

GOVERNMENT ETHICS OUTLINE

I. Ethics Laws and Regulations

- A. Conflict of interest laws - 18 U.S.C. §§ 201-209
- B. Regulatory code of conduct - Executive Order 12674 of 1989 modified by EO 12731; Executive Order 13490, "Ethics Commitments by Executive Branch Personnel," January 21, 2009
- C. Procurement Integrity Restrictions - 41 U.S.C. § 423
- D. Executive Branch-wide Standards of Conduct - 5 CFR 2635
- E. Department of Justice Supplement to the Standards of Conduct - 5 CFR 3801 and 28 CFR 45

II. Conflicts of Interest

- A. An employee is prohibited from participating personally and substantially in a matter in which:
 - 1. He, his spouse, minor child, or a general partner;
 - 2. An organization of which he is an officer, director, trustee, partner or employee; or
 - 3. An organization he is negotiating with for future employment - 18 U.S.C. § 208... has a financial interest.
- B. Remedies to disqualification
 - 1. Unlimited exemption for an interest in a diversified mutual fund and certain employee benefit plans; an exemption of \$50,000 for aggregated interests in sector mutual funds; an exemption for interests in publicly-traded securities not to exceed \$15,000 in parties to a matter and \$25,000 in non-parties affected by a matter with parties; and an exemption of \$25,000 per asset for matters of general applicability, such as legislation or regulations, with a combined limit of \$50,000 in all entities affected by a general matter.

2. An individual waiver may be granted by the head of the employee's component if the interest is found not to be so substantial as to affect the employee's services.
 3. Disqualification¹
 4. Sale of an asset or resignation from a position - an employee may obtain a tax deferral on gains from sales made to prevent a conflict of interest - 26 U.S.C. § 1043.
- C. DOJ-Specific Conflict of Interest Regulation: No DOJ employee may participate in a criminal investigation or prosecution if he has a personal or political relationship with any person or organization substantially involved in the conduct that is the subject of the investigation or prosecution, or who would be directly affected by the outcome. 28 CFR 45.2

Political relationship means a close identification with an elected official, candidate, political party or campaign organization arising from service as a principal advisor or official; personal relationship means a close and substantial connection of the type normally viewed as likely to induce partiality.

D. Impartiality in Performing Official Duties

1. An employee may not participate in a particular matter involving specific parties affecting the financial interests of a member of his household, or when a person with whom he has a covered relationship is, or represents a party.
2. A covered relationship includes one involving:
 - a. Someone with whom he has or seeks a business relationship;
 - b. A member of the employee's household;
 - c. A relative with whom the employee has a close relationship;
 - d. A present or prospective employer of a spouse, parent or child; and
 - e. An organization in which the employee serves or has served in the past year as an employee, attorney or active participant.
3. The employee may disqualify himself or he may be authorized in writing to participate in the matter if the interest of the Department outweighs the appearance of a conflict. The determination should be based on: a) the nature of the relationship; b) the effect of the resolution of the matter on the financial interest; c) the nature and importance of the employee's role;

¹ An employee involved in a procurement may have to report contacts regarding employment made by a bidder on that procurement and disqualify himself in writing - 41 U.S.C. § 423.

d) the sensitivity of the matter; and e) the difficulty of reassigning it.

4. An employee who receives an extraordinary payment from a former employer prior to entering government service must disqualify himself for two years if the payment is not part of an established compensation or benefits program; exceeds \$10,000; and is made because of his government position. Disqualification may be waived by his determining official.

E. E.O. 13490, Ethics Commitments by Executive Branch Personnel, January 21, 2009, applicable to *political appointees*:

1. An appointee is recused from participating in any particular matter that is directly or substantially related to his or her former employer, including regulations and contracts. The restriction applies to any particular matter with specific parties in which a former employer or former client is or represents a party if the appointee served that employer or client during the 2 years prior to appointment, recusal period is 2 years from appointment.

