



SUMMARY OF ETHICS RULES FOR SPECIAL GOVERNMENT EMPLOYEES

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

The role of consultants and advisors and other limited-service employees is vital to the effective functioning of the Federal Government. All employees are held to a high standard of conduct. As an employee who serves less than 130 days per year, you are considered a "special Government employee" and are subject to many, but not all, of the ethics rules applicable to Government employees who serve for longer periods of time. This document is to help familiarize you with those rules.

If you have a question regarding an ethics issue, contact the Ethics Division of the Office of the Assistant General Counsel for Administration at (202) 482-5384 or ethicsdivision@doc.gov.

Designated Agency Ethics Official:
General Counsel

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

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 prohibits you from working as a special Government employee on a matter affecting your personal financial interests (or the interests of those close to you). Participating in such a matter would create a conflict of interest between your personal interests and your duty to the Government.

General Rule. You may not participate as a Government official on a matter that will have a direct and predictable effect on your financial interests or those of your spouse, minor children, or general partners; persons with whom you are seeking employment; organizations for which you serve as an officer, director, trustee, general partner, or employee; or, with regard to a matter involving specific parties, a member of your household (unless an exemption applies or you receive a conflict of interest waiver).

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 valued at \$50,000 or less (if all interests in sector-specific funds that concentrate investments in the same sector total \$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; or
- a publicly-traded stock or bond holding of \$25,000 or less in a company with regard to broad policy matters (if total holdings in the industry or group affected by the matter are \$50,000 or less);
- one for which you have received a conflict of interest waiver; or
- if you are a Federal Advisory Committee member, one arising from your non-Federal employment and the matter at issue is a general policy matter affecting that interest as part of a class.

Conflict of Interest Waivers. The Department often issues waivers for interests reported by members of Federal Advisory Committees on their financial disclosure reports. To obtain a conflict of interest waiver, contact the Ethics Division at (202) 482-5384.

APPEARANCES OF BIAS (NON-FINANCIAL CONFLICTS OF INTEREST)

Basic Principle: No Special Favors

Because the public must have confidence in the Government and the impartiality of its employees, it is important that you avoid situations that may give rise to an appearance of a conflict of interest based on your personal relationships. There may be a matter on which you are asked to work that will not create an actual financial conflict of interest, but may, because the matter involves someone with whom you have close ties, create an appearance of favoritism or loss of objectivity.

General Rule. You may not participate in a matter involving specific parties if a person with whom you have close ties (a “covered relationship”) is a party or is representing a party in the matter, if your participation would create an appearance of loss of impartiality (unless you receive specific authorization to participate in the matter). Persons with whom you have a “covered relationship” include:

- persons with whom you have business or financial relationships or are seeking such relationships (other than routine consumer transactions);
- 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 amount 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 interest of the Government in 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 at (202) 482-5384 to obtain an authorization if such a situation arises.

BRIBES AND GIFTS

Basic Principle: Avoid Undue Influence

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

General Rule concerning Bribes. You may not receive anything of value for taking action or failing to take action in your Government position.

General Rules concerning Personal Gifts. You may not accept gifts from a person or firm that has or is seeking business with the Department of Commerce or that is regulated by the Department of Commerce, unless an exception applies. You also may not accept gifts that are given to you because of your Government position, unless an exception applies.

Exceptions to the General Rules concerning Personal Gifts. You may accept:

- gifts of \$20 or less (other than cash) (up to \$50 per year from the same source);
- gifts from relatives and friends (if based on a personal relationship);
- gifts of meals, lodging, and travel based on your outside business or employment relationships or those of your spouse;
- awards and honorary degrees (in specified circumstances);
- invitations to widely-attended events (if from the host (generally) and if your Government supervisor approves as in the Department's interest);
- business meals overseas, if a foreign citizen or representative of a foreign entity is present (up to the *per diem* of the city); and
- gifts from a foreign government of \$285 or less—gifts of over \$285 may be accepted, but become property of the United States Government.

NON-GOVERNMENT ACTIVITIES

Basic Principle: Avoid Divided Loyalties

As a special Government employee, you are likely to have employment other than your U.S. Government employment. It is important that you consider whether such non-Federal employment, or other personal activities, conflict with your position with the Government.

