



THE ETHICS STANDARD

The Office of General Counsel

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In an address to the Department last October, Secretary Martinez outlined his principal initiatives, which he called his “six challenges.” In closing, he said, “I have saved the

Secretary Martinez Makes Ethics a Top Initiative

sixth challenge for the last because it is perhaps the most important. For us to be effective in meeting the other five challenges, I am asking the men and women of HUD, and our partners in the nation’s housing authorities, to embrace a new sense of ethics and accountability.”

The Secretary urged that we “share and embrace these values.”

□ Our first responsibility is to the public we serve and to the taxpayers who fund our efforts.

- We do what is right and act out of integrity.
- We are accountable for the promises we make and the actions we take.
- We treat each other with respect and dignity.
- We go about our work with a sense of urgency.

With these challenges before the Department, the Secretary has emphasized that everything we do must be based on a foundation of high ethical principles.

Co-Sponsorship Policy

The General Counsel published the Department’s new co-sponsorship policy and guidance on February 21, 2002. After years of languishing, the policy was published with unanimous agreement among the program offices. The policy establishes the rules that permit the Department to jointly sponsor training and other events with non-Federal organizations.

Co-sponsorship is an excellent tool managers may use to do joint training with our industry partners or encourage participation in the Department’s programs. It is essential, however, to ensure that the event qualifies for the designation.

A Co-sponsorship is the Department’s joint development and substantive participation with a non-Federal entity in a conference, seminar, symposium, educational program, or similar event related to the mission of the Department. Co-sponsorships may have fees or no fees.

Co-sponsorships are authorized when the Department determines that participation in a co-sponsorship is in its interest and substantially advances its mission to provide education and information.

Co-sponsorships will be permitted, for example, when the Department determines that a non-Federal co-sponsor can provide expertise that will substantially benefit the Department’s training mission.

In each case, however, the Department’s interests take precedence over those of the co-sponsor. Non-Federal co-sponsors include non-profit organizations, industry organizations and trade associations, as well as state and local governments.

All Assistant Secretaries and officers of equivalent rank, DASs, and Regional Directors may approve co-sponsorships, but each approval must receive the concurrence of the General Counsel for Headquarters offices, or Regional Counsel for Field offices. Contact the Ethics Law Division or your Regional Counsel for guidance.



Widely-Attended Gathering It's a Gift!

Widely Attended Gatherings (WAGs). What are they, and why should I care?

First of all, “widely attended gathering” is a term of art that describes many of the events you attend in your official capacity outside of the Federal government. It could be a conference, panel discussion, training event, or, for some senior officials, an awards dinner or reception. We should be careful in the way we accept these invitations to participate or attend, because WAGs are also considered gifts.

Let's say you are asked by Mortgage Bankers Association (MBA) to attend a conference, free of charge, to sit in on some or all of its presentations. The conference likely would be considered a widely attended gathering. Why should you care? MBA is a prohibited source (its membership is affected by the

Department's actions) — and HUD employees may not accept gifts from prohibited sources. To do so, without proper authority, would violate the Standards of Conduct. Let's look at this a little closer. HUD employees are often asked by non-profit groups to attend conferences and similar events, and they are often sponsored by prohibited sources. A provision in the government-wide Standards of Conduct recognizes that this is a fairly common problem, because, while we may not accept gifts from prohibited sources, it is often in the agency's best interest to attend a particular function. If the event furthers the Department's mission or programs — if it is in the agency's interest — it is likely that the employee may attend.

Who approves attendance? It depends. If, as in the case above, the employee is simply attending (free or reduced fee), an agency ethics official must approve the attendance. If, on the other hand, the employee is participating, i.e., giving a speech or sitting on a panel,

the employee's supervisor may approve attendance. Participating Assistant Secretaries, DASs, and Regional Directors may approve their own attendance.

