

**§ 73.735-802**

organization to show consideration of the employee.

*Example 1:* An employee of the Department sends resumes and cover letters to fifty prospective employers, all of whom regularly have dealings with HHS. Forty employers do not respond; however, ten respond with cordial form letters stating that the employee's resume will be retained for future reference. For purposes of the 18 U.S.C. 208 prohibition, the employee is negotiating for prospective employment at the time he or she sends resumes.

*Example 2:* At a site visit to a grantee institution, an employee who is officially responsible for a grant to that institution informs an officer of the institution that he or she is seeking a new position outside HHS. The grantee subsequently makes a conditional offer of employment to the employee who promptly responds by asking for an opportunity to discuss salary and related matters. Under these circumstances, a negotiation for prospective employment is underway.

(c) An employee may obtain approval to participate in his or her official capacity in a matter in which he or she has a direct or indirect financial interest, if the interest is not so substantial as to affect the integrity of his or her official duties. An employee who believes that such participation is warranted should follow the procedures in § 73.735-804.

(d) An employee convicted of violating 18 U.S.C. 208 may be fined up to \$10,000, or imprisoned up to two years, or both.

**§ 73.735-802 Executive order prohibitions.**

(a) *Basic prohibition of Executive Order 11222.* (1) An employee shall not have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his or her duties as a Federal employee.

(2) An employee need not have a financial interest that actually conflicts with his or her duties to violate the prohibition of E.O. 11222. Any financial interest that could reasonably be viewed as an interest which might compromise the employee's integrity, whether or not this is in fact true, is subject to this prohibition.

(3) Except as provided in § 73.735-802 (b) and (c), an employee who has an indirect financial interest in a business entity through the ownership of shares in a widely-held mutual fund or other

**45 CFR Subtitle A (10-1-10 Edition)**

regulated investment company will not violate E.O. 11222. Stocks in business entities held by an intermediary such as a mutual fund are generally too remote or inconsequential to affect the integrity of an employee's services.

(b) *Employees in regulatory activities.*

(1) An employee who is working in a regulatory activity shall not have a financial interest in any company whose business activities are subject to the regulations of the particular activity with which the employee is associated, unless the regulated activities of the company are an insignificant part of its total business operations.

(2) An employee working in a regulatory activity may not hold shares in a mutual fund or other regulated investment company which specializes in holdings in industries that are regulated by the particular activity in which he or she is employed.

*Example:* An employee working for the Bureau of Laboratories, Centers for Disease Control, may not hold shares in a regulated investment company which specializes in holdings that include medical testing laboratories.

(c) Employees having procurement or contracting responsibilities.

(1) An employee who serves as a procurement or contracting officer shall not have a financial interest in a company or companies with which he or she in the course of his or her official duties would be likely to have procurement or contracting relationships.

(2) A procurement or contracting officer may not hold shares in a mutual fund or other regulated investment company that specializes in holdings in industries with which such officer would be likely to have procurement or contracting relationships.

*Example:* A contracting officer in the Social Security Administration owns shares in the XYZ Mutual Fund which specializes in stock in firms manufacturing electronic data processing equipment. Ownership of XYZ Mutual Fund shares would be prohibited in this instance. On the other hand, a contracting officer for a Public Health Service hospital, who is not likely to have responsibility for major contracts relating to electronic data processing, could hold such shares.