Former employer includes anyone appointee served as employee, officer, director, trustee, or general partner; **former client** is anyone the official served personally as an agent, attorney or consultant. Note: governmental entities excluded from restriction.

Client of an appointee's former firm who appointee did not personally serve as agent, attorney or consultant, is not appointee's former client.

Note: Recusal extends to **communications or meetings** with former employer or former client **unless** the communication concerns a matter of general applicability or a non-particular matter *and* is open to all interested parties.

Two clarifications: 1) 5 or more interested parties will generally suffice for a single meeting, conference call, etc.; 2) appointees are not barred from consultations on general policy matters with educational institutions and other non-profits (e.g., "think tanks") which have an expertise in the subject and which have an academic or ideological interest, **but not** a financial interest.

An official speech may be a particular matter with parties but will not be prohibited unless the event at which the speech is given will have demonstrable financial effect on the former employer or client. An event may have a financial effect on the sponsor if 1) there is an admission fee for the event; 2) the event is a fundraiser; or 3) the event is some kind of business development activity.

2. An appointee who was a registered lobbyist during 2 years prior to appointment is recused from participating in matters on which the appointee lobbied during 2 years prior to appointment, or any particular matter within same specific issue area, for 2 years from appointment

3. An appointee is prohibited from seeking or accepting employment with an agency which the appointee lobbied within 2 years before the date of appointment, recusal period is for 2 years from appointment.

III. Outside Activities

A. General Provisions

1. No employee should engage in outside employment or any other outside activity that conflicts with his duties. An activity conflicts with an employee's duties if:
 - a. It is prohibited by statute, regulation, or a Department supplemental regulation; or
 - b. It would require disqualification from matters so central or critical to the performance of the employee's duties that his ability to perform them would be impaired.
2. Without a waiver from the Deputy Attorney General based on compelling reasons, an employee is prohibited from engaging in outside employment that involves:
 - a. The practice of law, unless it is uncompensated and in the nature of community service or is on behalf of himself, his parents, spouse, or children;
 - b. Any criminal or habeas corpus matter, whether Federal, state or local; or
 - c. Any matter in which the Department is or represents a party.
3. An employee is required to seek approval before engaging in outside employment, not otherwise prohibited that involves:
 - a. The practice of law; or
 - b. A subject matter, policy or program that is in his component's area of responsibility - 5 CFR 3801.106.

B. Teaching, Speaking and Writing

1. An employee may not accept a fee² for teaching, speaking or writing that

² Noncareer employees above GS-15 are prohibited from accepting reimbursement for travel

relates to his official duties. Teaching, speaking or writing relates to an employee's official duties if:

- a. It is done as part of his official duties;
- b. The invitation was extended because of the employee's official position rather than an expertise based on education or experience;
- c. The invitation is from someone whose interests may be affected by the employee's performance of his official duties;
- d. The information conveyed is non-public; or
- e. The subject deals with:
 - I. Any matter to which the employee is presently assigned or has been assigned during the previous one-year period;
 - ii. Any ongoing or announced policy, program or operation of the Department; or
 - iii. In the case of a non-career employee above GS-15, the general subject matter, area, industry or economic sector primarily affected by the programs and operations of the Department. In addition, non-career employees at this level must have approval to engage in teaching for compensation and may not accept travel expenses connected to speaking and writing related to their duties.
- f. The Department is divided into separate components for purposes of this rule.

- 2. Notwithstanding that the activity would relate to his duties, an employee may accept compensation for teaching a course requiring multiple presentations as part of the curriculum of an institution of higher learning, an elementary or secondary school, or a program sponsored by the federal government, or a state or local government.
- 3. An employee should not use his official title to promote his teaching, speaking or writing except for inclusion in biographical details or in a scholarly article with a disclaimer. (Some components require advance review and clearance for written work that is related to the component's mission.)
- 4. An employee should not use his official time or that of another employee, especially a subordinate, to prepare materials for personal activities.