Invitations or requests from for-profit groups for employees to speak cloud the picture a bit. The same rules as above apply, but supervisors must also provide a written determination that the event is the only avenue available to disseminate the information. HUD involvement with for-profit widely attended gatherings should be approached with great caution, considering whether the gathering is the best way for the Department to disseminate public information. Ethics demands both access and impartiality. We must examine cost of attendance as well as the access of the public to the information.

When a non-Federal source offers to pay travel expenses, another set of ethics issues is implicated. Non-Federal source travel must be approved by the Deputy Secretary via the Office of General Counsel.

MSPB Confirms Prior Approval For Outside Activities

In a decision issued on August 22, 2002, the Merit Systems Protection Board (MSPB) confirmed that employees must obtain prior approval before engaging in certain outside activities. In the case of *Howell v. Department of Housing and Urban Development*, a HUD

employee was removed from employment for failing to obtain prior approval from the agency ethics official before running for political office. Citing the Government-wide Standards of Ethical Conduct Regulations and the Department's Supplemental Standards of Conduct, the MSPB affirmed HUD actions that require prior written approval for outside activities that may create a conflict of interest. Specifically, under the Department's ethical standards, an employee must obtain prior approval where there is an apparent or actual conflict of interest between

the federal position and outside activity.

The MSPB also stated that the employee's failure to obey HUD directives when she continued to campaign while holding her federal position constituted insubordination. Insubordination occurs where the employee refuses to obey an authorized order of a superior in a “willful and intentional manner.” MSPB's decision also indicated that HUD's prior approval requirement for outside activities does not abridge or infringe upon employee rights under the Hatch Act.



Know Your Agency Ethics Officials

The Department has 15 Agency Ethics Officials who are authorized to provide counseling on ethics issues. Five of them are located in Headquarters, and one is in each field office. The following list will be useful to you.

Headquarters

Designated Agency Ethics Official



Richard A. Hauser
General Counsel
(202) 708-2244

George L. Weidenfeller
Deputy General Counsel
(Alternate DAEO)
(202) 708-2864

Agency Ethics Officials (AEO)

Sam E. Hutchinson
Associate General Counsel
Human Resources Law
(202) 708-0888

Paula A. Lincoln
Assistant General Counsel
Ethics Law Division
(202) 708-3815

Kenneth M. Donohue
Inspector General
AEO for OIG
(202) 708-0430

Alfred M. Pollard
General Counsel, OFHEO
AEO for OFHEO
(202) 414-3800

Field

Region I
Miniard Culpepper
(617) 994-8250

Region VI
William J. Daley
(817) 978-5990

Region II
Henry Czauski
(212) 264-8000

Region VII
Thomas Coleman
(913) 551-5478

Region III
Ann Harrison
(215) 656-0639

Region VIII
Ellen P. Dole
(303) 672-5409

Region IV
Donnie Murray
(404) 331-5001

Region IX
R. Faye Austin
(415) 436-8218

Region V
Courtney Minor
(312) 353-6236

Region X
David Morado
(206) 220-5190

Prohibited Financial Interests For HUD Employees

The HUD Supplemental Standards of Conduct regarding prohibited financial interests applies to all HUD employees except special Government employees. A HUD employee, or an employee's spouse or minor child, shall not directly or indirectly receive, acquire or own:

- (1) Securities issued by Fannie Mae;
- (2) Securities issued by Freddie Mac;
- (3) Federal Housing Administration debentures or certificates of claim;
- (4) Stock or another financial interest in a multifamily project or single family dwelling, cooperative unit, or condominium unit, which is owned or subsidized by the Department;
- (5) Any Department Section 8 subsidy provided to or on behalf of a tenant of property owned by the employee. However, there are three exceptions:
 - (i) The employee acquires without specific intent, i.e., a gift or inheritance, a property which at the time of acquisition has a tenant receiving such a subsidy, but only as long as that tenant continues to reside in the property;
 - (ii) An incumbent tenant who has not previously received such a subsidy becomes the beneficiary thereof, but only if there is no increase in that tenant's rent upon the commencement of subsidy payments other than normal annual adjustments; or
 - (iii) The tenant is the parent, child, grandchild, or sibling of the employee, but only if there is no increase in that tenant's rent upon the commencement of subsidy payments other than normal annual adjustments.

