

# Rules and Regulations

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## FEDERAL HOUSING FINANCE AGENCY

### 5 CFR Chapter LXXX

RIN 2590-AA02, 3209-AA15

#### Supplemental Standards of Ethical Conduct for Employees of the Federal Housing Finance Agency

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** Final rule.

**SUMMARY:** The Federal Housing Finance Agency (FHFA) is publishing a final regulation, with the concurrence of the Office of Government Ethics, which supplements the Standards of Ethical Conduct for Employees of the Executive Branch. To ensure a comprehensive and effective ethics program at FHFA and to address ethical issues unique to FHFA, the final regulation establishes prohibitions on the ownership of certain financial interests and restrictions on outside employment and business activities.

**DATES:** This regulation is effective August 27, 2010.

**FOR FURTHER INFORMATION CONTACT:** Sean Dent, Associate General Counsel, (202) 414-3099 (not a toll-free number), Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877-8339.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Housing and Economic Recovery Act of 2008 (HERA), Public Law 110-289, 122 Stat. 2654, amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) (Safety and Soundness Act), and the Federal Home Loan Bank Act (12 U.S.C. 1421-1449) to establish FHFA as an independent

agency of the Federal Government.<sup>1</sup> FHFA was established to oversee the prudential operations of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation (collectively, enterprises), and the Federal Home Loan Banks (Banks) (collectively, regulated entities) and to ensure that they operate in a safe and sound manner including being capitalized adequately; foster liquid, efficient, competitive and resilient national housing finance markets; comply with the Safety and Soundness Act and rules, regulations, guidelines and orders issued by the Director of FHFA, and the respective authorizing statutes of the regulated entities; and carry out their missions through activities authorized and consistent with the Safety and Soundness Act and their authorizing statutes; and, that the activities and operations of the regulated entities are consistent with the public interest.

#### II. Proposed Regulation; Comments Received; Technical Revisions

##### Proposed Regulation

Executive Order 12674, as amended by Executive Order 12731, authorized the United States 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).<sup>2</sup> 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. With such concurrence, FHFA published proposed supplemental rules for comment on April 16, 2010 (75 FR 19909).

<sup>1</sup> See Division A, titled the "Federal Housing Finance Regulatory Reform Act of 2008," Title I, § 1101 of HERA.

<sup>2</sup> 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, 60 FR 6390-6391, 60 FR 66857-66858, and 61 FR 40950-40952.

#### Comments Received

FHFA received and considered two comments from one member of the public. The first comment relates to § 9001.101. That section, as proposed, contains cross-references to other executive branch ethics regulations and a subsequent employment restriction of section 1317D of the Safety and Soundness Act, 12 U.S.C. 4523, applicable to certain highly compensated former FHFA officers and employees. Section 1317D prohibits such highly compensated former FHFA officers and employees from accepting compensation from an enterprise under section 1317D of the Safety and Soundness Act for two years after leaving FHFA. The commenter believes that this statutory restriction is inconsistent with the government-wide post-employment restrictions of 18 U.S.C. 207(a)(1) and (2) and 5 CFR 2635.601. FHFA notes that the section 1317D statutory restriction is in addition to the government-wide post-employment restrictions of 18 U.S.C. 207(a)(1) and (2) and 5 CFR 2635.601. Thus, FHFA has determined that a revision to § 9001.101 is not needed.

The second comment relates to §§ 9001.104 and 9001.106. Section 9001.104(a) prohibits FHFA employees and the employees' spouse and minor children from owning or controlling certain financial interests that are related to or affected by the operations of FHFA, such as securities owned, issued, guaranteed, securitized, or collateralized by the regulated entities. Section 9001.106 prohibits an employee of FHFA from participating in any matter in which a regulated entity is a party if the regulated entity employs, as an employee or consultant, his or her spouse, child, parent, or sibling, or member of his or her household unless the Designated Agency Ethics Official has authorized the employee to participate in the matter using the standard in 5 CFR 2635.502(d).

The commenter noted that the application of the two sections to family members differs. The restriction prohibiting the ownership or control of certain financial interests applies only to the employee's spouse and minor children, while the restriction relating to employment by a regulated entity has a broader application in that it applies to the employee's spouse, child, or sibling, or a member of his or her

household. The commenter believes that FHFA's inclusion of family and household members in § 9001.106 but not in § 9001.104 might lead the public to question the different treatment and increase public uncertainty and confusion and make it more difficult for employees to distinguish between the restrictions that apply.

The different application of the two sections conforms to law and regulation. FHFA notes that the restriction in § 9001.104 prohibiting the ownership or control of certain financial interests conforms to the scope of the government-wide conflicting financial interests law at 18 U.S.C. 208, which applies to the employee and to the employee's spouse and minor children, individuals whose financial interests are by law attributed to the employee. The requirement to receive prior approval before employment by a regulated entity of the employee's spouse, child, sibling, or a member of his or her household in § 9001.106 is intended to determine whether the employment could raise questions about the employee's impartiality in performing his or her duties under the Standards.

