

Supplemental Standards of Ethical Conduct for Employees of the Federal Housing Finance Agency, Proposed Rule RIN 2590-AA02

I applaud the Federal Housing Finance Agency (FHFA) for its commitment to improve public confidence in executive branch agencies by attempting to reduce reasonable uncertainty of the impartiality with which FHFA programs are administered through its Proposed Rule RIN 2590-AA02, which supplements the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. §2635. While I agree with FHFA's objectives, I believe the proposed rule needs to be modified to ensure consistency, clarity, and broader protection.

Inconsistency § 9001.101

Proposed Rule RIN 2590-AA02 explicitly lays out in § 9001.101 the statutory restriction prohibiting former FHFA employees who while employed by FHFA were compensated at a rate in excess of the lowest rate for a position classified higher than GS-15 of the General Schedule under 5 U.S.C. § 5107. However, § 9001.101 only prohibits these former employees from accepting compensation from an enterprise during the two-year period beginning on the date he or she was no longer employed with FHFA. While this prohibition is also mentioned in 18 U.S.C. § 207(a)(2), 18 U.S.C. § 207(a)(1) and 5 C.F.R. §2635.601 offer the public more security by prohibiting these former employees from engaging in employment regarding any matter or with persons whose financial interest would be affected by particular matters in which they participated "personally and substantially" while employed by an executive branch agency. I believe this additional prohibition is required to obtain the public's complete trust in the impartiality of FHFA, and it would ensure consistency and clarity among the different regulations.

Broader protection, inconsistency, and confusion between § 9001.104 and § 9001.106

FHFA attempts to reduce public uncertainty by barring an employee or an employee's spouse or minor children from directly or indirectly owning or controlling securities owned, issued, guaranteed, securitized, or collateralized by a regulated entity. § 9001.104. However, FHFA fails to include additional family and household members of the employee that might also have a financial interest. § 9001.106 deals with restrictions resulting from employment of the employee's spouse, child, parent, sibling, or member of his or her household. The analysis for the proposed rule states that the requirement under § 9001.106 "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." Proposed Rule RIN 2590-AA02, at 19912. FHFA's inclusion of family and household members in § 9001.106 but not in § 9001.104 might lead to the public to question FHFA's different treatment and increase public uncertainty and confusion. In addition, this inconsistency will make it more difficult for employees to distinguish between the restrictions that apply.

Conclusion and Endorsement of Proposed Rule RIN 2590-AA02

I endorse and believe FHFA's Proposed Rule RIN 2590-AA02 will reduce the improper influences, either real or perceived, that employees of executive branch agencies experience, increasing public confidence in FHFA. The additions mentioned above will ensure that FHFA employees are in compliances with their basic obligations of public service by "avoid[ing] any actions that might create the appearance that they are violating the law or the ethical standards," 5 C.F.R. §2635.101, set forth in the Standards of Ethical Conduct for Employees of the Executive Branch and the Supplemental Standards of Ethical Conduct for Employees of the Federal Housing Finance Agency, Proposed Rule RIN 2590-AA02.