

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

5 CFR Chapter LXV

24 CFR Part 0

[Docket No. FR-3331-P-01]

RIN 2501-AB55, 13209-AA15

**Supplemental Standards of Ethical
Conduct for Employees of the
Department of Housing and Urban
Development**

AGENCY: Office of the Secretary,
Department of Housing and Urban
Development (Department).

ACTION: Proposed rule.

SUMMARY: The Department of Housing and Urban Development (Department), with the concurrence of the Office of Government Ethics (OGE), proposes to issue regulations for the officers and employees of the Department that supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE. To ensure a comprehensive and effective ethics program at the Department and to address ethical issues unique to the Department, the proposed rule establishes prohibitions on the ownership of certain financial interests and restrictions on outside employment and business activities.

DATES: Comments are invited and must be received on or before August 29, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. at the above address. *Comments by facsimile (FAX) are not acceptable.*

FOR FURTHER INFORMATION CONTACT: Aaron Santa Anna, Assistant General Counsel, Ethics Law Division, at (202) 708-3815, or Sam E. Hutchinson, Associate General Counsel, Office of Human Resources Law, (202) 708-2947; 451 Seventh Street, SW, Washington, DC 20810. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708-3259. (Telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION

I. Background

Executive Order 12674, as amended by Executive Order 12731, authorized the Office of Government Ethics (OGE) to establish a single, comprehensive and clear set of executive-branch standards of conduct. On August 7, 1992, OGE published the Standards of Ethical Conduct for Employees of the Executive Branch (Standards). See 57 FR 35006-35067, as corrected at 57 FR 48557 and 57 FR 52583 with additional grace period extensions at 59 FR 4779-4780 and 60 FR 6390-6391. Codified at 5 CFR part 2635, the Standards took effect on February 3, 1993, and established uniform standards of ethical conduct for all executive branch employees.

With the concurrence of OGE, 5 CFR 2635.105 authorizes executive branch agencies to publish agency-specific supplemental regulations necessary to implement their respective ethics programs. The Department, with OGE's concurrence, has determined that the following supplemental rules contained in the proposed regulation, which would add a new chapter LXV, consisting of part 7501, to 5 CFR, are necessary to implement successfully the Department's ethics program in light of the Department's unique programs and operations. The Department of Housing and Urban Development is simultaneously removing its superseded Standards of Conduct at 24 CFR part 0 and is replacing those provisions with a single section that provides a cross-reference to 5 CFR parts 2634 and 2635, and to the Department's new supplemental regulations.

II. Analysis of the Regulation

The following is a section by section analysis of the proposed rule.

Section 7501.101 Purpose

Proposed § 7501.101 explains that the regulations contained in the proposed rule would apply to all Department employees and would supplement the executive branch-wide Standards. Special Government employees, as that term is defined by 18 U.S.C. 202 and 5 CFR 2635.102(l), however, would be exempt from §§ 7501.104 and 7501.105. Proposed § 7501.101 would also note that Department employees must comply with the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635, the executive branch financial disclosure regulations at 5 CFR part 2634, this part, and any additional rules of conduct that the Department is authorized to issue. Upon finalization of this supplemental regulation, the Department will, as

proposed, delete its present Standards of Conduct rule at 24 CFR part 0, except for a cross-reference to 5 CFR.

Section 7501.102 Definitions

Proposed § 7501.102 defines the key terms used in the proposed rule, and would include a definition of the term "affiliate" at § 7501.102.

Proposed § 7501.102 would, for purposes of the proposed rule and 5 CFR part 2635, delegate to the Associate General Counsel, Office of Human Resources Law, the Assistant General Counsel, Ethics Law Division, and the Field Assistant General Counsels, the authority to serve as agency designees and agency ethics officials for all Department employees. These proposed sections would also delegate to the Inspector General the authority to serve as agency designee and agency ethics official for Department employees in the Office of the Inspector General. Finally, the General Counsel, Office of Federal Housing Enterprise Oversight, would be delegated authority to act as agency designee and agency ethics official for Department employees in the Office of Federal Housing Enterprise Oversight.