C. Representations Before the Federal Government

- 1. An employee may not represent anyone else before a court or agency of the federal government or accept compensation for someone else's representation on a matter in which the U.S. is a party or has an interest -

expenses as well as a fee for a speech that relates to duties.

18 U.S.C. §§ 203 & 205 - except for:

- a. Representing his immediate family;
- b. Testifying under oath;
- c. Representing another employee in personnel administration proceedings; and
- d. Representing a non-profit organization composed of government employees and spouses but not on a claim against the U.S.

2. An employee may not serve as an expert witness in any proceeding before a court or agency of the U.S. in which the U.S. is a party or has an interest unless authorized as being in the interest of the government.

D. Restrictions on Political Appointees

1. A non-career (political) employee paid above GS-15 may not be compensated for serving as a member of a board, engaging in activities that involve a fiduciary relationship, or being employed by a firm that provides such services, nor may he allow his name to be used by such an entity. His outside earned income is limited to 15% of the Executive Level II salary - 5 U.S.C. app. 7 §§ 502 and 501 (\$26,955 as of January 1, 2014).
2. An official appointed by the President may receive no outside *earned* income - Executive Order 12674.

E. Fundraising - Non-Political

1. An employee may not engage in fundraising in his official capacity unless authorized by statute, regulation, executive order or a determination by the Department. (Only CFC, disaster relief are authorized.)

Exception: A speech, related to an employee's official duties, that is given at a fundraiser provided that the event is appropriate for the dissemination of official information and the employee does not request donations, and where the official's participation is not used to promote the event.

2. An employee may engage in fundraising in his personal capacity if he does not solicit funds from a subordinate or someone who has or seeks business with the Department, and he does not use his official title.
Exception: Use of the media and mass mailings when not targeted to subordinates or prohibited sources.

F. Partisan Political Activities

1. Public Law 103-94 amended 5 U.S.C. §§ 7321-26 (The Hatch Act) to

lighten the restrictions on participation in partisan political activities for most employees.

- a. All employees may register and vote, contribute money, sign petitions, attend political events, including fundraisers, assist in non-partisan voter registration drives, join political clubs or parties, express political views and display political stickers and buttons.
- b. Most employees (**excluding** all DOJ political appointees, career SES, ALJ's and employees of the Criminal Division, NSD, the Federal Bureau of Investigation (FBI), and all Criminal Investigators and Explosives Enforcement Officers in the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF)) may prepare and distribute campaign literature, campaign for a candidate in a partisan election, participate in political rallies, make political speeches, hold office in political clubs or parties and be candidates in nonpartisan elections.³
- c. DOJ political appointees, members of the career SES, ALJ's, and employees of the Criminal Division, NSD, the FBI, and all Criminal Investigators and Explosives Enforcement Officers in ATF may not participate actively in a campaign for partisan political office. They may not distribute fliers, serve as, or be a candidate for, an office or committee member of a political party, serve as a delegate to a political party convention; address a convention, rally, etc. for a candidate if it's done in concert with a party, organize, promote or actively participate in a fundraiser, canvass for votes, endorse or oppose a candidate, or initiate or circulate a nominating petition.
- d. No employee may use his official authority or influence to interfere with or affect the result of an election; solicit, accept or receive a political contribution from the public, other than from a fellow member of an employee union; sponsor a fundraiser; run for nomination or election to a partisan political office; or solicit or discourage the participation in political activities of anyone who has business with the Department.
- e. No employee may engage in political activities (to include wearing buttons) while on duty, in a government building, while wearing a uniform or insignia of office or in a government owned or leased vehicle.

³ In certain communities, including the Washington D.C. suburbs, an employee may run as an independent in a local partisan election and receive, but not solicit contributions.

2. An election is partisan if any candidate is running as a representative of a political party whose presidential candidate received electoral votes in the last presidential election.

