



SUMMARY OF ETHICS RULES

2004

ETHICS DIVISION – OFFICE OF THE ASSISTANT GENERAL COUNSEL FOR ADMINISTRATION
(202) 482-5384 – ETHICSDIVISION@DOC.GOV

UNITED STATES DEPARTMENT OF COMMERCE

PUBLIC SERVICE IS A PUBLIC TRUST

As a Department of Commerce employee, you have been placed in a position of trust and are held to a high standard of ethical conduct. This handout contains a summary of the rules set forth in conflict of interest statutes and the *Standards of Ethical Conduct for Employees of the Executive Branch*. You should retain this handout for use as a reference source.

Office of the Assistant General Counsel for Administration

To obtain legal advice regarding ethics issues, contact the:

Ethics Division at (202) 482-5384 (or ethicsdivision@doc.gov) for advice regarding conflict of interest laws and rules of conduct.

To obtain legal advice regarding other administrative law issues, call the following offices.

Employment and Labor Law Division at (202) 482-5017 – for advice regarding employment law and labor law issues.

General Law Division at (202) 482-5391 – for advice regarding appropriations laws, joint projects, preservation and release of documents, and general administrative law issues.

Designated Agency Ethics Official:
General Counsel

Alternate Designated Agency Ethics Official:
Barbara S. Fredericks, Assistant General Counsel for Administration

Office of Inspector General – The Ethics Division provides advice but does not investigate allegations of violations of law. To report fraud, waste, abuse, or other violations of law, or to request an investigation, call the Office of Inspector General HotLine at (800) 424-5197 or (202) 482-2495 or e-mail hotline@oig.doc.gov.

GENERAL ETHICAL PRINCIPLES

1. *Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.*
2. *Employees shall not hold financial interests that conflict with the conscientious performance of duty.*
3. *Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.*
4. *An employee shall not, except as permitted in ethics regulations, solicit or accept any gift of other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or non-performance of the employee's duties.*
5. *Employees shall put forth honest effort in the performance of their duties.*
6. *Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.*
7. *Employees shall not use public office for private gain.*
8. *Employees shall act impartially and not give preferential treatment to any private organization or individual.*
9. *Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.*
10. *Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.*
11. *Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.*
12. *Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those—such as Federal, State, or local taxes—that are imposed by law.*
13. *Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.*
14. *Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in ethics regulations. Whether particular situations create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.*

FINANCIAL CONFLICTS OF INTEREST

Basic Principle: No Self-Dealing

One of the most basic of the conflict of interest rules concerns self-dealing. To ensure public confidence in the integrity of the Government and its employees, a conflict of interest statute provides that you may not be placed in a position where you will be called upon to act on a matter in which your personal financial interests (or the interests of those close to you) may differ from the goals and interests of the Government, thereby creating a "conflict of interest." Such a conflict is resolved by having you disqualify (or "recuse") yourself from participating in any matter creating a conflict of interest (unless an exemption applies allowing your participation).

General Rule. You may not participate as a Government official in a matter that will have a direct and predictable effect on your financial interests; on the financial interests of your spouse, minor children, household members, general partners, outside employers, or prospective employers; or on the financial interests of an organization in which you serve as a trustee, officer, or board member.

Exemptions from the General Rule. Exemptions permit you to participate in matters affecting a financial interest if the financial interest is:

- a holding in a diversified mutual fund;
- a holding in an industry sector-specific mutual fund or geographic sector-specific mutual fund of \$50,000 or less (if interests in all such funds are \$50,000 or less);
- a publicly-traded stock or bond holding of \$15,000 or less in a company if the company is a party to a matter (or \$25,000 or less if the company is not a party to a matter) with regard to a specific-party matter;
- a publicly-traded stock or bond holding of \$25,000 or less in a company with regard to a broad policy matter (if total holdings in the industry or group affected by the matter are \$50,000 or less); or
- not substantial and for which you have received a conflict of interest waiver through the Ethics Division. (Under current Department policy such waivers are generally available only for employees serving overseas.)

Special Rule for U.S. Patent and Trademark Office Employees. USPTO employees are barred from applying for a patent or acquiring, directly or indirectly, except by inheritance or bequest, any right or interest in a patent issued by USPTO.