General Rule regarding Non-Federal Employment. You may not engage in non-Federal employment that conflicts with your Government duties. An activity may create a conflict if it is barred by law (such as employment with a foreign government) or if it requires your disqualification from assignments critical to the performance of your Federal duties.

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, unless authorized by statute.

General Rule regarding Political Activities. The rules on political activities are intended to allow you to actively participate in the political process, but also to ensure that Government activities and political activities are not intermingled. You may not engage in political activities during Government duty hours or while on Government premises. You are also barred from using Government resources (including your Government affiliation) for a partisan political purpose or to aid a political campaign or organization. You may engage in partisan political activities during non-duty hours, even on days in which you are providing services to the Government.

Service as an Expert Witness. Unless you receive prior authorization, you may not serve as an expert witness in any case involving the United States Government if you participated as a Government employee in the matter that is the subject of the proceeding. Additionally, if you served for more than 60 days during the previous year, or on a commission established by statute, you may not serve as either a fact or an expert witness in a proceeding before a Federal court or Federal agency if the Department of Commerce is a party or has a direct and substantial interest in the matter, unless you receive prior authorization.

LOBBYING THE FEDERAL GOVERNMENT

Basic Principle: Avoid Divided Loyalties

As a Federal employee, you are subject to some restrictions on your dealings with Federal agencies and Federal courts; this is to avoid any appearance that you will have an undue influence on other Federal officials.

General Rules on Lobbying the Government. Because you are considered a Federal official, you are subject to some limitations regarding contacts with other Federal officials to influence Government actions on behalf of others. The restrictions differ depending on how many days you provided services to the Government during the previous year.

If you served for 61-130 days during the previous year, you generally may not serve as agent or attorney or otherwise represent anyone before a Federal agency or Federal court in any matter involving specific parties in which the United States is a party or has a substantial interest if:

- you participated personally and substantially in the matter as a special Government employee, or
- the matter is pending before the Department of Commerce.

If you served for 60 days or less, you generally may not serve as agent or attorney or otherwise represent anyone before a Federal agency or Federal court in any matter involving specific parties in which the United States is a party or has a substantial interest if:

- you participated personally and substantially in the matter as a special Government employee.

Receipt of Compensation based on the Lobbying Activities of Others. In addition to being restricted from representing others before the Federal Government, you are also barred from accepting compensation for the representational activities of others before the United States Government regarding a matter involving specific parties in which you participated personally and substantially or, if you served for 61-130 days, on a matter pending before the Department during your period of service.

Restrictions on Serving as a Foreign Government Agent or Lobbyist. A Federal official may not perform services on behalf of a foreign government that will require the official to register under the Foreign Agents Registration Act or Lobbying Disclosure Act. If you are required to register under either statute, you should call either the Ethics Division at (202) 482-5384 or the General Law Division at (202) 482-5393 for further advice.

MISUSE OF GOVERNMENT RESOURCES

Basic Principle: Thou Shalt Not Steal

It is important to limit the use of taxpayer-funded resources to activities that benefit the public rather than the individual employee.

General Rules. You may only use Government equipment, supplies, services, and personnel for authorized Government activities. Furthermore, your Government title may not be used in connection with private, non-Government activities. You must avoid circumstances that may imply that the Government endorses a particular private activity with which you are associated. Therefore, it would be improper for you to refer to your Government title or position when conducting personal business. You may not use nonpublic trade data, economic analyses, private personnel information, protected census data, national security information, or other nonpublic information for your private activities or for the benefit of someone else. 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. Regarding frequent flier benefits, you may use frequent flier miles and other benefits obtained from Government travel for personal purposes, including personal travel or upgrades on Government travel.

POST-FEDERAL EMPLOYMENT RESTRICTIONS

Basic Principle: Avoid Misuse of a Prior Relationship

After leaving Federal service you will continue to be subject to some restrictions on your activities, particularly with regard to lobbying the Government and using nonpublic information.

General Rules. After you leave Federal service you may not represent others before a Federal agency or Federal court concerning a specific-party matter on which you worked personally as a special Government employee. Similarly, for two years after leaving Federal service you may not represent others before a Federal agency or Federal court concerning a specific-party matter that was under your official responsibility as a special Government employee during your last year of Federal service. Furthermore, you may not use or disclose nonpublic information you obtained through your Federal service.

