



DAEO

SUPPLEMENTAL INSTRUCTION

No. 98-2

Date: December 2, 1998

Pursuant to the authority vested in me as Designated Agency Ethics Official (DAEO), under the delegation from the Secretary, dated November 12, 1997, and the provisions of section 5501.106(d)(5)(i) of title 5 of the Code of Federal Regulations, I hereby exempt the following type(s) of outside activities from the prior approval requirements specified in the Department of Health and Human Services Supplemental Agency Ethics Regulations at section 5501.106(d) of title 5 of the Code of Federal Regulations:

**OUTSIDE POSITIONS AS AN OFFICER, DIRECTOR, BOARD OR
ADVISORY GROUP MEMBER OF A CONDOMINIUM ASSOCIATION,
TENANTS GROUP, COOPERATIVE BOARD, SUBDIVISION
HOMEOWNERS ASSOCIATION, OR SIMILAR ORGANIZATION
FOCUSED ON RESIDENTIAL INTERESTS, WITH RESPECT TO WHICH
THE EMPLOYEE HAS A PERSONAL CONNECTION THROUGH
PROPERTY OWNERSHIP OR OTHER INVESTMENT RELATIONSHIP OR
A LEASEHOLD TENANCY**

The basis for this determination is stated in a DAEO memorandum of even date. The change shall be effective immediately.

Edgar M. Swindell
Designated Agency Ethics Official

For further information, contact:

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Ethics Division
Room 700-E, Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201

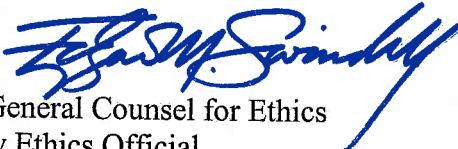
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MEMORANDUM

TO: Deputy Ethics Counselors
Ethics Contacts

FROM: Edgar M. Swindell 
Acting Associate General Counsel for Ethics
Designated Agency Ethics Official

SUBJECT: Instruction Exempting Services as an Officer, Director, Board or Advisory Group
Member of a Condominium Association or Similar Organization from Prior
Approval Requirement

Introduction

The HHS Supplemental Standards of Ethical Conduct require employees to obtain prior approval before engaging in certain types of outside activities. All HHS employees must obtain prior approval for services as an "officer, director, board member, or . . . member of a group . . . which requires the provision of advice, counsel, or consultation." 5 C.F.R. § 5501.106(d)(1)(iii). Additionally, FDA employees must obtain prior approval for any compensated or uncompensated "outside employment," which is defined as including personal services as an officer or director of a non-Federal entity. 5 C.F.R. § 5501.106(d)(2) (incorporating the definition in 5 C.F.R. § 2635.603(a)). However, the Supplemental Standards also provide that the Designated Agency Ethics Official "may issue an instruction or manual issuance exempting categories of employment or other outside activities from a requirement of prior written approval." 5 C.F.R. § 5501.106(d)(5)(i). The DAEO may issue such an exemption upon "a determination that those categories would generally be approved and are not likely to involve conduct prohibited by statute or Federal regulations, including 5 C.F.R. part 2635 and this part." Id. This memorandum transmits, as an attachment, an exemption for the category of outside positions as an officer, director, board or advisory group member of a condominium association, cooperative board, subdivision homeowners association, tenants group, or similar organization focused on residential interests, with respect to which the employee has a personal connection through property ownership or other investment relationship or a leasehold tenancy.

Discussion

In the last several years, this office has reviewed or provided advice with respect to numerous requests from employees to serve as an officer or director of a condominium association or similar residential organization. During this time, we have never encountered a significant ethical problem with any such proposed activity. Given the nature of HHS programs and

operations, the residential focus of the types of organizations involved, and the likelihood that only state or local laws will be implicated, such outside activities are unlikely to pose potential conflicts of interest or other ethics concerns.

This exemption will not apply if the requisite personal stake or interest in residential matters is lacking. For example, an HHS employee still must obtain prior approval in order to provide consultative services as an advisory committee member to a neighborhood association for a community in which the employee does not reside. Prior approval is still required where a personal residential stake or interest is absent, because of the possibility that the employee may have been recruited for the position because of his or her official position and presumed influence, rather than because of a direct personal concern about residential matters. Prior approval may well be granted in many of such cases, but employees are likely to benefit from the review and counseling by an official authorized to approve outside activity requests.

It should be noted that the determination to exempt certain personal residential association activities from the prior approval requirement does not mean that such activities can never raise ethical or legal issues. Even though employees will be excused from the procedural requirement of prior approval, they should be aware that all substantive requirements still apply. These include, among others, the prohibition against representing private parties before any agency of the Federal government. See 18 U.S.C. § 205. Thus, for example, an HHS employee could not represent his or her subdivision or neighborhood association before the United States Department of Transportation in connection with the organization's opposition to an interstate highway bridge project.

Conclusion

In sum, service as an officer, director, board or advisory group member of a condominium association, cooperative board, subdivision homeowners association, tenants group, or similar organization that represents the employee's residential interests constitutes a category of activities that would generally be approved in any event and that are not likely to involve conduct prohibited by statute or regulation. Accordingly, I am issuing an exemption pursuant to my authority in 5 C.F.R. § 5501.106(d)(5). Please disseminate this change widely and maintain a copy in a separate binder for permanent retention in each component. Also, consult your labor relations staff concerning any requirements that may apply to dissemination of the document to union representatives and bargaining unit employees.

Attachment

cc: Deputy General Counsels
Associate General Counsels
Chief Counsels, Regions I-X

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prep by: rmt:condo.exmpt

subject: Outside Activity (520); HHS Supplement Interpretations