G. Misuse of Position

1. An employee generally is prohibited from using his public office for private gain.
 - a. This includes his own private gain, and that of friends, relatives, or persons with whom he is affiliated, including a non-profit organization in which he holds office or is a member or persons with whom he has or seeks employment or business relations. Restrictions on employment of relatives (“nepotism” statute), 5 U.S.C. § 3110, prohibit an employee from appointing, employing, promoting, or advancing, or advocating for any of these actions, in the Department of Justice, a relative of the employee.
 - b. There should be no use of position or title to coerce someone, including a subordinate, to provide benefits to any of the above.
 - c. There should be no use of position or title to imply that the government sanctions the employee's personal activities or those of another, except for recommendations provided on request for someone with whom the employee worked in government or someone who is seeking a government job.
 - d. There should be no use of public office to endorse a product, service or enterprise.
2. Government property may not be used for other than authorized purposes. The Department has authorized the personal use of certain property such as office equipment and library facilities as long as the cost to the government is negligible and there is no use of official time, and all security precautions are followed.
3. An employee should not use non-public information to further his own or another's interests or engage in a financial transaction based on such information. Non-public information includes information that he knows:
 - a. Is treated as confidential by the Department;
 - b. Is exempt or protected from disclosure by statute, executive order or regulation; or
 - c. Has not been disseminated nor is authorized to be made available to the public.
4. No present or former employee or anyone acting on behalf of the United States shall knowingly disclose any contractor bid or source selection information before the award of the contract to which the information

relates - 41 U.S.C. § 423.

5. An employee shall not encourage, direct, coerce or request a subordinate to use official time to perform activities other than those required in the performance of official duties.

H. Purchase and Use of Forfeited Property - 5 CFR 3801.104

1. An employee shall not purchase or use any property forfeited to the government and offered for sale by the Department without a specific waiver from the head of his component.
2. An employee of the Drug Enforcement Administration, the FBI and the U.S. Marshals Service shall not purchase from his component or the General Services Administration property formerly used by his component.

I. Off-Duty Conduct

1. An employee must refrain from off-duty conduct that may negatively impact on his ability to perform his job or detract from the Department's mission.
2. Examples of such employee off-duty conduct include: sexual misconduct; racist or sexist remarks; falsification of documents; and failure to pay just debts.
3. An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.
4. High level officials and those entrusted with sensitive responsibilities such as law enforcement officers must be especially careful even when off duty. The latter must ensure that their off-duty conduct does not undermine their credibility when providing testimony in criminal proceedings.

IV. Acceptance of Gifts From Outside Sources - 5 U.S.C. §7353

- A. An employee may not accept gifts from a prohibited source which includes anyone who:
 1. Has or seeks business with the Department⁴;

⁴ The Department has designated separate components for purposes of this rule.

2. Is regulated by the Department;
3. Has interests that may be affected by the employee's official actions; or
4. Is an organization a majority of whose members are described above.

B. An employee is prohibited from accepting a gift given because of his official position.

Political appointees are prohibited from accepting a gift from a registered lobbyist or registered lobbying organization.

C. A gift includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of training, transportation, local travel, lodgings and meals.

D. Exceptions:

1. Gifts of \$20 or less per occasion and a total of \$50 from one source annually. (*This exception is not available to political appointees for gifts from a registered lobbyist or lobbying organization, Executive Order 13490, "Ethics Commitments by Executive Branch Personnel," January 21, 2009⁵.*)
2. Gifts based on a personal relationship.
3. Discounts and similar benefits offered to a broad category of the public such as reduced membership fees as long as there is no discrimination based on grade.
4. Awards, other than cash, for meritorious public service of \$200 or less. Awards above this amount or in cash may be accepted with written approval. (*This exception is not available to political appointees for gifts from a registered lobbyist or lobbying organization, Executive Order 13490, "Ethics Commitments by Executive Branch Personnel," January 21, 2009, except see FN 5.*)
5. Honorary degrees with approval in writing. (*This exception is not*

⁵ However, the exception may be used if the donor is: 1) a charitable or other not-for-profit organization exempt from taxation under 26 U.S.C. 501(c)(3), as long as the organization's employee extending the gift is not a registered lobbyist; or 2) if the donor is a media organization as long as the organization's employee extending the gift is not a registered lobbyist.

available to political appointees for gifts from a registered lobbyist or lobbying organization, Executive Order 13490, "Ethics Commitments by Executive Branch Personnel," January 21, 2009, except see FN 5.)