"Assistance" would be defined broadly by proposed § 7501.102 to include any contract, grant, loan, subsidy, guarantee, cooperative agreement or any other financial assistance under a program administered by the Secretary. The definition is intended to include "assistance" awarded by the Department that is subsequently redistributed competitively to a second tier of applicants. The term does not include, however, single family mortgage insurance provided under a program administered by the Secretary.

"Employment" would be defined broadly at § 7501.102 as proposed to cover any form of non-Federal employment or business relationship involving the provision of personal services, including writing when done under an arrangement with another person for production or publication of the written product.

The term "security" also would be defined broadly at § 7501.102 of the proposed rule. The proposed definition is based, in part, on the definition of "financial interest" at 5 CFR 2635.403(c) and would include any interest in debt or equity instruments, such as stocks, bonds and commercial paper. The definition also would extend to loans securitized by mortgages or deeds of trust and securities backed by such instruments, but would not include deposit accounts.

Section 7501.103 Waivers

Proposed § 7501.103 would authorize the Designated Agency Ethics Official (DAEO) to grant HUD employees written waivers of any provision of the proposed Department rule based upon a determination that the waiver will not result in conduct inconsistent with 5 CFR part 2635 or otherwise prohibited by law, and that application of the provision would not be necessary to ensure public confidence in the impartiality and objectivity with which the Department's programs are administered. Authority to waive provisions of the Department's conduct regulations has been included in 24 CFR 0.735-106. Under proposed § 7501.103, the DAEO could grant a written waiver but require the employee to take further action, including executing a written disqualification statement. This provision is intended, in appropriate cases, to ease the burden that these supplemental regulations may impose on Department employees while ensuring that employees do not engage in actions or hold financial interests that may interfere with the objective and impartial performance of their official duties.

Section 7501.104 Prohibited Financial Interests

General Requirement. Proposed § 7501.104 would prohibit Department employees from receiving, acquiring, or owning certain financial interests that are related to or affected by Department operations, such as securities issued or collateralized by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation. It would incorporate, with one addition, the restrictions implemented in 1987 through the promulgation of 24 CFR 0.735-204 of the Department's existing standards regulation. The additional restriction that would be imposed by paragraph (a)(2) reflects the Secretary's more recently acquired authority over the Federal Home Loan Mortgage Corporation under the Financial Institutions Reform, Recovery and Enforcement Act of 1989. (12 U.S.C. 4511). In accordance with 5 CFR 2635.403(a), these prohibitions are proposed on the basis of the Department's determination that the acquisition or holding by Department employees of the six categories of financial interests listed in proposed § 7501.104(a) would cause reasonable persons to question the impartiality and objectivity with which Department programs are administered.

Exceptions to prohibition for certain interests. Proposed § 7501.104(b) is

substantially identical to the provision which it was designed to replace, 24 CFR 0.735-204(b). One provision which was modified, paragraph (b)(1), would permit employees to own interests in publicly traded or publicly available mutual or other investment funds which contain within their portfolios interests that they would be prohibited from holding by proposed § 7501.104(a). Under this provision, ownership of investment funds would be permitted as long as the employee does not have the ability to control the fund or its portfolio, and the fund does not have an objective or practice of concentrating its investments in residential mortgages or securities backed by residential mortgages other than those of the Government National Mortgage Association.

Reporting and Divestiture. Proposed § 7501.104(c) is loosely based on 24 CFR 0.735-204(c). It would require new employees, within 30 days of commencing employment, to report to the appropriate agency ethics official financial interests acquired prior to the commencement of their employment with the Department that they are prohibited from holding by § 7501.104(a). Employees would be required to divest such interests within 90 days of the date reported unless they receive a written waiver from the Designated Agency Ethics Official in accordance with § 7501.103. The proposed section would impose a similar reporting and divestiture requirement upon employees who acquire, without specific intent, financial interests prohibited by § 7501.104(a).

Section 7501.105 Outside Employment and Other Outside Activities

The proposed rule is designed to balance several important ethical principles against an employee's right to engage in outside activities. Proposed § 7501.105(a) would incorporate, with minor modification, the substance of 24 CFR 0.735-203(b)(4), a provision which was promulgated in 1987. The proposed section prohibits paid and unpaid employment with businesses dealing with or related to real estate or manufactured housing. The Department has determined that maintaining the policy against active participation in such businesses is necessary to protect against questions regarding the impartiality and objectivity of employees and the administration of the Department's programs. It would hinder the Department in meeting its missions if members of the public question whether Department employees are using their public positions or

Department connections to advance their real estate careers.