*Issuance of Final Regulation With Technical and Clarifying Revisions; Immediate Effective Date*

Section 9001.101 has been revised to add a reference to the regulation concerning the post-employment restriction for senior examiners at 12 CFR part 1212. Clarifying provisions have been added to §§ 9001.104(d) and 9001.105(b), as discussed below under the Section-by-Section Analysis.

FHFA, with the concurrence of OGE, has determined that the following supplemental rules that are contained in the proposed regulation, which adds a new 5 CFR chapter LXXX, consisting of part 9001, are necessary to implement successfully the ethics program of FHFA in light of the unique programs and operations of FHFA. Thus, FHFA is publishing as final the regulation as proposed with the technical revisions noted above. The final regulation has an immediate effective date for good cause. The final regulation, which affects only FHFA employees, is necessary to ensure the public trust in FHFA operations and it provides employees with adequate notice and time to report prohibited holdings and outside employment.

**III. Section-by-Section Analysis**

The following is a section-by-section analysis of the regulation.

*Section 9001.101 General*

Section 9001.101 explains that the regulation applies to all employees of

FHFA and supplements the Standards found in 5 CFR part 2635. It also requires that employees of FHFA must comply with the Standards, this part, guidance and procedures established pursuant to this part, the regulation concerning the post-employment restriction for senior examiners at 12 CFR part 1212, and any additional rules of conduct that FHFA is authorized to issue. It also notes that employees should contact the Designated Agency Ethics Official (DAEO) if they have questions about any provision of this regulation or other ethics-related matters.

The section also contains cross-references to other executive branch ethics regulations and a subsequent employment restriction of section 1317D of the Safety and Soundness Act, 12 U.S.C. 4523, applicable to certain highly compensated former FHFA officers and employees, including FHFA Director, along with an annual employee notification requirement as to that statutory restriction. Section 1317D prohibits such highly compensated former FHFA officers and employees, and the Director, from accepting compensation from an enterprise under section 1317D of the Safety and Soundness Act for two years after leaving FHFA.

*Section 9001.102 Definitions*

Section 9001.102 defines the key terms used in the regulation.

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

*Designated Agency Ethics Official*, or *DAEO*, as also used in 5 CFR part 2635, and "alternate DAEO" are defined as the individuals so designated by the Director, FHFA. The DAEO is responsible for designating agency ethics officials and ethics designees, as such terms are used in 5 CFR part 2635. The alternate DAEO acts as the DAEO in the DAEO's absence.

*Director* is defined to mean the Director of FHFA or his or her designee.

*Employee* is defined to mean an officer or employee of FHFA, including a special Government employee. For purposes of this part, it also is defined as an individual on detail from another agency to FHFA for a period of more than 30 days.

*Enterprise* is defined as the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

*Federal Home Loan Bank* or *Bank* is defined to mean a Bank established under the Federal Home Loan Bank Act; the term "Federal Home Loan Banks"

means, collectively, all the Federal Home Loan Banks.

*Federal Home Loan Bank System* is defined to mean the Federal Home Loan Banks under the supervision of FHFA.

*Regulated entity* is defined to mean the Federal National Mortgage Association and any affiliate thereof; the Federal Home Loan Mortgage Corporation and any affiliate thereof; or any Federal Home Loan Bank; the term "regulated entities" means, collectively, the Federal National Mortgage Association and any affiliate thereof; the Federal Home Loan Mortgage Corporation and any affiliate thereof; and the Federal Home Loan Banks.

*Safety and Soundness Act* is defined to mean the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*), as amended by the Housing and Economic Recovery Act of 2008 (HERA), Public Law 110-289, 122 Stat. 2654 (2008).

*Security* is defined to mean 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. Such interest includes any right to acquire or dispose of any long or short position in such securities and also 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, such as checking, savings, or money market deposit accounts.

*Section 9001.103 Waivers*

Section 9001.103 authorizes the DAEO to grant employees of FHFA written waivers of any provision of the FHFA regulation 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 is not necessary to ensure public confidence in the impartiality and objectivity with which the programs of FHFA are administered. In granting a waiver under § 9001.103, the DAEO may 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 will impose

on employees of FHFA 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 9001.104 Prohibited Financial Interests*

Section 9001.104(a) prohibits FHFA employees and the employees' spouse and minor children from owning or controlling certain financial interests that are related to or affected by the operations of FHFA, such as securities owned, issued, guaranteed, securitized, or collateralized by the regulated entities. This prohibition does not apply to special Government employees.<sup>3</sup> The prohibition of § 9001.104(a) is based on the view of FHFA that permitting FHFA employees and their spouse and minor children directly or indirectly to own or control securities owned, issued, guaranteed, securitized, or collateralized by the regulated entities would cause a reasonable person to question the impartiality with which FHFA programs are administered. Specifically, FHFA believes that there is a direct and appropriate nexus between the prohibition against owning or controlling such securities as applied both to employees and to the spouses and minor children of employees and the efficiency of the service.