Limit on FHA insurance:

Employees may own mortgage insurance provided by FHA on the employee's principal residence and any one other single-family residence.

Employees are not prohibited from owning publicly traded or

publicly available investment funds (most mutual funds) which may include securities otherwise prohibited, provided the fund does not concentrate its investments in residential mortgages or securities backed by residential mortgages, and the employee neither exercises control nor has the ability to exercise control over the financial interests held in the fund.

Prohibited investments must be divested within 90 days from the date reported unless waived by the Designated Agency Ethics Official. For further information, see the HUD Supplemental Standards of Conduct regulation at 5 C.F.R. § 7501.104 or call the Ethics Law Division at (202) 708-3815.

Regional Directors Receive Briefings

The Associate General Counsel for Human Resources Law, Sam E. Hutchinson, led a team of ethics officials in a seminar designed specifically for the Department's Regional Directors. The seminar, which was

held in the Philadelphia regional office, focused on co-sponsorship, political activity, and gifts from prohibited sources. In addition, Steve Wagner, Director of Faith Based Initiatives, addressed the group clarifying the Administration's and Department's positions on faith based efforts and how to be effective while staying

within the ethics rules. He emphasized the importance of including faith-based organizations in HUD's programs without showing favoritism or preferential treatment. Other participants in the presentation included Bryant Applegate, OGC; Ann Harrison, Region III Regional Counsel; and Tom Coleman, Region VII Regional Counsel.

Conducting Business with HUD

Business with HUD is no longer 'business as usual.' Organizations that receive grants from the Department are now required to "develop and maintain a written code of conduct that reflects HUD's Core Values," according to the language in the NOFAs. Prior to funding, applicants must submit a copy of their

Code and describe the methods they will use to enforce them.

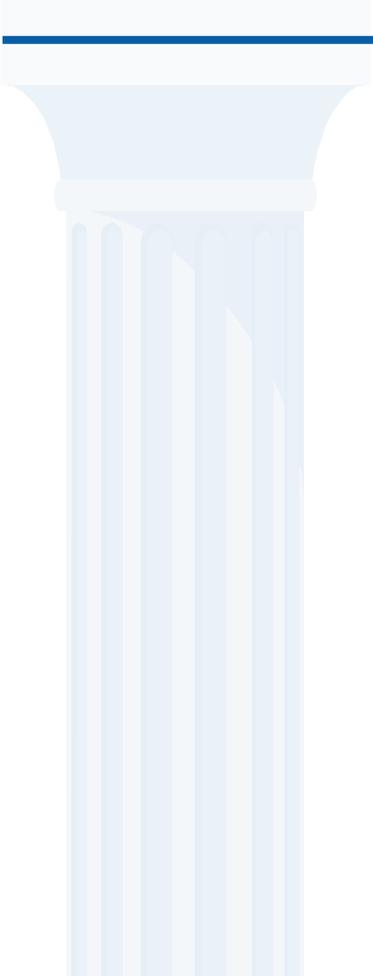
The Code must prohibit real and apparent conflicts of interest that may arise among the employees or officers of the grantees. It must also prohibit solicitation and acceptance of gifts.

Some organizations receiving HUD funding already have codes of conduct, but many are hurrying to develop standards and put them in

place. For some, a Code of Conduct is a completely new concept. The General Counsel, who is also the Department's top Agency Ethics Official, said, "The Secretary insists upon the highest ethical standards *within* the Department, and he wants our business partners, those that are involved in the essential work of the Department, to reflect the same standards. This is a way to help ensure that is done."

In relation with the article above, the following is quoted from a recent Ethics Resource Center press release:

"Government, corporations, business leaders, legal authorities, accounting professionals and the public must all work together to create norms of professional business responsibility where integrity is the foundation. The answer to today's corporate crisis is not merely in passing more laws. It is not more regulations. It is not increasing punishments. Research ... has established that ethical leaders make ethical companies. In addition, we know from our research that where there are strong ethics programs, employees have a high sense of the company's integrity and feel less pressure to commit misconduct."