In addition, since the parties involved in any real estate transaction, such as real estate agents, brokers, mortgagees, settlement attorneys, title and property insurance companies, appraisers, and developers, may do business with, or may be regulated by, the Department, an employee engaged in outside real estate transactions with these parties on a regular basis may be perceived as providing these persons preferential treatment in order to further his or her real estate-related business. In determining whether an employee is actively participating in a business related to real estate, the Department will consider a number of factors, including whether the employee maintains an office, advertises or solicits clients or business, hires staff, uses business stationery or similar materials, or establishes a formal or informal association with an existing business. The number of transactions over a period of time will also be considered in determining whether an employee is actively participating in a business.

Proposed § 7501.105(a)(2) and (a)(3) would incorporate, with minor revision, restrictions promulgated in 24 CFR 0.735-203(b)(5) and (b)(6). The additional employment restriction of proposed § 7501.105(a)(4) against employment with certain mortgage institutions was considered necessary in view of the Department's role as regulator under the authority of the Financial Institutions Reform, Recovery and Enforcement Act of 1989.

Proposed § 7501.105(b) would create exceptions to the prohibitions in § 7501.105(a) which would ensure that employees are not prohibited from serving as officers or directors of Federal credit unions or of certain cooperative or condominium associations. It would also give the Designated Agency Ethics Official authority to exempt service as an officer or director of other entities which would not be expected to raise appearance concerns.

Proposed § 7501.105(c) lists the circumstances under which an employee is required to obtain the approval of an agency ethics official prior to engaging in certain compensated or uncompensated outside employment activities. The requirement in proposed § 7501.105(c)(1)(i) to obtain prior approval to serve in a position of authority with any organization that receives Department assistance is new. Because these organizations interact with the Department and are affected by Department programs and operations, proposed § 7501.105(c)(1)(i) will ensure

that employees do not violate 18 U.S.C. 203, 205 and 208. In this regard, it is noted that the financial interests of an organization in which an employee serves as officer, director, trustee, general partner or employee are imputed to the employee by 18 U.S.C. 208.

Proposed § 7501(c)(1)(ii) and (c)(1)(iii) reflect the practice of the Department since 1982, and under 24 CFR 0.735–203(d) of the current HUD standards regulation to require employees to obtain approval prior to engaging in any outside activities which are in the same professional field as that of the employee's official position or which are with a State or local government. For purposes of this section, professions subject to the prior approval requirement are those that require specialized knowledge and often long and intensive training. As noted in 5 CFR 2636.305, it is a characteristic of a profession that those in the profession, through force of organization or concerted opinion, establish and maintain high standards of achievement and conduct. Secretarial and clerical positions are not, for purposes of this rule, included within the term "profession."

Proposed § 7501.105(c)(2) would establish the standards against which requests for prior approval of outside activities would be judged. In this regard, it is noted that requests will be approved unless inconsistent with the conflict of interest laws, executive branch-wide Standards or this part.

Proposed § 7501.105(d) reflects the policy of the Department to encourage its employees to volunteer their time to nonprofit organizations. This paragraph recognizes, however, that such service must be consistent with applicable law and regulation, including 18 U.S.C. 205 and 208.

Section 7501.106 Additional Rules for Certain Department Employees Involved in the Regulation or Oversight of Government Sponsored Enterprises

Proposed § 7501.106 would apply to certain Department employees whose official duties involve implementing the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (the Act). These rules would be in addition to those which would apply to these employees under §§ 7501.101–7501.105.

The need for these rules results from the authority granted the Department by the Act. The Act significantly expanded the Department's authority to regulate the Federal National Mortgage Association (Fannie Mae or FNMA) and the Federal Home Loan Mortgage Corporation (Freddie Mac or FHLMC),

collectively referred to as Government sponsored enterprises (GSEs). In enacting this legislation, Congress sought to ensure, given the size of the GSEs and the fact that their securities are perceived as guaranteed by the Federal Government, the continued financial stability of the GSEs. In addition, Congress sought to establish a mechanism to ensure that the GSEs fulfill their public missions to stimulate the growth of affordable housing.