In addition, while Federal conflict of interest statutes and the Standards prohibit an employee of FHFA from participating in matters in which the employee or the employee's spouse or minor children have a conflicting financial interest, FHFA has determined that a broader ban is more effective in ensuring that no reasonable person could question the impartiality and objectivity of the agency's actions. The broader ban of § 9001.104(a) establishes a clear prohibition that will be easily understood by observers of FHFA.

Moreover, the prohibition will substantially reduce the burden on FHFA and FHFA employees to determine the scope of the prohibition for each employee. By promulgating a broad ban that excludes all securities owned, issued, guaranteed, securitized, or collateralized by the regulated entities, § 9001.104(a) will substantially reduce the need for FHFA employees,

the DAEO, and other agency ethics officials or counselors to determine the financial interests prohibited by each employee's duties.

Section 9001.104(b) also attributes to an FHFA employee, or to the employee's spouse and minor children, securities he or she is prohibited from holding directly by § 9001.104(a) that are held by certain described third-party entities.

Section § 9001.104(c) permits an FHFA employee and the employee's spouse and minor children to own interests in publicly-traded or publicly-available diversified mutual or other collective diversified investment funds that contain within their portfolios interests that they are prohibited from holding by § 9001.104(c). Under this provision, ownership of such investment funds are permitted as long as the employee or the employee's spouse or minor children do 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 securities of a regulated entity or the regulated entities generally, and less than 25 percent of the total holdings of the fund are comprised of securities owned, issued, guaranteed, securitized, or collateralized by one or more regulated entities.

This exception to § 9001.104(a) reflects the view of FHFA that the prohibition on owning or controlling securities of the regulated entities should not be extended to publicly-traded or publicly-available mutual funds or other collective investment funds that are diversified and over which employees have no control, since it would be unreasonable to require employees to divest themselves of such mutual funds based on investment decisions in which they played no role. FHFA believes that allowing an FHFA employee and the employee's spouse and minor children to own interests in publicly-traded or publicly-available diversified mutual funds and collective investment funds will not endanger the impartiality or objectivity of FHFA, even if these funds held some limited interest in securities owned, issued, guaranteed, securitized, or collateralized by one or more of the regulated entities.

Section 9001.104(d) requires employees of FHFA, within 30 calendar days commencement of employment, to report to the DAEO in writing all financial interests that they acquired prior or the commencement of their employment, and that they are prohibited from holding by § 9001.104(a). Employees are required to divest such interests, within 90 calendar days of the date reported, unless they

receive a written waiver from the DAEO in accordance with § 9001.103. The section imposes a similar reporting and divestiture requirement upon employees who acquire, without specific intent, financial interests prohibited by § 9001.104(a). Section 9001.104(d) has been clarified to provide expressly that the reporting and divestiture requirements also apply to prohibited financial interests acquired prior to the effective date of this part.

*Section 9001.105 Outside Employment*

This section is designed to balance several important ethical principles against an employee's right to engage in outside activities. Paragraph (a) of the section prohibits an FHFA employee, except for a special Government employee, from engaging in paid or unpaid employment with (1) a person, other than a State or local government, who is a registered lobbyist engaged in lobbying activities concerning FHFA programs; (2) any regulated entity, or (3) the Office of Finance of the Federal Home Loan Bank System. FHFA is of the view that such a 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 programs of FHFA. FHFA believes that it will hinder FHFA in meeting its missions if members of the public could question whether employees are using their public positions or connections at FHFA to advance alternate careers.

Furthermore, in accordance with 5 CFR 2635.803, FHFA is of the view that it is necessary or desirable for the purpose of administering its ethics program to require FHFA employees to obtain approval before engaging in outside employment or activities. An approval requirement helps ensure that potential ethical problems are resolved before employees begin outside employment or activities that could involve a violation of applicable statutes and standards of conduct.

Thus, § 9001.105(b)(1) provides that an FHFA employee, other than a special Government employee, must obtain advance written approval from the employee's supervisor and the concurrence of the DAEO before engaging in any outside employment.

FHFA has added clarifying language to § 9001.105(b)(2) addressing outside employment commenced by employees before the effective date of this part. An employee who commenced engaging in any outside employment not prohibited under § 9001.105(a) before the effective date of this part must request written approval from his or her supervisor and

<sup>3</sup> The term "special Government employee" is defined in 5 CFR 2635.102 to mean "those executive branch officers or employees specified in 18 U.S.C. 202(a). A special Government employee is retained, designated, appointed, or employed to perform temporary duties either on a full-time or intermittent basis, with or without compensation, for a period not to exceed 130 days during any consecutive 365-day period."

the concurrence of the DAEO within 30 calendar days of the effective date. The employee may continue engaging in the outside employment while the request is under review.