Secretary Speaks to Cabinet & Sub-Cabinet About Ethics

The White House invited Secretary Martinez to address a meeting, held at the Department of State, of the President, Vice-President, Cabinet, and all Senate confirmed appointees of the Administration, on the subject of ethics. The invitation was extended in recognition of the Secretary's efforts to promote public confidence in the integrity of decision-making at HUD and a compliment to the men and women of the Department.

Annual Ethics Training: It's the Law

Annual Ethics Training is mandatory for some employees every year. The law requires it. Section 704 of 5 CFR § 2638, requires that certain employees be given "in person" briefings every year and that a qualified person be on hand to answer questions related to the training. At HUD, those employees are all political appointees, Administrative Law Judges, and SES personnel.

A second category of annual trainees is all Confidential Financial Disclosure Report filers. They

include employees involved in procurement and contracting, financial management, law enforcement, and many high level managers. This group may be trained through reading materials two out of three years. Live training is required once every three years.

Other employees receive ethics training at the discretion of the Department. This year, 2002, the Department will make Annual Ethics Training broadcasts available to all employees. Managers are requested to ensure that employees under their supervision attend a training session. The broadcasts will begin in September.

Counsel's Corner

by Richard A. Hauser

Secretary Martinez has made the ethical conduct of HUD business a top priority of his Administration. In this regard, he has given OGC an aggressive mandate to assure that HUD employees and management officials understand the importance of complying with ethics and procurement integrity rules. At the start of this Administration, we conducted extensive ethics briefings with the Assistant Secretaries and all Schedule C Employees. Individual briefings were also conducted with the Secretary and Deputy Secretary and their relevant staffs. At the close of fiscal year 2001, Department-wide ethics training was held for all Confidential and Public Financial Dis-

closure filers, as well as all GTMs and GTRs. We have also conducted extensive ethics training for our new Regional Directors and HUD Office Directors.

We have continued to implement the Secretary's mandate throughout the year. Significantly, this year the field agency ethics officials met during the field counsel's conference in Kansas City and began developing a set of "core values" for those doing business with HUD. This effort resulted in the standards that are now published in the NOFAs and required of our grantees. I, and others in the Office of General Counsel, have taken the Secretary's message of high ethical expectation to national meetings of the American Bar Association-Affordable Housing Section, NAHRO, PHADA, CLAPHA,

and HDLI. As we continue our endeavors, I am confident that this continued insistence on high ethical standards from HUD partners will pay off in dividends of better and more affordable housing.

In addition to our training and "core values" initiatives, the Department, through the efforts of OGC, will be participating in the Fellows Program of the Council for Excellence in Government. Candidates for the one-year program will be middle and upper level managers from all HUD program areas. The group will work as a team within the Council's larger program and, in addition to the larger group's general training on techniques for management excellence, will work on HUD specific strategies to continue incor-

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porating integrity and accountability as the foundation for HUD performance. There will be more to come on this subject.

In short, the Secretary has insisted upon putting ethics first — at every turn. It is our pleasure to pursue his agenda, and we look forward to working with you toward promoting *the highest ethics standard*.



Confidential OGE-450

It will soon be time for Confidential Financial Disclosure Reports again. This year's form, the OGE-450 is identical with last year's — even the HUD specific HUD-450-A is the same. If you are an annual filer, the report is due on October 31st, and it covers the period of October 1, 2001, to September 30, 2002.

Did You Hear

...the story about the guy who stormed in on his six year old son and said, "I just got a call from your teacher and she said you put some color markers in your back-pack that belong to the school. Johnny, that's stealing! If you need markers, all you have to do is let me know and I'll bring some home from the office! Now, tomorrow I'll have to call in sick to go in for a parent-teacher conference!" ...

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