To achieve these goals, the Act divided the regulatory responsibility over the GSEs between a newly established Office of Federal Housing Enterprise Oversight (OFHEO) within the Department and the Secretary. OFHEO was given substantial independence in matters relating to the financial health and security of the GSEs. The Director of OFHEO has authority, for example, to issue the risk-based capital standards for the GSEs and to periodically conduct broad-based examinations of the GSEs without Secretarial review. To ensure that the GSEs are in compliance with the capital standards and are operating safely, the Director has exclusive authority to bring a broad range of enforcement actions against an enterprise, including final and temporary cease-and-desist actions and civil money penalties. In its financial safety and soundness mission, OFHEO is analogous to other Federal financial regulators.

The Act also granted the Secretary more specific authority over the housing missions and fair lending responsibilities of the GSEs. Under the Act, the Secretary has the authority to establish and monitor goals for the GSEs' purchase of mortgages financing housing for low- and moderate-income families, and to establish and monitor goals for the GSEs' purchase of mortgages financing housing located in rural areas, central cities, and other underserved areas. The Secretary also was provided authority to enforce fair lending requirements for the GSEs and to require the GSEs to assist the Department in investigating whether a mortgage lender has failed to comply with the Fair Housing Act and Equal Credit Opportunity Act. The Secretary is also authorized to approve new programs prior to the GSEs' implementation of such programs. To enforce compliance with these housing goals, the Secretary is authorized to hold hearings, issue cease-and-desist orders, and assess civil monetary penalties.

Based on the authority granted under the Act, the Department proposes to promulgate new restrictions which would, among other things, prohibit

certain employees whose official duties involve implementing the Department's statutory responsibilities under the Act from acquiring or owning the financial interests of certain mortgage institutions which do business with or rely upon the GSEs.

Definitions. Proposed § 7501.106(b) would define the terms "covered employee" and "mortgage institution" for the purpose of § 7501.106. The term "covered employee" would include employees required to file public or confidential financial disclosure reports and who are employed in OFHEO and certain other Departmental offices that have responsibilities under the Act. By virtue of this definition, the term would include employees involved in auditing and reviewing the GSEs for financial soundness, establishing housing goals for the GSEs, reviewing the lending policies and practices of the GSEs, bringing regulatory actions against the GSEs or the lending institutions with which they do business or reviewing new GSE programs. It would also include employees who have access to financial data about the GSEs or the lenders with which they do business or are involved in developing or implementing new Federal Housing Administration (FHA) programs to meet the Secretary's housing goals.

"Mortgage institution" would include any person or entity which originates or services mortgages that are owned or guaranteed by FNMA or FHLMC. The term would also include any person or entity which insures mortgages owned or guaranteed by FNMA or FHLMC.

Prohibited Financial Interests. Proposed § 7501.106 would prohibit covered employees and their spouses and minor children from owning securities issued by certain "mortgage institutions." The Department has determined, consistent with 5 CFR 2635.403(a), that prohibiting covered employees from acquiring or holding financial interests in the mortgage institutions specified in proposed §§ 7501.106(c)(1)(i)–(iii) is necessary to maintain public confidence in the impartiality and objectivity with which the Department fulfills its statutory and regulatory functions to regulate the GSEs and establish housing goals. This prohibition also would ensure that widespread disqualifications of covered employees from official matters because of their financial interests do not adversely affect the Department's ability to carry out its mission. Moreover, actions taken by the Department may affect the market value of the securities of the mortgage institutions with which the GSEs deal.

Restrictions Arising from Third Party Relationships. Proposed § 7501.106(d) would attribute to a covered employee securities he or she would be prohibited from holding by § 7501.106(c) that are held by the entities described in this subsection. A covered employee with an attributed interest would be required to report the interest to the appropriate agency ethics official and could be required to terminate the relationship with the entity, disqualify himself or herself from a matter or take other appropriate action as determined by the agency ethics official to avoid a violation of the conflict of interest statutes, the executive branch-wide Standards, or these supplemental regulations.