Section 9001.105(b)(2) also addresses outside employment by new employees. An employee who before being employed by FHFA commenced engaging in any outside employment not prohibited under § 9001.105(a) must request written approval from his or her supervisor and the concurrence of the DAEO within 30 calendar days of commencing employment with FHFA. The new employee may continue engaging in the outside employment while the request is under review.

Paragraph (c) to § 9001.105 broadly defines outside employment to cover any form of non-Federal employment or business relationship involving the provision of personal services, whether or not for compensation, other than in the discharge of official duties. It also includes writing when done under an arrangement with another person or entity for production or publication of the written product. It does not, however, include participation in the activities of nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organizations, unless such activities are for (1) compensation other than reimbursement of expenses, (2) the organization's activities are devoted substantially to matters relating to the employee's official duties as defined in 5 CFR 2635.807(a)(2)(i)(B) through (E) and the employee will serve as officer or director of the organization, or (3) the activities will involve the provision of consultative or professional services.

*Consultative services* is defined to mean the provision of personal services by an employee, including the rendering of advice or consultation, which requires advanced knowledge in a field of science or learning customarily acquired by a course of specialized instruction and study in an institution of higher education, hospital, or similar facility.

*Professional services* is defined to mean the provision of personal services by an employee, including the rendering of advice or consultation, which involves application of the skills of a profession as defined in 5 CFR 2636.305(b)(1) or involves a fiduciary relationship as defined in 5 CFR 2636.305(b)(2).

A note following paragraph (c) of § 9001.105 pertains to the special approval requirement set out in both 18 U.S.C. 203(d) and 205(e), respectively, for certain representational activities otherwise covered by the conflict of interest restrictions on compensation and activities of employees in claims

against and other matters affecting the Government. The note explains that an employee who wishes to act as agent or attorney for, or otherwise represent his or her parents, spouse, children, or any person for whom, or any estate for which, he or she is serving as guardian, executor, administrator, trustee, or other personal fiduciary in such matters must obtain the approval required by law of the Government official responsible for the employee's appointment in addition to the regulatory approval that is required in § 9001.105.

Section 9001.105(d) sets out the procedures for requesting prior approval to engage in outside employment initially, or within seven calendar days of a significant change in the nature or scope of the outside employment or the employee's official position. Paragraph (e) of § 9001.105 provides that the concurrence of the DAEO will be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and this part.

Section 9001.105(f) provides that the DAEO may issue written instructions governing the submission of requests for approval of and concurrence with outside employment. The written instructions may exempt categories of employment from the prior approval and concurrence requirement based on a determination that employment within those categories will generally be approved and will likely not involve conduct prohibited by Federal law or regulation, including 5 CFR part 2635 and this part.

#### Section 9001.106 *Restrictions Resulting From Employment of Family and Household Members*

Section 9001.106 prohibits an employee of FHFA from participating in any matter in which a regulated entity is a party if the regulated entity employs, as an employee or consultant, his or her spouse, child, parent, or sibling, or member of his or her household unless the DAEO has authorized the employee to participate in the matter using the standard in 5 CFR 2635.502(d). Section 9001.106 requires such an employee to make a written report to the DAEO within 30 calendar days of employment by a regulated entity of the employee's spouse, child, parent, sibling, or member of his or her household. This requirement is intended to eliminate the potential for any appearance of preferential treatment in those instances where employment of a family member or a member of the employee's household would be likely to raise

questions regarding the appropriateness of actions taken by the employee or FHFA.

#### Section 9001.107 *Other Limitations*

Section § 9001.107(a) references the statutory restriction on financial interests applicable to the Director, the Deputy Director of the Division of Enterprise Regulation, the Deputy Director of the Division of Federal Home Loan Bank Regulation, and the Deputy Director for Housing Mission and Goals. These individuals are subject to additional financial interest limitations set forth in section 1312(g) of the Safety and Soundness Act (12 U.S.C. 4512(g)). Section 1312(g) provides that the Director and each Deputy Director may not—

(1) Have any direct or indirect financial interest in any regulated entity or entity-affiliated party;<sup>4</sup>

(2) Hold any office, position, or employment in any regulated entity or entity-affiliated party; or

(3) Have served as an executive officer or director of any regulated entity or entity-affiliated party at any time during the three-year period preceding the date of appointment or designation of such individual as Director or Deputy Director, as applicable.

Paragraph (b) of § 9001.107 provides that if an employee or the spouse or minor children of the employee directly or indirectly owns a financial interest in a member of a Bank or in a financial institution such as a mortgage bank, mortgage broker, bank, thrift, or other financial institution that originates, insures, or services mortgages that are owned, issued, guaranteed, securitized, or collateralized by a regulated entity, the employee is cautioned not to violate the statutory prohibition against financial conflicts of interest set forth in 18 U.S.C. 208. The language notes that the government-wide *de minimis* and other exceptions set forth in 5 CFR 2640.202 are applicable to the ownership or control of interests in such financial institutions. Employees are encouraged to seek a determination from the DAEO as to whether the financial interest in the member of a Bank or in the financial institution creates a financial conflict of interest or an appearance of a conflict of interest and whether the employee should disqualify himself or herself from participating in an official capacity in a particular matter involving the financial institution.