APPEARANCES OF BIAS (NON-FINANCIAL CONFLICTS OF INTEREST)

Basic Principle: No Special Favors

Because the public must have confidence in the Government and its employees, it is not enough for you just to avoid situations that create a conflict of interest between your official duties and your financial interests; you must also avoid situations that give rise to an appearance of a conflict of interest based on personal relationships. There may be a matter on which you are asked to work that presents no actual financial conflict of interest, but that may, because the matter involves persons with whom you have close ties, create an appearance of impropriety or loss of objectivity.

General Rule. You may not participate in matters in which certain persons with whom you have close ties (“covered relationships”) are parties or are representing parties if your participation would cause an appearance of loss of impartiality. Persons with whom you have a “covered relationship” include:

- persons with whom you have or are seeking business or financial relationships;
- household members;
- close relatives;
- employers and clients of your parents, dependent children, and spouse (and their prospective employers and clients);
- former non-Federal employers and clients (for one or two years depending on the value of any severance payment); and
- organizations (other than political parties) in which you are an active participant.

Exception to the General Rule. You may be able to work on a matter in which someone with whom you have a covered relationship is a party or represents a party if the Government’s need for your participation outweighs a concern that someone may question the integrity of the Department’s programs and operations. However, before you participate in such a matter, you must receive authorization to do so. Contact the Ethics Division of the Office of the Assistant General Counsel for Administration to obtain such authorization.

GIFTS, BRIBES, AND SALARY SUPPLEMENTATION

Basic Principle: Avoid Undue Influence

The United States Government, like all governments, recognizes that the acceptance of bribes is the most basic form of corruption. Similarly, gratuities and salary supplementation from persons with matters before the Government may create an appearance of undue influence on Government workers.

Rules concerning Bribes and Salary Supplementation. You may not receive anything of value from a non-Government source for taking action or failing to take action in your Government position. You also may not accept payment for performing your Federal duties from a source other than the United States Government.

General Rule concerning Personal Gifts from Non-Federal Sources. You may not, in general, accept personal gifts from a person, company, organization, or other entity that has a contract, grant, or other business with the Department or is seeking such business; is regulated by the Department; or has interests that may be affected by performance of your Government duties. You also may not accept gifts given to you because of your Government position. Gifts to your spouse or minor children are considered gifts to you in most circumstances.

Exceptions to the General Rule concerning Personal Gifts from non-Federal sources.

You may accept:

- items of little intrinsic value (greeting cards, plaques, trophies);
- gifts of \$20 or less (other than cash) (up to \$50 per year from the same donor);
- invitations to widely-attended events (if from the host (generally) and if your supervisor approves as being in the Department's interest and as outweighing any appearance concern);
- gifts from relatives or friends (if based on a personal relationship);
- discounts available to a broad range of persons;
- awards and honorary degrees (in specified circumstances);
- gifts of meals, lodging, and travel if based on an outside business or outside employment relationship;
- business meals overseas, if a foreign national or representative of a foreign entity is present (up to the *per diem* for the city); and
- gifts from a foreign government of \$285 or less; a gift of over \$285 may be accepted, but becomes property of the United States Government.

General Rule concerning Gifts between Employees. You may not offer a gift to a supervisor or accept a gift from a subordinate.

Exceptions to the General Rule concerning Gifts between Employees. You may offer to a supervisor and accept from a subordinate:

- a gift on a special, infrequent occasion (such as the birth or adoption of a child, recovery from a serious illness, retirement, or a wedding);
- items of \$10 or less, given occasionally;
- food shared in the office;
- personal hospitality at one's home; and
- a gift to a host or hostess.

General Rule concerning Gifts to the Government. You may, on behalf of the Department and with the approval of the appropriate official in your agency, accept donations to support agency programs and activities. However, except in rare circumstances, you may not accept a gift for your agency from a donor that is an agency contractor or grantee or is a member of an industry regulated by your agency. You also may not accept a gift from a donor if the circumstances would create an appearance of loss of impartiality by you or your agency.

