.R. § 585.120(b) are to be used in making the determination under 12 C.F.R. § 585.120(a). Under 12 C.F.R. § 585.120(a)(2), OTS will consider whether the application has demonstrated the person's fitness to hold the described position. As the regulation makes clear, the burden of demonstrating such fitness is on the Applicant. OTS has determined that the nature of the offense in question, particularly the use of a payment system in connection with the commission of a crime, raises material concerns regarding the Applicant's fitness to hold the position in question, which also involves use of a payment system.

Section 585.120(a)(2) states that “[s]ome positions may be reviewed without an extensive review of a person’s fitness because the position does not enable a person to take the actions described in paragraph (a)(1) of this section.” Claims adjusters have access to a payment system, and the potential exists that a claims adjuster could misappropriate significant amounts, particularly if such misappropriation were to occur over a period of time. Therefore, OTS is unable to conclude that the position in question would not enable a person to threaten public confidence in the subsidiary depository institution, particularly where, as here, the holding company and the depository institution do business under the same name, USAA.

Accordingly, based on the foregoing, OTS concludes that it is appropriate to deny the exemption request, and the exemption request is hereby denied.

OTS is hereby advising you, in accordance with 12 C.F.R. § 585.130(b)(2), that you may file, within 20 calendar days of the date of this order, a written request demonstrating good cause for a hearing on the denial of your application. You should file any such request with the undersigned at the Office of Thrift Supervision, 1700 G Street, N.W., Washington, DC 20552. Consistent with 12 C.F.R. § 585.140, OTS will review any hearing request to determine if you have demonstrated good cause for a hearing on your application. Within 30 calendar days after any timely filing of a request for a hearing, OTS will notify you in writing of its decision whether to grant or deny such a request.

By order of the Acting Director of the Office of Thrift Supervision, or his designee,
effective December 23, 2010.



Grovetta N. Gardineer
Managing Director
Corporate & International Activities