<sup>4</sup> The term "entity-affiliated party" is defined in section 1301(11) of the Safety and Soundness Act (12 U.S.C. 4502(11)).

### Section 9001.108 Prohibited Recommendations

Section 9001.108 prohibits an employee of FHFA from recommending, suggesting, or giving advice to any person with respect to financial transactions or investment actions involving the acquisition, sale, or divestiture of securities of a regulated entity. The Standards at 5 CFR 2635.703 prohibit an employee from allowing the improper use of nonpublic information to further his or her private interest or that of another, whether through advice or recommendation or by knowing unauthorized disclosure. The section supplements 5 CFR 2635.703 in that it expressly prohibits FHFA employees from using or creating the appearance of using information that is not available to the general public to further a private interest. The prohibition is also intended to eliminate any misunderstanding or harm that could result from such a recommendation. For example, an investor should not be misled into believing, pursuant to the recommendation of an FHFA employee, that the securities of a particular regulated entity regulated by FHFA is a sound buy because the investor believes that the employee may have access to inside information.

### Section 9001.109 Prohibited Purchase of Assets

Section 9001.109 prohibits employees, the spouses of employees, and the minor children of employees of FHFA from purchasing real or personal property from the regulated entities unless it is sold at public auction or by other means that would ensure that the selling price of the property is the asset's fair market value. This prohibition supplements the general prohibition in 5 CFR 2635.702 against the use of public office for private gain.

### Regulatory Impacts

#### Paperwork Reduction Act

The regulation does not contain any information collection requirement that requires the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

#### Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the

agency has certified that the regulation does not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the regulation under the Regulatory Flexibility Act. FHFA certifies that the regulation is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to employees of FHFA.

### List of Subjects in 5 CFR Part 9001

Administration, Conflict of interests, Ethics, Government employees.

■ Accordingly, for the reasons stated in the preamble, FHFA, with the concurrence of OGE, is amending title 5 of the Code of Federal Regulations by adding a new chapter LXXX, consisting of part 9001, to read as follows:

## CHAPTER LXXX—FEDERAL HOUSING FINANCE AGENCY

### PART 9001—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE FEDERAL HOUSING FINANCE AGENCY

Sec.

- 9001.101 General.
- 9001.102 Definitions.
- 9001.103 Waivers.
- 9001.104 Prohibited financial interests.
- 9001.105 Outside employment.
- 9001.106 Restrictions resulting from employment of family and household members.
- 9001.107 Other limitations.
- 9001.108 Prohibited recommendations.
- 9001.109 Prohibited purchase of assets.

**Authority:** 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 12 U.S.C. 4526; 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, 2635.402(c), 2635.403(a), 2635.502(e), 2635.604, 2635.702, 2635.703, 2635.802(a), 2635.803.

#### § 9001.101 General.

(a) *Purpose and scope.* In accordance with 5 CFR 2635.105, the purpose of this regulation is to supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. The regulation applies to employees of the Federal Housing Finance Agency (FHFA). Employees are required to comply with 5 CFR part 2635, this part, guidance and procedures established pursuant to this part, the regulation concerning the post-employment restriction for senior examiners at 12 CFR part 1212, and any additional rules of conduct that FHFA is authorized to issue. Employees should contact the DAEO if they have questions about any

provision of this regulation or other ethics-related matters.

(b) *Cross-references—(1) Regulations.* FHFA employees are also subject to the regulations concerning executive branch financial disclosure contained in 5 CFR part 2634, the regulations concerning executive branch financial interests contained in 5 CFR part 2640, and the regulations concerning executive branch employee responsibilities and conduct contained in 5 CFR part 735.

(2)(i) *Statutory restriction.* Section 1319D of the Act, 12 U.S.C. 4523, prohibits the Director or any former officer or employee of FHFA who, while employed by FHFA, was compensated at a rate in excess of the lowest rate for a position classified higher than GS-15 of the General Schedule under section 5107 of title 5, United States Code, from accepting compensation from an enterprise during the two-year period beginning on the date of his or her separation from employment by FHFA.

(ii) *Notice to employees.* The DAEO shall notify employees on an annual basis of the rate of compensation that triggers the subsequent employment restriction.

#### § 9001.102 Definitions.

For purposes of this part, the term:

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

*Designated Agency Ethics Official*, or *DAEO*, as also used in 5 CFR part 2635, and “alternate DAEO” mean the individuals so designated by the Director, FHFA. The DAEO is responsible for designating agency ethics officials and ethics designees, as such terms are used in 5 CFR part 2635. The alternate DAEO acts as the DAEO in the DAEO’s absence.