Prohibited Outside Employment. Proposed § 7501.106(e) is intended to highlight for covered employees that they are prohibited by § 7501.105(a) from engaging in employment with or on behalf of a mortgage institution. Employment with or on behalf of a mortgage institution means performing any work, whether compensated or uncompensated, for or to be provided to a mortgage organization through its employees, contractors, or agents.

Prohibited Recommendations. Proposed § 7501.106(f) would prohibit a covered employee from recommending, suggesting or giving advice to any person with respect to financial transactions or investment actions involving FHLMC or FNMA securities. This provision would supplement 5 CFR 2635.704 with a provision designed specifically for covered employees which would prohibit them from using or creating the appearance of using information which is not available to the general public to further a private interest.

Prohibited Purchase of Assets. Proposed § 7501.106(g) would prohibit covered employees from purchasing real or personal property from FHLMC or FNMA unless purchased under circumstances which ensure that the property is sold for fair market value. It is proposed as a supplement to the more general prohibition in 5 CFR 2635.702 against the use of public office for private gain.

Pre-existing Interests. Proposed § 7501.106(h) would require a covered employee, upon entering a covered position, to report any interest he or she would be prohibited from continuing to hold by § 7501.106(c) to the agency ethics official within thirty days of the start of that covered employment. The covered employee would be required to divest such interest within 90 days of the date reported unless the employee receives a written waiver from the

Designated Agency Ethics Official in accordance with § 7501.103. A similar requirement would apply to covered employees who acquire financial interests prohibited by § 7501.106(c) by gift or otherwise without specific intent on their part.

III. Removal of the Old Department Standards of Conduct Regulations

Because the Department's Standards of Conduct have been largely superseded by the new executive branch financial disclosure regulations at 5 CFR part 2634 and by the new executive branch-wide Standards at 5 CFR part 2635 as supplemented by the regulations contained in new 5 CFR part 7501, the Department is removing all of existing 24 CFR part 0. To ensure that employees are on notice of the ethical standards to which they are subject, the Department is replacing its old standards at 24 CFR part 0 with a residual provision that cross-references 5 CFR parts 2634, 2635 and 7501.

IV. Matters of Regulatory Procedure

Regulatory Flexibility Act

The Secretary in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule would not have a significant economic impact on a substantial number of small entities because it would affect only Federal employees.

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures contained in this rule relate only to internal administrative procedures whose content does not constitute a development decision nor affect the physical condition of project areas or building sites, and therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. Specifically, this rule is only directed toward Federal employees and would not alter the established roles of HUD

and the States and local governments. As a result, the rule is not subject to review under the order.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs would result from promulgation of this rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This rule was listed as item number 1367 in the Department's Semiannual Agenda of Regulations published on May 8, 1995 (60 FR 23368, 23375) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects in 5 CFR Part 7501

Conflict of interests, Government employees.

List of Subjects in 24 CFR Part 0

Administrative practice and procedure, Conflict of interests.

Dated: May 22, 1995.

Henry G. Cisneros,

Secretary of the Department of Housing and Urban Development.

Approved: June 1, 1995.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Department of Housing and Urban Development, with the concurrence of the Office of Government Ethics, is proposing to amend title 5 of the Code of Federal Regulations by adding a new chapter LXV, consisting of part 7501, and to amend title 24 of the Code of Federal Regulations by revising part 0, to read as follows:

1. In title 5, a new chapter LXV, consisting of part 7501, would be added to read as follows:

5 CFR CHAPTER LXV—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PART 7501—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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 7501.104 Prohibited financial interests.
 7501.105 Outside employment.
 7501.106 Additional rules for certain Department employees involved in the regulation or oversight of Government sponsored enterprises.

Authority: 5 U.S.C. 301, 7301, 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.203(a), 2635.403(a), 2635.803, 2635.807.

§ 7501.101 Purpose.

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Department of Housing and Urban Development (HUD or Department) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. Employees are required to comply with 5 CFR part 2635, this part, and any additional rules of conduct that the Department is authorized to issue.

§ 7501.102 Definitions.

For purposes of this part, and otherwise as indicated, the following definitions shall apply:

Affiliate means any entity that controls, is controlled by, or is under common control with another entity.