6. Gifts based on outside business relationships, to include those resulting from a spouse's business, and trips paid for by a prospective employer.
 - a. *The exception for a gift resulting from a government employee's own outside business or employment activities is not available to political appointees for gifts from a registered lobbyist or lobbying organization, Executive Order 13490, "Ethics Commitments by Executive Branch Personnel, January 21, 2009, except see FN 5.*
7. Widely attended gatherings (WAG) and speaking engagements:
 - a. When an employee's attendance will further agency programs, he may accept free attendance, food, or materials, generally only on the day of any presentation to be given, from the sponsor⁶ of:
 - i. A gathering of members of an industry or profession; or
 - ii. A conference or seminar where the employee is a speaker or on a panel.
 - b. Approval must be in writing when the organization is one that may be affected by the employee's performance of his duties.
 - c. Political appointees may accept free attendance, etc. on the day they are serving as a speaker or on a panel; however, *appointees otherwise may not be approved to accept attendance at WAG events if the gift is from a registered lobbyist or lobbying organization, Executive Order 13490, "Ethics Commitments by Executive Branch Personnel," January 21, 2009, except see FN 5.*
8. Food and refreshments at a social event from someone who is not a prohibited source and where no fee is charged to anyone in attendance even if the employee was invited because of his official position. *(This exception is not available to political appointees for gifts from a registered lobbyist or lobbying organization, Executive Order 13490, "Ethics Commitments by Executive Branch Personnel," January 21, 2009, except see FN 5.)*
9. Gifts from foreign governments up to \$375 - 5 U.S.C. § 7342.
10. Meals and entertainment in a limited amount in foreign areas from persons other than a foreign government where attendance will further Department programs or operations. *(This exception is not available to political*

⁶ If the cost of the employee's attendance is not provided by the sponsor of event, 100 or more persons must be expected to attend and the cost of the gift must not exceed \$375.

appointees for gifts from a registered lobbyist or lobbying organization, Executive Order 13490, "Ethics Commitments by Executive Branch Personnel," January 21, 2009, except see FN 5.)

- E. Notwithstanding the exceptions, an employee may not accept:
 - 1. Gifts from the same or different sources on a basis so frequent that it would appear to be misuse of public office;
 - 2. A gift that is solicited or coerced.
- F. Excluded from the definition of a gift for purposes of this standard are modest amounts of food and refreshments such as coffee and donuts not offered as part of a meal, greeting cards and plaques, favorable rates and commercial discounts, and rewards and prizes in contests or events open to the public.
- G. Even though acceptance of a gift may be permitted by an exception, it is frequently prudent to decline.
- H. An employee may not accept compensation for services to the government from anyone but the government - 18 U.S.C. § 209.
- I. Expenses for official travel may be accepted, with approval, from:
 - 1. Non-federal sources for attendance at certain meetings and other functions, but not to carry out statutory functions - 31 U.S.C. § 1353 & 41 CFR § 304. **This is a "gift" to the Department, not a gift to the employee, and requires advance written approval.**
 - 2. Foreign governments when overseas.
- V. Gifts Between Employees - 5 U.S.C. § 7351
 - A. An employee may not give gifts to a superior or solicit a contribution from another employee for a gift to a superior, except on special occasions; and may not accept gifts from subordinates or employees receiving less pay.
 - B. Exceptions
 - 1. On occasions when gifts are traditionally exchanged, the following may be given to an official superior or accepted from a subordinate:
 - a. Items other than cash valued at \$10 or less;
 - b. Food and refreshments shared among employees;
 - c. Personal hospitality and related gifts; and
 - d. Transferred leave except to an immediate supervisor.

