

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FEDERAL HOUSING FINANCE AGENCY

### 5 CFR Chapter LXXX

RINs 2590-AA02, 3209-AA15

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

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Housing Finance Agency (FHFA) is issuing and seeking comment on a proposed regulation, with the concurrence of the Office of Government Ethics, which would supplement 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 proposed regulation would establish prohibitions on the ownership of certain financial interests and restrictions on outside employment and business activities.

**DATES:** Comments regarding the notice of proposed rulemaking must be received on or before May 17, 2010. For additional information, see

#### SUPPLEMENTARY INFORMATION.

**ADDRESSES:** You may submit your comments on the proposed rulemaking, identified by "RIN 2590-AA02," by any of the following methods:

- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel; Attention: Comments/RIN 2590-AA02, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.

- *Hand Delivery/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel; Attention: Comments/RIN 2590-AA02, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard

Desk, First Floor, on business days between 9 a.m. and 5 p.m.

- *E-mail:* Comments to Alfred M. Pollard, General Counsel, may be sent by e-mail at [RegComments@FHFA.gov](mailto:RegComments@FHFA.gov). Please include "RIN 2590-AA02" in the subject line of the message.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

#### FOR FURTHER INFORMATION CONTACT:

Isabella Sammons, Deputy General Counsel, telephone (202) 414-3790 (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. Comments

The Federal Housing Finance Agency (FHFA) invites comment on all aspects of the proposed regulation, and will take all relevant comments into consideration before issuing the final regulation.

Copies of all comments will be posted on the FHFA internet Web site at <http://www.fhfa.gov>. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m. at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414-3751.

##### II. 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.

The Office of Federal Housing Enterprise Oversight (OFHEO) and the Federal Housing Finance Board (FHFB) were abolished one year after enactment of the HERA. However, the regulated entities continue to operate under regulations promulgated by OFHEO and FHFB; and such regulations are enforceable by the Director of FHFA until such regulations are modified, terminated, set aside, or superseded by the Director of FHFA.<sup>2</sup>

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>3</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. The FHFA, with the concurrence of OGE, has determined that the following supplemental rules contained in the proposed regulation, which would add a new 5 CFR chapter LXXX, consisting of part 9001, are necessary to implement successfully the ethics program of FHFA in light of the

<sup>2</sup> See sections 1302 and 1312 of HERA.

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

<sup>3</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.

unique programs and operations of FHFA.

### III. Section-by-Section Analysis

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

#### Section 9001.101 General

Proposed § 9001.101 explains that the proposed regulation would apply to all employees of FHFA and would supplement the Standards found in 5 CFR part 2635. It would also require that employees of FHFA must comply with the Standards, this part, guidance, and procedures established pursuant to this part, 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 proposed 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 the 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

Proposed § 9001.102 defines the key terms used in the proposed regulation.

*Affiliate* would be 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” would be 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. As proposed, the alternate DAEO would act as the DAEO in the DAEO’s absence.

*Director* would be defined as the Director of FHFA or his or her designee.

*Employee* would be defined as an officer or employee of FHFA, including a special Government employee. For purposes of this part, it also would be defined as an individual on detail from

another agency to FHFA for a period of more than 30 days.

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

*Federal Home Loan Bank* or *Bank* would be defined as 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* would be defined as the Federal Home Loan Banks under the supervision of FHFA.

*Regulated entity* would be defined as 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* would be 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* would be defined as 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

Proposed § 9001.103 would authorize the DAEO to grant employees of FHFA written waivers of any provision of the proposed 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 would not be necessary to ensure public confidence in the impartiality and objectivity with which the programs of FHFA are administered. In granting a waiver under proposed § 9001.103, the DAEO may require the employee to take further action, including executing a written disqualification statement. This proposed provision is intended, in appropriate cases, to ease the burden that these supplemental regulations as proposed would 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

Proposed § 9001.104(a) would prohibit 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 would not apply to special Government employees.<sup>4</sup> The prohibition of proposed § 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 would be more effective in ensuring that no reasonable

<sup>4</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.”

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 proposed prohibition would substantially reduce the burden on the 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, proposed § 9001.104(a) would 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. The proposed rule should be easier for FHFA to implement and for employees to follow.

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

Proposed § 9001.104(c) would permit 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 would be prohibited from holding by proposed § 9001.104(c). Under this provision, ownership of such investment funds would be 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 proposed § 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 would not endanger the impartiality or objectivity of FHFA, even if these funds held some limited interest in securities owned, issued, securitized, guaranteed, or collateralized by one or more of the regulated entities.