Agency designee, as used also in 5 CFR part 2635, means the Associate General Counsel for Human Resources Law, the Assistant General Counsel, Ethics Law Division, and the HUD Field Office Assistant General Counsels; the Inspector General, for employees assigned to the Office of the Inspector General; and the General Counsel, Office of Federal Housing Enterprise Oversight, for employees assigned to the Office of Federal Housing Enterprise Oversight.

Agency ethics official, as used also in 5 CFR part 2635, means the agency designees as specified above.

Assistance means any contract, grant, loan, subsidy, guarantee, cooperative agreement or other financial assistance under a program administered by the HUD Secretary, and includes "assistance" awarded by the Department that is competitively redistributed to a second tier of applicants or awardees. The term does not include single family mortgage insurance provided under a program administered by the Secretary.

Designated Agency Ethics Official (DAEO) means the General Counsel of HUD or the Deputy General Counsel (Operations) in the absence of the General Counsel.

Employment means any compensated or uncompensated form of non-Federal

employment or business relationship, including self-employment, involving the provision of personal services by the employee. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher or speaker. It includes writing when done under an arrangement with another person for production or publication of the written product.

Security means all interests in debt or equity instruments. The term includes, without limitation, secured and unsecured bonds, debentures, notes, securitized assets and commercial paper including loans securitized by mortgages or deeds of trust and securities backed by such instruments, as well as all types of preferred and common stock. The term encompasses current and contingent ownership interests including any beneficial or legal interest derived from a trust. It extends to any right to acquire or dispose of any long or short position in such securities and includes, without limit, interests convertible into such securities, as well as, options, rights, warrants, puts, calls and straddles with respect thereto. The term shall not, however, be construed to include deposit accounts.

§ 7501.103 Waivers.

The Designated Agency Ethics Official (DAEO) may waive any provision of this part upon finding that the waiver will not result in conduct inconsistent with 5 CFR part 2635 or otherwise prohibited by law and that application of the provision is not necessary to ensure public confidence in the impartiality and objectivity with which the Department's programs are administered. Each waiver shall be in writing and supported by a statement of the facts and findings upon which it is based and may impose appropriate conditions, such as requiring the employee's execution of a written disqualification statement.

§ 7501.104 Prohibited financial interests.

(a) *General requirement.* This section applies to all HUD employees except special Government employees. Except as provided in paragraph (b) of this section, an employee, or an employee's spouse or minor child, shall not directly or indirectly receive, acquire or own:

(1) Securities issued by the Federal National Mortgage Association (FNMA) or securities collateralized by FNMA securities;

(2) Securities issued by the Federal Home Loan Mortgage Corporation

(FHLMC) or securities collateralized by FHLMC securities;

(3) FHA debentures or certificates of claim;

(4) Stock or another financial interest in a Department-owned, insured or subsidized multifamily project or single family dwelling, cooperative unit, or condominium unit, except to the extent that the stock or other interest represents the employee's principal residence. Employees who wish to purchase a Department-held property as a principal residence must adhere to the procedures established by the Assistant Secretary for Housing for the administration of the property disposition program set forth in HUD Handbook 4310.5;

(5) Any Department subsidy provided pursuant to Section 8 of the United States Housing Act of 1937, as amended, (42 U.S.C. 1437f) to or on behalf of a tenant of property owned by the employee. However, an employee may receive such a subsidy when:

(i) The employee acquires without specific intent, as through gift or inheritance, a property which at the time of acquisition has a tenant receiving such a subsidy, but only as long as that tenant continues to reside in the property; or

(ii) An incumbent tenant who has not previously received such a subsidy becomes the beneficiary thereof, but only if there is no increase in that tenant's rent upon the commencement of subsidy payments other than normal annual adjustments; or

(6) Any direct creditor interest in a mortgage insured by the Department.

(b) *Exception to prohibition for certain interests.* Nothing in this section prohibits an employee, or the spouse or minor child of an employee, from acquiring, owning, or controlling:

(1) An interest in a publicly traded or publicly available investment fund which, in its prospectus, does not indicate the objective or practice of concentrating its investments in residential mortgages or securities backed by residential mortgages, except those of Government National Mortgage Association (GNMA), and the employee neither exercises control nor has the ability to exercise control over the financial interests held in the fund;

(2) A limited partnership interest in a partnership which has at least 5,000 partnership interests, of which less than 25% of the assets are Department insured or subsidized projects; or

(3) Mortgage insurance provided pursuant to section 203 of the National Housing Act (12 U.S.C. 1709) on the employee's principal residence and any one other single family residence.