Gifts for Official Travel. Although you may accept payment for official travel from a non-Federal source, you may not solicit such gifts. If the gift is in the form of an in-kind contribution (i.e., hotel room or airline ticket rather than reimbursement for accommodations or transportation expenses), you are not limited to the amount that is authorized for travel expenditures under Federal Travel Regulations, if such travel arrangements are being provided for similarly-situated non-Federal participants. However, you may not accept first-class airline tickets.

Honoraria to the Government. Under current Department policy, you may not accept an honorarium for your agency in connection with a speech or appearance in your official capacity.

Special Approval Requirements for Gifts to the Department. You must receive approval from the Secretary for a gift to your agency valued at more than \$25,000 and approval from the Assistant Secretary for Administration for a gift of real property, a gift that imposes conditions on the agency, or a travel gift that is valued at \$500 or more over expenses authorized by Federal Travel Regulations.

OUTSIDE EMPLOYMENT AND ACTIVITIES AND LOBBYING THE GOVERNMENT

Basic Principle: Avoid Divided Loyalties

Working for the Federal Government does not preclude other employment, but your non-Government employment and activities may not conflict with your Federal job.

General Rule on Outside Employment. You may not engage in outside employment or any other outside activity that conflicts with your Government position, including employment that requires disqualification from significant Government duties and activities that create an appearance of using public office for private gain. There are special rules for practicing law, writing or teaching for compensation, and working overseas. Contact the Ethics Division for specific advice regarding these special rules.

Working for a Foreign Government. The U.S. Constitution bars you from working for, or accepting any compensation, including salary or travel expenses, from, a foreign government, except as authorized by statute. A statute permits NIST employees in some circumstances to accept compensation through fellowships from foreign governments.

General Rule on Lobbying the Government and Receiving Payments for Lobbying. You may not, in general, act as an agent or attorney or, if paid, otherwise represent others before any Federal agency or Federal court in your personal capacity. Representation includes any contact made on behalf of someone with the intent to influence Government action. In addition, you are barred from receiving any payment that is based on the representational activities of someone else, such as a partner, before a Federal agency or Federal court during a period you serve as a Federal employee.

Exceptions to the Rule on Lobbying the Government. You may represent other Federal employees in some personnel disputes if you do not receive compensation and you may represent your parents, spouse, or children, or an estate or trust, if you receive prior approval. (Contact the Ethics Division, at (202) 482-5384, for advice on obtaining approval.) You may also represent, without compensation, professional, recreational, and similar groups before the Government if the majority of the organization's members are Federal employees or their spouses or dependents, if the matter does not involve claims against the Government, proceedings in which the organization is a party, or Government financial benefits to the organization.

POLITICAL ACTIVITIES

Basic Principle: Keep Government and Political Activities Separate

Rules regarding political activities help ensure that Government activities are separate from partisan activities.

General Restrictions concerning Engaging in Political Activities. Unless you serve as a Presidential Appointee in a position requiring Senate confirmation, you may not engage in partisan political activities while on Government premises or while on official duty.

Regardless of your Government position, you may not use the authority of your position or Government resources, including equipment, services, or your official title, in connection with partisan political activities. In addition, you may not:

- accept or receive a political contribution;
- personally solicit political contributions or host a political fund-raiser;
- run as a candidate in a partisan election (except as an independent candidate in certain designated areas); or
- solicit or accept volunteer services from a subordinate.

(However, an exception to the rule against political fund-raising lets a union member solicit other union members who are not subordinates for contributions to a multicandidate political committee of the union.)

Permissible Activities. Except as indicated in the above restrictions, you may actively engage in political campaign activities during non-duty hours (unless you are a career member of the Senior Executive Service, an administrative law judge, a NOAA Corps officer, or the Inspector General). Permissible activities include:

- assisting in the management of a campaign;
- serving as an officer in a political organization;
- giving speeches and soliciting votes (but not funds) for a candidate;
- making telephone calls or stuffing envelopes on behalf of a campaign; and
- speaking at a fund-raising event (if you do not ask for funds and are listed as a guest or speaker and not as a host of the event).