If you served in a senior employee position (are paid at or greater than 86.5% of the Executive Level II rate (\$135,805 in 2004) or were paid at or greater than Senior Executive Service level 5 on 11/23/2003) you will also be subject to a “no-contact” rule that will bar you from making any contacts with the agency in which you served for one year, if the contact is made on behalf of someone else with the intent to influence Government action. If you served in such a senior position you will also be subject to a one-year bar on advising and representing foreign governments and foreign political parties.

Exceptions. There are exceptions to some post-employment rules, including exceptions for contacts made on behalf of a state or local government, educational institution, international organization, or medical institution; and testimony provided under oath. You should seek further advice as to the circumstances in which such exceptions apply.

Seeking Non-Federal Employment. Please note that during a period you are in employment negotiations with a non-Federal Government entity you may not participate as a Federal official on any matter in which the prospective employer has a financial interest. This disqualification begins when you first contact a prospective employer or are contacted by one and continues until you or the prospective employer notifies the other of a lack of interest in pursuing the matter.

Contact the Ethics Division of the Office of the General Counsel at (202) 482-5384 for and handout and additional guidance regarding post-employment restrictions.

FINANCIAL DISCLOSURE

Basic Principle: Tell the Whole Truth

Basic Guidelines. As a special Government employee you will be 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 provide 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.

For more information about any of these rules contact the Ethics Division of the Office of the General Counsel, U.S. Department of Commerce,

EXAMPLES

NO PROBLEM

1. An advisory committee member who advises on regulations that will affect all domestic telephone companies has \$30,000 worth of stock in a telecommunications company, which is included in a conflict of interest waiver.
2. A 90-day temporary employee who has \$60,000 of holdings in a broadly-diversified mutual fund that has investments in oil and gas companies reviews a proposed oil spill regulation.
3. A consultant works on a grant application from a company for which he worked 3 years ago.
4. A special Government employee makes telephone calls on behalf of a candidate in a partisan election during non-duty hours from her home on a personal cellular telephone.
5. An advisory committee member (who serves for less than 60 days) contacts a Commerce employee on behalf of a neighbor concerning a grant unrelated to the committee's work.
6. An advisory committee member uses a Commerce-produced publicly-available marketing study to target potential customers for his private business.

PROBLEM

1. An advisory committee member who advises on regulations that will affect all domestic telephone companies. She has \$30,000 worth of stock in a telecommunications company and no conflict of interest waiver.
2. A 90-day temporary employee who has \$60,000 of holdings in a sector-specific mutual fund that focuses investments in oil and gas companies reviews a proposed oil spill regulation.
3. A consultant works on a grant application from a company for which he worked 3 months ago.
4. A special Government employee makes telephone calls on behalf of a candidate in a partisan election during non-duty hours from her Government office on a personal cellular telephone.
5. An advisory committee member (who serves for more than 60 days) contacts a Commerce employee on behalf of a neighbor concerning a grant unrelated to the committee's work.
6. An advisory committee member uses a Commerce-produced non-public marketing study to target potential customers for his private business.

CITATIONS TO APPLICABLE LAW

Financial Conflicts of Interest

18 United States Code (U.S.C.) § 208

5 Code of Federal Regulations (C.F.R.) §§ 2635.401 - 2635.403, 2635.502,
2640.201 - 2640.202

Appearances of Bias based on Outside Relationships

5 C.F.R. §§ 2635.501 - 2635.503

Bribes and Gifts

5 U.S.C. §§ 7342, 7351, and 7353

15 U.S.C. § 1522

18 U.S.C. § 201

5 C.F.R. §§ 2635.201 - 2635.205, 2635.301 - 2635-304

Non-Government Activities and Lobbying the Federal Government)

5 U.S.C. §§ 7321-7326; 18 U.S.C. §§ 203, 205, and 208

5 C.F.R. §§ 734.201 - 734.702, 2635.801 - 2635.809

Misuse of Government Position and Resources

18 U.S.C. § 641

5 C.F.R. §§ 2635.701 - 2635.705

Post-Federal Employment Restrictions

18 U.S.C. § 207

5 C.F.R. Parts 2635, 2637, and 2641

15 C.F.R. §§ 15.11-15.18

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