*Director* means the Director of FHFA or his or her designee.

*Employee* means an officer or employee of FHFA, including a special Government employee. For purposes of this part, it also means an individual on detail from another agency to FHFA for a period of more than 30 calendar days.

*Enterprise* means the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

*Federal Home Loan Bank* or *Bank* means a Bank established under the Federal Home Loan Bank Act; the term “Federal Home Loan Banks” means, collectively, all the Federal Home Loan Banks.

*Federal Home Loan Bank System* means the Federal Home Loan Banks under the supervision of the Federal Housing Finance Agency.

*Regulated entity* means the Federal National Mortgage Association and any

affiliate thereof; the Federal Home Loan Mortgage Corporation and any affiliate thereof; or any Federal Home Loan Bank; the term “regulated entities” means, collectively, the Federal National Mortgage Association and any affiliate thereof; the Federal Home Loan Mortgage Corporation and any affiliate thereof; and the Federal Home Loan Banks.

*Safety and Soundness Act* means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*), as amended by the Housing and Economic Recovery Act of 2008 (HERA), Public Law 110–289, 122 Stat. 2654 (2008).

*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. Such interest includes any right to acquire or dispose of any long or short position in such securities and also 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, such as checking, savings, or money market deposit accounts.

#### § 9001.103 Waivers.

(a) *General.* The DAEQ 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 programs of FHFA 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, including but not limited to requiring the employee to execute a written disqualification statement or an agreement not to acquire additional securities.

(b) *Waiver of prohibitions relating to ownership or control of securities.* The DAEQ may grant a waiver permitting the employee or the employee's spouse or minor children to own or control, directly or indirectly, any security prohibited under § 9001.104, if, in

addition to the standards under paragraph (a) of this section:

(1) Extenuating circumstances exist, such as ownership or control of the security was acquired:

(i) Prior to employment with FHFA;

(ii) Through inheritance, gift, merger, acquisition, or other change in corporate structure, or otherwise without specific intent on the part of the employee, or employee's spouse or minor children, to acquire the security; or

(iii) By an employee's spouse or minor children as part of a compensation package in connection with employment or prior to marriage to the employee;

(2) The amount of the prohibited financial interest has a market value of less than the *de minimis* amount set forth in 5 CFR 2640.202(a);

(3) The employee makes a prompt and complete written disclosure of the interest; and

(4) If the employee is required to disqualify himself or herself from certain assignments, the disqualification does not unduly interfere with the full performance of the employee's duties.

#### § 9001.104 Prohibited financial interests.

(a) *General prohibition.* This section applies to all employees, except special Government employees. Except as permitted in paragraph (c) of this section, an employee or an employee's spouse or minor children, shall not directly or indirectly own or control securities owned, issued, guaranteed, securitized, or collateralized by a regulated entity.

(b) *Restrictions arising from third-party relationships.* If any of the entities listed in paragraphs (b)(1) through (6) of this section owns securities that an employee is prohibited from owning directly by paragraph (a) of this section, the employee is deemed to hold the securities indirectly. The entities are—

(1) A partnership in which the employee or employee's spouse or minor children are general partners;

(2) A partnership in which the employee or employee's spouse or minor children individually or jointly hold more than a 10 percent limited partnership interest;

(3) A closely held corporation in which the employee or employee's spouse or minor children individually or jointly hold more than a 10 percent equity interest;

(4) A trust in which the employee or employee's spouse or minor children have a legal or beneficial interest;

(5) An investment club or similar informal investment arrangement between the employee or employee's spouse or minor children and others; or

(6) Any other entity in which the employee or employee's spouse or minor children individually or jointly hold more than a 10 percent equity interest.

(c) *Exceptions to prohibition for certain interests.* Notwithstanding paragraphs (a) and (b) of this section, an employee or an employee's spouse or minor children may directly or indirectly own or control:

(1) A security for which a waiver has been granted pursuant to § 9001.103; and

(2) An interest in a publicly-traded or publicly-available diversified mutual fund or other collective diversified investment fund, including a widely-held pension or other retirement fund if:

(i) Neither the employee, the employee's spouse, nor the employee's minor children exercise or have the ability to exercise control over the financial interests held by the fund; and

(ii) The fund does not indicate in its prospectus the objective or practice of concentrating its investments in securities of a regulated entity or regulated entities generally, and less than 25 percent of the total holdings of the fund are comprised of securities owned, issued, guaranteed, securitized, or collateralized by one or more regulated entities.

(d) *Reporting and divestiture.* An employee must provide, in writing, to the DAEQ any financial interest prohibited under paragraph (a) of this section acquired prior to the effective date of this part or the commencement of employment with FHFA or without specific intent, as through gift, inheritance, or marriage, within 30 calendar days from the effective date of this part, commencement of employment with FHFA, or acquisition of such interest. Such financial interest must be divested within 90 calendar days from the date reported unless a waiver is granted in accordance with § 9001.103.