Special Rules for Career SES Members, ALJs, NOAA Corps Officers, and the Inspector General. If you are a career member of the Senior Executive Service, an administrative law judge, a NOAA Corps officer, or the Inspector General, you may not actively assist in the conduct of a partisan campaign or serve as an officer in a political organization, even during non-duty hours. However, during non-duty hours you may actively participate in nonpartisan elections and non-candidate campaigns, such as for referenda. Regarding partisan candidate campaigns, you may vote, make contributions, sign nominating petitions, and engage in similar activities.

MISUSE OF GOVERNMENT RESOURCES

Basic Principle: Thou Shalt Not Steal

Appropriated funds, Department and agency gift funds, and other Commerce resources are provided to support Government activities and may be used only for authorized purposes.

General Rules. You may only use Government resources for authorized Government activities. This includes the use of Government equipment, supplies, and services, as well as the duty time of Government personnel. Additionally, your official title may not be used in connection with private, non-Government activities. Furthermore, information you learn during the course of your Federal service may not be used for personal purposes, unless it is information readily available to the public at large. This includes nonpublic trade data, economic analyses, census data, private personnel information, and other nonpublic information. You also may not use your Government authority, including business contacts obtained through Federal employment, for personal non-official activities.

Exceptions to the General Rules regarding Use of Your Title and Frequent Flier Benefits.

You may use your Government title in connection with personal activities as part of general biographical data if it is given no more prominence than other significant biographical details. You may use frequent flier miles and other benefits obtained from Government travel for personal purposes, including personal travel or upgrades on official travel.

Rule on the Use of the Internet and E-mail. You may use access to e-mail and to the Internet for personal activities if such use does not interfere with the business of your office and is not prohibited by your agency, if you do not use access for:

- the pursuit of private commercial business activities or profit-making ventures;
- partisan political activities;
- prohibited lobbying activities;
- uses that result in additional charges to the Government;
- engaging in prohibited discriminatory conduct;
- obtaining or viewing sexually explicit material;
- any activity that would bring discredit on the Department; or
- any violation of a statute or regulation.

Due to a change in the Department's Internet Policy in 2004, employees are now permitted to use office printers for personal Internet and e-mail uses, provided it does not consume excessive resources.

SEEKING EMPLOYMENT AND POST-EMPLOYMENT RESTRICTIONS

Basic Principle: Avoid Divided Loyalties

Seeking Employment. Once you begin to seek non-Federal employment, you must disqualify yourself from working as a Government employee on any matter in which a prospective employer has a financial interest. Your disqualification must continue until employment discussions end through a clear statement by either party or until two months have passed after you have submitted an unsolicited employment proposal (such as a résumé) with no response from the prospective employer. If you are participating in a procurement over \$100,000, you must notify your supervisor and the Ethics Division, in writing, of any employment contacts with or from a competing contractor.

Post-Employment Restrictions. After you leave Federal service, you may not:

- lobby any Federal agency or Federal court concerning specific-party matters on which you worked (which includes any contact to a Federal agency or Federal court on behalf of someone to influence Government action);
- for two years, lobby any Federal agency or Federal court concerning specific-party matters on which your subordinates worked during your last year of Federal service (or which was otherwise under your official responsibility);
- disclose or use certain nonpublic information gained during the course of Federal employment, including information obtained from a trade or treaty negotiation, census data, private personnel information, trade secrets or proprietary business information, and national security information;
- if you served as a “senior employee” (pay is equal to or greater than 86.5% of Executive Level II (\$135,805 in 2004) or was equal to or greater than SES level 5 on 11/23/2003)
 - N** for one year, lobby any official of your agency on any matter;
 - N** for one year, advise or represent foreign governments and foreign political parties; or
- if you served as a procurement official or program manager or deputy program manager, for one year accept compensation from the winning contractor of a major procurement (over \$10,000,000).

Exceptions and Special Post-Employment Rules. There are exceptions to some post-employment rules regarding testimony under oath and regarding representing state and local governments, international organizations, educational institutions, and medical institutions. There are also special rules applicable to attorneys, to USPTO employees (regarding obtaining patent rights), to EDA grant officials, and to employees who receive buyouts. Contact the Ethics Division at (202) 482-5384 for a handout on these rules.