2. On special, infrequent occasions such as marriage, illness, birth or on occasions that terminate the work relationship such as retirement, transfer, not promotion, an employee may solicit voluntary contributions of nominal amount from fellow employees for a gift to an official superior or for shared refreshments and make a voluntary contribution of a nominal amount.
3. An employee may accept a gift from an employee receiving less pay where there is a personal relationship and no superior-subordinate relationship.

VI. Seeking Other Employment

- A. An employee may be required to disqualify himself from participating in a matter that affects the financial interests of a prospective employer when the employee is seeking, but not yet negotiating for employment.
- B. An employee is seeking employment if he has:
 1. Made an unsolicited communication, unless to request an application ; or
 2. Responded to an unsolicited communication, other than to reject it.
- C. An employee is no longer seeking employment when:
 1. Either side rejects the other and discussions have terminated; or
 1. Two months have transpired with no response to an unsolicited resume or proposal.
- D. Requirement to notify ethics official in writing within 3 days of commencement of negotiations or acceptance of non-federal employment.

VII. Post-Employment Restrictions

- A. A former employee is prohibited from representing someone else before the government on a particular matter involving specific parties in which he participated personally and substantially while working for the government and in which the U.S. is a party or has a substantial interest - 18 U.S.C. § 207(a)(1).
- B. The Bar Rules prohibit behind-the-scenes work on such a matter, and extend this bar to the entire law firm unless the former employee is screened from access to the case files - ABA Model Rule 1.11.

- C. For two years, a former employee is prohibited from representing someone else before the government on a particular matter involving specific parties that he knows was pending under his official responsibility for the last year of government service and in which the U.S. is a party or has a substantial interest - 18 U.S.C. §207(a)(2).
- D. For one year, a former employee is prohibited from representing, aiding or advising on the basis of confidential information on a trade or treaty negotiation in which he participated personally and substantially within one year of leaving government - 18 U.S.C. § 207(b).
- E. For one year, a former **senior** employee is prohibited from representing someone else before his former agency with the intent to influence on a matter which is pending before the Department or in which it has an interest. A senior employee includes Executive Level officials, and SES officials, Senior Level (SL) and Scientific or Professional (ST) officials whose salary is above 86.5% of Executive Level II, which is \$156,997 as of January, 2014.

Executive Level personnel will be barred from the whole Department, while other senior officials who are in a designated separate component will only be barred from that component. A senior employee who works in a component not designated as separate is barred only from parts of the Department not designated as separate. (Most divisions and bureaus and each U.S. Attorney's Office are a separate component for purposes of this provision) - 18 U.S.C. § 207(c).

Political appointees covered by § 207(c) are subject to the ban for two years following the end of the individual's appointment.

- F. For two years, a former cabinet level official is prohibited from certain communications and appearances with the intent to influence official action to any other Executive Level official in the Executive Branch - 18 U.S.C. § 207(d).
- G. For one year, an official subject to 18 U.S.C. § 207(c) and (d) is prohibited from representing, aiding or advising a foreign entity with the intent to influence a Federal employee - 18 U.S.C. § 207(f).
- H. **Former appointees** are barred from lobbying any covered executive branch official or noncareer SES appointee for the remainder of the Administration.
- I. A former official may not accept compensation from a contractor within a year after he served as the procuring contracting officer, the source selection authority, a member of the evaluation board, or the chief of a financial or technical evaluation team for a procurement for a contract in excess of \$10 million. This restriction also applies to a former official who served as a program manager, deputy program manager, administrative contracting officer, or anyone who made

a decision to award or modify the contract, subcontract, task order or delivery order, to establish overhead or other rates, approve issuance of a contract payment, or pay or settle a claim in excess of \$10 million.