#### § 9001.105 Outside employment.

(a) *Prohibited outside employment.* Employees, except special Government employees, shall not engage in:

(1) Employment with a person or entity, other than a State or local government, that is registered as a lobbyist under the Lobbying Disclosure Act of 1995 (2 U.S.C. chapter 26) and engages in lobbying activities concerning FHFA programs; or

(2) Employment with any regulated entity or with the Office of Finance of the Federal Home Loan Bank System.

(b) *Prior approval for and concurrence with other outside employment.* (1) Except as provided in

paragraph (b)(2) of this section, before engaging in any outside employment that is not prohibited under paragraph (a) of this section, with or without compensation, an employee, other than a special Government employee, must obtain written approval from his or her supervisor and the concurrence of the DAEO. Nonetheless, special Government employees remain subject to other statutory and regulatory provisions governing their outside activities, including 18 U.S.C. 203(c) and 205(c), as well as applicable provisions of 5 CFR part 2635.

(2) An employee, other than a special Government employee, who before the effective date of this part or commencement of employment with FHFA commenced engaging in outside employment that is not prohibited under paragraph (a) of this section must request written approval from his or her supervisor and the concurrence of the DAEO within 30 calendar days of the effective date of this part or commencement of employment with FHFA. The employee may continue engaging in the outside employment while the request is under review.

(c) *Definition of outside employment.* For purposes of paragraph (b) of this section, *outside employment* means any form of non-Federal employment or business relationship involving the provision of personal services, whether or not for compensation. It includes, but is not limited to, services as an officer, director, employee, agent, advisor, attorney, consultant, contractor, general partner, trustee, teacher, or speaker. It includes writing when done under an arrangement with another person or entity for production or publication of the written product. The definition does not include positions as trustee for a family trust for which the only beneficiaries are the employee, the employee's spouse, the employee's minor or dependent children, or any combination thereof. The definition also does not include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service or civic organization, unless:

(1) The employee will receive compensation other than reimbursement of expenses;

(2) The organization's activities are devoted substantially to matters relating to the employee's official duties as defined in 5 CFR 2635.807(a)(2)(i)(B) through (E) and the employee will serve as officer or director of the organization; or

(3) The activities will involve the provision of consultative or professional services. *Consultative services* means

the provision of personal services by an employee, including the rendering of advice or consultation, which requires advanced knowledge in a field of science or learning customarily acquired by a course of specialized instruction and study in an institution of higher education, hospital, or similar facility. *Professional services* means the provision of personal services by an employee, including the rendering of advice or consultation, which involves application of the skills of a profession as defined in 5 CFR 2636.305(b)(1) or involves a fiduciary relationship as defined in 5 CFR 2636.305(b)(2).

**Note to § 9001.105(c):** There is a special approval requirement set out in both 18 U.S.C. 203(d) and 205(e), respectively, for certain representational activities otherwise covered by the conflict of interest restrictions on compensation and activities of employees in claims against and other matters affecting the Government. Thus, an employee who wishes to act as agent or attorney for, or otherwise represent his or her parents, spouse, children, or any person for whom, or any estate for which, he or she is serving as guardian, executor, administrator, trustee, or other personal fiduciary in such matters must obtain the approval required by law of the Government official responsible for the employee's appointment in addition to the regulatory approval required in this section.

(d) *Procedure for requesting approval and concurrence*—(1) The approval required by paragraph (b) of this section shall be requested by e-mail or other form of written correspondence in advance of engaging in outside employment as defined in paragraph (c) of this section.

(2) The request for approval to engage in outside employment shall set forth, at a minimum:

- (i) The name of the employer or organization;
- (ii) The nature of the activity or other work to be performed;
- (iii) The title of the position; and
- (iv) The estimated duration of the outside employment.

(3) Upon a significant change in the nature or scope of the outside employment or in the employee's official position within FHFA, the employee must, within seven calendar days of the change, submit a revised request for approval and concurrence.

(e) *Standard for concurrence.* The DAEO may concur with the supervisor's approval required by paragraph (b) of this section only upon his or her written determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and this part.

(f) *Issuance of instructions.* The DAEO may issue written instructions

governing the submission of requests for approval of and concurrence with outside employment under paragraph (d) of this section. The instructions may exempt categories of employment from the prior approval and concurrence requirement of paragraph (b) of this section based on a determination by the DAEO that employment within those categories of employment will generally be approved and is not likely to involve conduct prohibited by Federal law or regulation, including 5 CFR part 2635 and this part.

**§ 9001.106 Restrictions resulting from employment of family and household members.**

(a) *Disqualification of employee.* An employee may not participate in any particular matter in which a regulated entity is a party if the regulated entity employs as an employee or a consultant his or her spouse, child, parent, or sibling, or member of his or her household unless the DAEO has authorized the employee to participate in the matter using the standard set forth in 5 CFR 2635.502(d).