FINANCIAL DISCLOSURE

Basic Principle: Tell the Whole Truth

Presidential Appointees, members of the Senior Executive Service, employees in non-career policy-making positions, procurement officials, and other employees whose performance of Federal duties could have a significant impact on the interests of members of the public are required to file financial disclosure reports. These are collected upon entry into a position and annually thereafter.

Basic Guidelines. If you are designated as required to file a financial disclosure report, please keep in mind that the information you disclose is used to provide advice to you in order to ensure that you do not inadvertently engage in prohibited activities. In order to give you this advice (and to certify that the report includes all necessary information), it is important that the information you provide be as complete as possible. Specifically, please be sure to include the following information:

- the full name of any mutual fund (not just the generic name of the company managing the fund);
- specific holdings in any IRA, 401(k) account, trust, or investment account;
- a short description of the activities or industry sector of any privately-held company or limited partnership; and
- assets and sources of income of your spouse and dependant children.

**For advice regarding any of these rules, contact the
Ethics Division at (202) 482-5384.**

EXAMPLES

NO PROBLEM

1. An employee works on a contract with a company in which she holds \$8,000 worth of publicly-traded stock.
2. An employee works on a policy affecting the oil and gas industry while holding \$75,000 in a broadly-diversified mutual fund that invests, in part, in oil and gas companies.
3. An analyst works on a grant application from a company for which he worked 3 years ago.
4. A GS-12 employee makes calls for a candidate in a partisan election during non-duty hours from her home.
5. An employee prepares tax forms as an outside business and submits tax forms to the IRS on behalf of clients.
6. An employee accepts a \$15 lunch from an agency grantee.
7. An employee writes a recommendation letter for a non-Federal job on agency letterhead for a subordinate.
8. A former GS-12 employee submits her new employer's grant proposal to her former agency within one year of leaving the Department.

PROBLEM

1. An employee works on a contract with a company in which she holds \$18,000 worth of publicly-traded stock.
2. An employee works on a policy affecting the oil and gas industry while holding \$75,000 in a sector-specific mutual fund that focuses its investments in oil and gas companies.
3. An analyst works on a grant application from a company for which he worked 3 months ago.
4. A career member of the SES makes calls for a candidate in a partisan election during non-duty hours from her home.
5. An employee prepares tax forms as an outside business and submits pleadings in disputes to the IRS on behalf of clients.
6. An employee accepts a \$25 lunch from an agency grantee.
7. An employee writes a recommendation letter for a non-Federal job on agency letterhead for a friend.
8. A former senior employee submits her new employer's grant proposal to her former agency within one year of leaving the Department.

CITATIONS TO APPLICABLE LAW

Financial Conflicts of Interest

- 18 United States Code (U.S.C.) § 208
- 35 U.S.C. § 4
- 5 Code of Federal Regulations (C.F.R.) §§ 2635.401 - 2635.403, 2635.502, 2640.201 - 2640.202
- 3 Foreign Affairs Manual (FAM) Part 4120

Gifts, Bribes, and Salary Supplementation

- 5 U.S.C. §§ 7342, 7351, and 7353
- 15 U.S.C. § 1522
- 18 U.S.C. §§ 201 and 209
- 5 C.F.R. §§ 2635.201 - 2635.205, 2635.301 - 2635-304; 41 C.F.R. Part 304-1

Outside Activities

- 18 U.S.C. §§ 203 and 205
- 5 C.F.R. §§ 2635.801 - 2635.809
- 3 FAM Part 4120

Outside Relationships

- 18 U.S.C. §§ 203, 205, and 208
- 5 C.F.R. §§ 2635.501 - 2635.503

Misuse of Government Position and Resources

- 18 U.S.C. § 641
- 5 C.F.R. §§ 2635.701 - 2635.705
- Department of Commerce Internet Use Policy

Seeking Employment and Post-Employment Restrictions

- 18 U.S.C. § 207
- 41 U.S.C. § 423
- 5 C.F.R. Parts 2635, 2637, and 2641; 15 C.F.R. §§ 15.11-15.18

Prepared by the Ethics Division, Office of the Assistant General Counsel for Administration, U.S. Department of Commerce – May 4, 2004