Proposed § 9001.104(d) would require new employees of FHFA, within 30 days of commencing employment, to provide to the DAEO in writing all financial interests acquired prior to the commencement of their employment with FHFA that they are prohibited from holding by § 9001.104(a). Employees would be required to divest such interests, within 90 days of the date reported, unless they receive a written waiver from the DAEO in accordance with § 9001.103. The proposed section would impose a similar reporting and divestiture requirement upon employees who acquire, without specific intent, financial interests prohibited by § 9001.104(a).

#### *Section 9001.105 Outside Employment*

The proposed regulation is designed to balance several important ethical principles against an employee's right to engage in outside activities. Paragraph (a) of the proposed section would prohibit 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 the 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 would 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 would help to 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, proposed § 9001.105(b) would provide 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. Proposed 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 compensation other than reimbursement of expenses, 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 the activities will involve the provision of consultative or professional services. *Consultative services* is proposed 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 proposed 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 proposed 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, as proposed, 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 would be required in proposed § 9001.105.

As proposed, § 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. Proposed paragraph (e) of § 9001.105 would provide that approval would 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 proposed part.

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

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

Proposed § 9001.106 would prohibit 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). Proposed § 9001.106 would require such an employee to make a written report to the DAEO within 30 days of the 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*

Proposed § 9001.107(a) would reference 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>5</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 3-year period preceding the date of appointment or designation of such individual as Director or Deputy Director, as applicable.

Proposed paragraph (b) of § 9001.107 would provide 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 proposed language would note 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.

#### *Section 9001.108 Prohibited Recommendations*

Proposed § 9001.108 would prohibit 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 proposed section would supplement 5 CFR 2635.703 in that the section expressly would prohibit 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 proposed 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*

Proposed § 9001.109 would prohibit 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. It is proposed as a supplement to the general prohibition in 5 CFR 2635.702 against the use of public office for private gain.

#### **Regulatory Impacts**

##### *Paperwork Reduction Act*

The proposed 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 proposed regulation under the Regulatory

<sup>5</sup> The term "entity-affiliated party" is defined in section 1301(11) of the Safety and Soundness Act (12 U.S.C. 4502(11)).

Flexibility Act. FHFA certifies that the proposed 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, Conflicts of interest, Ethics, Government employees.

Accordingly, for the reasons stated in the preamble, FHFA, with the concurrence of OGE, is proposing to amend 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, and any additional rules of conduct that the 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 the FHFA who, while employed by the 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 the 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 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 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 programs of the 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 DAEO 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 would be 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 DAEO any financial interest prohibited under paragraph (a) of this section acquired prior to the commencement of employment with the FHFA or without specific intent, as through gift, inheritance, or marriage, within 30 days from the start of employment or acquisition of such interest. Such financial interest must be divested within 90 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 the 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 other outside employment.* Before engaging in any outside employment that is not prohibited under paragraph (a) of this section, with or without compensation, an employee of the FHFA, other than a special Government employee, must obtain written approval from the employee's 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.

(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*—(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 or certain other activities shall set forth, at a minimum:

(i) The name of the employer or organization;

(ii) The nature of the legal 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.

(e) *Standard for approval*. The DAEO may grant the 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 outside employment under paragraph (d) of this section. The instructions may exempt categories of employment from the prior approval requirement of paragraph (b) of this section based on a determination by the DAEO that employment within those categories of employment would 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 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: January 18, 2010.

**Edward J. DeMarco,**

*Acting Director, Federal Housing Finance Agency.*

Approved: April 8, 2010.

**Robert I. Cusick,**

*Director, Office of Government Ethics.*

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## **DEPARTMENT OF AGRICULTURE**

### **Animal and Plant Health Inspection Service**

#### **9 CFR Part 94**

[Docket No. APHIS-2009-0034]

RIN 0579-AD12

### **Changes in Disease Status of the Brazilian State of Santa Catarina with Regard to Certain Ruminant and Swine Diseases**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations governing the importation of certain animals and animal products by adding the Brazilian State of Santa Catarina to the list of regions we recognize as free of foot-and-mouth disease, rinderpest, swine vesicular disease, classical swine fever, and African swine fever. We are proposing this action at the request of the Government of Brazil and after conducting a risk evaluation that concludes that the Brazilian State of Santa Catarina is free of these diseases. This proposed action would relieve certain restrictions on the importation into the United States of live swine, swine semen, pork meat, pork products, live ruminants, ruminant semen, ruminant meat, and ruminant products from Santa Catarina while continuing to protect against the introduction of these diseases into the United States.

**DATES:** We will consider all comments that we receive on or before June 15, 2010.

**ADDRESSES:** You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to (<http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0034>) to submit or view comments and to view supporting and related materials available electronically.

- Postal Mail/Commercial Delivery: Please send two copies of your comment to Docket No. APHIS-2009-0034,