(c) *Reporting and divestiture.* An employee must report, in writing, to the appropriate agency ethics official, any interest prohibited under paragraph (a) of this section acquired prior to the commencement of employment with the Department or without specific intent, as through gift, inheritance, or marriage, within 30 days from the start of employment or acquisition of such interest. Such interest must be divested within 90 days from the date reported unless waived by the Designated Agency Ethics Official in accordance with § 7501.103.

§ 7501.105 Outside employment.

(a) *Prohibited outside employment.* Subject to the exceptions set forth in paragraph (b) of this section, HUD employees, except special Government employees, shall not engage in:

(1) Employment involving active participation in a business dealing with or related to real estate or manufactured housing including but not limited to real estate brokerage, management and sales, architecture, engineering, mortgage lending, property insurance, appraisal services, construction, construction financing, land planning, or real estate development;

(2) Employment with a person, other than a State or local government, who engages in lobbying activities concerning Department programs or who is required to report expenditures for lobbying activities or register as a lobbyist under 42 U.S.C. 3537b or similar statutes which require the registration of persons who attempt to influence the decisions of officers or employees of the Department;

(3) Employment as an officer or director of a person who is a Department-approved mortgagee, a lending institution or an organization which services securities for the Department; or

(4) Employment with the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Finance Board or any affiliate thereof.

(b) *Exceptions to employment prohibitions.* The prohibitions set forth in paragraph (a) of this section do not apply to serving as an officer or a member of the Board of Directors of:

(1) A Federal Credit Union;

(2) A cooperative or condominium association for a housing project which is not subject to regulation by the Department or, if so regulated, in which the employee personally resides; or

(3) An entity designated in writing by the Designated Agency Ethics Official.

(c) *Prior approval requirement.* (1) Employees shall obtain the prior written

approval of an agency ethics official before accepting compensated or uncompensated employment:

(i) As an officer, director, trustee, or general partner of, or in any other position of authority with, either a for-profit or non-profit organization which directly or indirectly receives assistance from the Department.

(ii) With a State or local government; or

(iii) In the same professional field as that of the employee's official position.

(2) Approval shall be granted unless the conduct is inconsistent with 5 CFR part 2635 or this part.

(d) *Voluntary services.* Subject to the restrictions and requirements contained in the conflict of interest laws, 5 CFR part 2635 and this part, employees are encouraged to volunteer their personal time to nonprofit organizations.

§ 7501.106 Additional rules for certain Department employees involved in the regulation or oversight of Government sponsored enterprises.

(a) The following rules apply to certain Department employees whose duties involve the regulation or oversight of Government Sponsored Enterprises, specifically the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC). This section is in addition to §§ 7501.101 to 7501.105.

(b) *Definitions.* For purposes of this section, the following definitions are applicable:

(1) *Covered employee* means an employee required to file a public or confidential financial disclosure report under 5 CFR part 2634 in:

(i) the Office of the HUD Secretary;

(ii) the Office of Federal Housing Enterprise Oversight;

(iii) the Office of the Assistant Secretary for Housing-Federal Housing Commissioner, with the exception of the Office of the Deputy Assistant Secretary for Operations;

(iv) the Office of Financial Institutions Regulation in the Office of the Assistant Secretary for Policy Development and Research;

(v) the Offices of Investigation, Program Standards and Evaluation, and Regulatory Initiatives and Federal Coordination within the Office of the Assistant Secretary for Fair Housing and Equal Opportunity;

(vi) the Offices of Insured Housing, Finance and Regulatory Enforcement, Legislation and Regulations, and the Fair Housing Enforcement Division in the Office of the General Counsel;

(vii) the official superiors of the employees listed in paragraphs (b)(1)(iv), (b)(1)(v) and (b)(1)(vi) of this definition; and

(viii) any other employee in the offices listed above who is designated in writing by the Secretary or the appropriate individual of Assistant Secretary rank, or his or her designee, to ensure compliance with the principles set forth in 5 CFR 2635.403.

