

## Office of Government Ethics

81 x 18 -- 06/02/81

### Letter to a Private Attorney dated June 2, 1981

This is in response to your letter of May 5, 1981 concerning an associate [with a company ("the Company")] who has accepted an appointment [with the Federal Government]. You inquire whether it is permissible under 18 U.S.C. § 209 for [the individual] who will completely sever her relationship with [the Company], to accept from it the benefit of the home selling program it accords its transferring employees pursuant to its October 1, 1980 contract with [a real estate management company].

Since [the individual] is leaving [the Company] instead of transferring from [one regional] office to another office, she is not among those usually granted access to [the real estate company's] home buying services. Consequently, these services, as they apply to her, would not fall within the exemptions of 18 U.S.C. § 209(b) regarding employee benefit plans. It is therefore necessary to consider whether [the Company's] discretionary tender of these services, if accepted by [the individual], would constitute a contribution to or supplementation of her salary as a [Federal] employee, contrary to section 209(a).

We understand that the [real estate company's] services are designed to provide the fair market value to [the Company's] personnel for their homes and in a significant sense, therefore, do not provide the employee-sellers a financial benefit.<sup>2</sup> However, there can be little doubt that there is a benefit based on time, convenience, certainty of sale and perhaps other factors that have a modicum of financial value. Since conferring the benefit is elective on the part of [the Company] the issue here turns upon its intent and that of [the individual] under all of the circumstances of this case.

We understand that [the Company] and [the individual] look upon the proposed benefit as a form of recognition and favor for her excellent past work with [the Company]. We understand also that [the Company] is motivated by the wish to predispose at this time [the individual] to return to its employ upon the completion of her two-year fellowship with the [the Federal Government].<sup>3</sup> Neither of these motivations suggests a preferment for [the individual] to compensate her for the role she will play in the Government. In short, we are of the opinion that [the Company] may, consistently with 18 U.S.C.

§ 209(a), provide to her the home buying services of [the real estate company] under this established written relocation plan which only grants to her the fair market value price of her home and that she may likewise accept these services.

Sincerely,

J. Jackson Walter  
Director

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**1** You supplemented the information in your May 5 letter by another letter dated May 19, 1981 and by telephone conversations in response to further questions that we has on this matter.

**2** We are satisfied that [the individual would only receive the fair market value of her home from [the real estate company] under the relocation plan. We understand that upon the resale of [the individual's] house by [the real estate company] to another buyer, the amount received above or below the fair market value paid to [the individual] by [the real estate company] would be passed on to or absorbed by [the Company.] Consequently, if ther is a "profit" or "loss" in the home selling transaction, it is ultimately borne by [the Company], not [the real estate company]. In either case the [indiviual] would still only receive the fair market value as defined in the relocation plan.

**3** We have been informed that [the individual] has no present arrangement with [the Company] to return there after her two-year fellowship is completed. In other words, what she decides to do after finishing the fellowship is completely open and dependent upon her future decisions.