

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.