(2) *Mortgage institution* means mortgage bankers, mortgage brokers, banks, savings and loans, and other institutions that originate or service mortgages that are owned or guaranteed by the Federal National Mortgage Association (FNMA) or the Federal Home Loan Mortgage Corporation (FHLMC).

(c) *Prohibited financial interests.* (1) Except as provided in paragraph (c)(2) of this section, a covered employee, or a spouse or minor child of a covered employee, shall not receive, acquire, or own securities of:

(i) a mortgage institution if more than 20 percent of the institution's assets consist of mortgages;

(ii) a mortgage institution in which 20 percent or less of the institution's assets consist of mortgages and more than 40 percent of the mortgages originated by the institution are sold to or guaranteed by FNMA and/or FHLMC; or

(iii) a mortgage institution which services or insures mortgages if more than 20 percent of the gross income of such institution is derived from either or both of these activities.

(2) The prohibitions in paragraph (c)(1) of this section do not apply to ownership of securities held in a publicly traded or publicly available investment fund, or profit-sharing, retirement, or similar plan which in its prospectus or governing documents does not indicate the objective or practice of concentrating its investments in the financial services sector, and the employee neither exercises control nor has the ability to exercise control over the financial interests held in the fund.

(3) The mortgage institution's most recent financial statement shall be used in determining the applicability of the prohibitions in paragraph (c)(1) of this section.

(d) *Restrictions arising from third party relationships.* If any of the entities listed below have securities that a covered employee would be prohibited from owning by paragraph (c) of this section, the employee shall report such interest to the appropriate Agency Ethics Official. The Agency Ethics Official may require the employee to terminate the third party relationship, undertake an appropriate disqualification, or take other appropriate action determined to be necessary consistent with 5 CFR part

2635 and this part. This paragraph applies to a:

(1) Partnership in which the covered employee, or a spouse or minor child of the employee is a general partner;

(2) Partnership in which the covered employee, or spouse or minor child of the employee, individually or jointly holds more than a 10 percent limited partnership interest;

(3) Closely held corporation in which the covered employee, or spouse or minor child of the employee, individually or jointly holds more than a 10 percent equity interest;

(4) Trust in which the covered employee, or spouse or minor child of the employee, has a legal or beneficial interest;

(5) Investment club or similar informal investment arrangement between the covered employee, or spouse or minor child of the employee and others; or

(6) Other entity in which the covered employee, or spouse or minor child of the employee, individually or jointly holds more than a 10 percent equity interest.

(e) *Prohibited outside employment.* In accordance with § 7501.105(a)(1),

covered employees shall not engage in employment with or on behalf of a mortgage institution.

(f) *Prohibited recommendations.* Covered employees shall not make any recommendation or suggestion, directly or indirectly, concerning the acquisition, sale, or divestiture of securities of FHLMC or FNMA.

(g) *Prohibited purchase of assets.* Covered employees, their spouses or minor children shall not purchase, directly or indirectly, any real or personal property from FHLMC or FNMA, unless it is sold at public auction or by other means which would assure that the selling price is the asset's fair market value.

(h) *Pre-existing interests.* Covered employees must report, in writing, to the appropriate Agency Ethics Official, any interest prohibited under paragraph (c) of this section acquired prior to either the commencement of employment as a covered employee or the effective date of this part, or acquired without specific intent, as through gift, inheritance, or marriage, within 30 days from the start of covered employment or acquisition of such interest. Such interest must be divested

within 90 days from the date it is reported unless waived by the Designated Agency Ethics Official in accordance with § 7501.103.

24 CFR Subtitle A—Office of the Secretary Department of Housing and Urban Development

PART 0—STANDARDS OF CONDUCT

2. 24 CFR part 0 consisting of § 0.1 would be revised to read as follows:

§ 0.1 Cross-reference to employees ethical conduct standards and financial disclosure regulations.

Employees of the Department of Housing and Urban Development (Department) are subject to the executive branch-wide standards of ethical conduct at 5 CFR part 2635 and the Department regulation at 5 CFR Chapter LXV which supplements the executive branch-wide standards, and the executive branch-wide financial disclosure regulation at 5 CFR part 2634.

(5 U.S.C. 7301; 42 U.S.C. 3535(d)).

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