(b) *Reporting certain relationships.* Within 30 calendar days of the spouse, child, parent, sibling, or member of the employee's household being employed by the regulated entity, the employee shall provide in writing notice of such employment to the DAEO.

**§ 9001.107 Other limitations.**

(a) *Director and Deputy Directors.* The Director, the Deputy Director of the Division of Enterprise Regulation, the Deputy Director of the Division of Federal Home Loan Bank Regulation, and the Deputy Director for Housing Mission and Goals are subject to additional financial interest limitations as set forth in section 1312(g) of the Safety and Soundness Act, 12 U.S.C. 4512(g).

(b) *Financial interests in Bank members and other financial institutions.* If an employee or the spouse or minor children of the employee directly or indirectly owns a financial interest in a member of a Bank or in a financial institution such as a mortgage bank, mortgage broker, bank, thrift, or other financial institution that originates, insures, or services mortgages that are owned, guaranteed, securitized, or collateralized by a regulated entity, the employee is cautioned not to violate the statutory prohibition against financial conflicts of interest set forth in 18 U.S.C. 208. The government-wide *de minimis* and other exceptions set forth in 5 CFR 2640.202 are applicable to the ownership or control of interests in such financial

institutions. Employees are encouraged to seek a determination from the DAEO as to whether the financial interest in the member of the Bank or in the financial institution creates a financial conflict of interest or an appearance of a conflict of interest and whether the employee should disqualify himself or herself from participating in an official capacity in a particular matter involving the financial institution.

#### **§ 9001.108 Prohibited recommendations.**

Employees shall not make any recommendation or suggestion, directly or indirectly, concerning the acquisition, sale, or divestiture of securities of a regulated entity.

#### **§ 9001.109 Prohibited purchase of assets.**

An employee or the employee's spouse or minor children shall not purchase, directly or indirectly, any real or personal property from a regulated entity, 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.

Dated: August 3, 2010.

**Edward J. DeMarco,**

*Acting Director, Federal Housing Finance Agency.*

Approved: August 13, 2010.

**Robert I. Cusick,**

*Director, Office of Government Ethics.*

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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 25**

**[Docket No. NM433; Special Conditions No. 25-411-SC]**

#### **Special Conditions: Embraer Model ERJ 170-100 SU Series Airplanes; Seats With Non-Traditional, Large, Non-Metallic Panels**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for the Embraer Model ERJ 170-100 SU series airplanes. These airplanes, as modified by C&D Zodiac, Inc., will have a novel or unusual design feature associated with seats that include non-traditional, large, non-metallic panels that would affect survivability during a post-crash fire event. The applicable airworthiness regulations do not contain adequate or

appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is August 18, 2010. We must receive your comments by September 27, 2010.

**ADDRESSES:** You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM-113), Docket No. NM433, 1601 Lind Avenue, SW., Renton, Washington 98057-3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM433. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:**  
Jayson Claar, FAA, ANM-115, Transport Airplane Directorate, Aircraft Certification Service, 16501 Lind Avenue, SW., Renton, WA 98057-3356; telephone (425) 227-2194; facsimile (425) 227-1232.

#### **SUPPLEMENTARY INFORMATION:**

The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public-comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

#### **Comments Invited**

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this

preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to acknowledge receipt of your comments on these special conditions, include with your comments a self-addressed, stamped postcard on which you have written the docket number. We will stamp the date on the postcard and mail it back to you.

#### **Background**

On June 16, 2010, C&D Zodiac, Inc., 5701 Bolsa Ave., Huntington Beach, California 92647, applied for a Supplemental Type Certificate (STC) for an interior modification to include seats with large, non-metallic panels in the cabin interior in the Embraer Model ERJ 170-100 SU series airplanes. The Model ERJ 170-100 SU, which is currently approved under Type Certificate No. A56NM, is a 76 passenger, twin-engine regional jet with a maximum takeoff weight of 82,011 pounds.

The applicable airplane regulations, currently approved under Title 14, Code of Federal Regulations (14 CFR) part 25, do not require seats to meet the more-stringent flammability standards required of large, non-metallic panels in the cabin interior. At the time the applicable rules were written, seats were designed with a metal frame covered by fabric, not with large, non-metallic panels. Seats also met the then-recently adopted standards for flammability of seat cushions. With the seat design being mostly fabric and metal, the contribution to a fire in the cabin had been minimized and was not considered a threat. For these reasons, seats did not need to be tested to heat-release and smoke-emission requirements.

Seat designs have now evolved to occasionally include non-traditional, large, non-metallic panels. Taken in total, the surface area of these panels is on the same order as the sidewall and overhead stowage bin interior panels. To provide the level of passenger protection intended by the airworthiness standards, these non-traditional, large, non-metallic panels in the cabin must meet the standards of part 25, Appendix F, parts IV and V, heat-release and smoke-emission requirements.