

UNITED STATES DEPARTMENT OF COMMERCE SUMMARY OF ETHICS RULES FOR SPECIAL GOVERNMENT EMPLOYEES



2022

ETHICS LAW AND PROGRAMS OFFICE
OFFICE OF THE GENERAL COUNSEL
UNITED STATES DEPARTMENT OF COMMERCE
202-482-5384 – ethicsdivision@doc.gov – www.commerce.gov/ethics

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 intended to help familiarize you with those rules.

If you have a question regarding an ethics issue, contact a Commerce ethics official in the Ethics Law and Programs Office (Ethics Office) of the Office of General Counsel, U.S. Department of Commerce at 202-482-5384 or ethicsdivision@doc.gov.

Designated Agency Ethics Official for the U.S. Department of Commerce:

Leslie B. Kiernan
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Office of Inspector General (OIG) – Employees have an obligation to report waste, fraud, abuse, or other violations of the law. The OIG maintains a Hotline for receiving allegations of fraud, waste, abuse, and other violations of law in U.S. Department of Commerce programs or operations. To file a complaint, please visit www.oig.doc.gov, click on “Hotline & Whistleblower Protection” on the top right and then scroll down to the “Online Complaint Form.”

The Ethics Office does not investigate allegations of violations of law.

Prepared by the Ethics Office, Office of the General Counsel, U.S. Department of
Commerce 202-482-5384 – ethicsdivision@doc.gov – January 31, 2022

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 or 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

A conflict of interest statute requires your disqualification from participating in a matter—including by giving advice or making a recommendation—in which you or your spouse, minor child, partner, household member, or employer has a financial interest. However, there are some exceptions to this general rule, including if a waiver has been granted, which is often the case for members of Federal advisory committees.

General Rule. You cannot participate as a Government official in a matter that will have a direct and predictable effect on your financial interests (such as a company in which you own stock); 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.

Exceptions to the General Rule. There are some exceptions to the general rule, however; you may participate in matters affecting a financial interest if the financial interest is:

- covered by a conflict of interest waiver, which is available for members of Federal advisory committees in most cases (and other employees in limited circumstances);
- a holding in a publicly-traded diversified mutual fund;
- a holding of less than \$50,000 in a publicly-traded “sector-specific mutual fund” (a fund that focuses on a specific industry sector or state or foreign country);
- a publicly-traded stock or bond holding of \$15,000 or less in a company;
- a publicly-traded stock or bond holding of \$25,000 or less in a company regarding participation in broad policy matters affecting the company as a member of a group or industry sector (if total investments in the group/industry sector are \$50,000 or less) (but not participation in matters affecting the company individually); or
- if you are a member of a Federal advisory committee, an interest in your non-Federal employer if the matter at issue concerns general policy.

Use of Insider Information and Investing in IPOs. You are barred from using insider information to make investment decisions. In addition, if you file a public financial disclosure report (which is required for political appointees, SES members, and employees at a similar pay level) you are barred from investing in Initial Public Offerings (IPOs) except in the same manner as is available to members of the public generally.

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

Applicable Law: 15 United States Code (U.S.C.) § 78u-1; 18 U.S.C. § 208; 35 U.S.C. § 4; 5 Code of Federal Regulations (C.F.R.) §§ 2635.401-2635.403 and 2640.201-2640.202

NON-FEDERAL EMPLOYMENT AND OTHER OUTSIDE ACTIVITIES

It is important to avoid not only financial conflicts of interest but also any appearance of loss of impartiality, including an appearance of a conflict based on personal relationships. An appearance of bias is most likely when a matter concerns a person or organization with which you have a close relationship outside of the Government.

General Rule. You cannot participate in a matter in which a person with whom you have a “covered relationship” is before the Government as a party (or to represent a party) and your participation would cause a reasonable person to question your 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 spouse, parents, or dependent children (and their prospective employers and clients);
- recent former non-Federal employers and clients, (which includes anyone who was an employer or client within the past year and, if you are a political appointee, anyone (other than a state or local government) that was an employer or client within the two years prior to your appointment (in which case the restriction will last for two years after your appointment)); and
- organizations (other than political parties) in which you are an active participant.

If you are a political appointee who served as a registered lobbyist or a registered foreign agent in the two years prior to your appointment, you also cannot participate in any matter on which you lobbied or engaged in activities as a foreign agent for two years after your appointment or specific issue areas in which such matter falls.

Exception to the General Rule. If the Government’s need for your participation in a matter outweighs appearance concerns, a waiver of the disqualification requirement may be available. Contact an ethics official for more guidance on this exception.

Perception Concerns. Note that if you are assigned to a task that does not involve someone with whom you have a “covered relationship,” but which still may raise a question regarding favoritism, such as a matter concerning a personal friend, you should discuss the concern with your supervisor, who can decide whether to reassign the matter to someone else based on management considerations, even though there is no legal requirement for your disqualification. You can also discuss such perception concerns with an ethics official.

Applicable Law: 5 C.F.R. §§ 2635.501-2635.503; Executive Order 13989 (January 20, 2021)

General Rule on Outside Activities. As a special Government employee, you are likely to have employment other than your U.S. Government position. It is important that you consider whether such non-Federal employment, or other personal activities, conflict with your Government duties. You are required to disqualify yourself from participating on matters in which an outside employer, or an organization in which you serve as an officer or board member, has a financial interest (except that you are permitted to participate in general policy matters affecting a non-Federal employer if you serve on a Federal advisory committee). If you think that this disqualification requirement will prevent you from performing important Government duties, please contact an ethics attorney at 202-482-5384 or ethicsdivision@doc.gov.

Restrictions on Non-Federal Activities. While serving as a special Government employee, you cannot:

- be a registered lobbyist;
- be a registered foreign agent;
- represent someone, or receive compensation due to someone else's representational activities (such as a partner's), before a Federal agency or Federal court regarding:
 - a matter involving specific parties on which you participated as a special Government employee or
 - if you serve for 61-130 days, a matter involving specific parties that was before the Commerce Department during your period of service;
- be paid for teaching or writing about programs, policies, and operations of Commerce or, if you are a political appointee in the Senior Executive Service (SES), about any subject areas under the responsibility of Commerce;
- be employed by a foreign government, unless your only Federal service is as a member of a Federal advisory committee; and
- engage in political activities during days of Federal service, which includes:
 - fundraising for a candidate in a partisan election (an election in which candidates are identified by party affiliation) or for a political party or Political Action Committee;
 - actively campaigning for elective office if you are running for office in a partisan election.

Applicable Law: 18 U.S.C. §§ 203, 205, 208, and 219; 5 C.F.R. §§ 2635.801-2635.809

GIFTS

Bribes. A bribe is any payment or benefit that is offered for you to take action, or fail to take action, as a Government employee. Bribes are always prohibited.

General Rule concerning Personal Gifts from Non-Federal Sources. Generally, you cannot accept a personal gift from anyone who has or is seeking business with or action from the Department of Commerce, is regulated by Commerce, or has interests that can be affected by performance of your Federal duties or a gift that was offered to you because of your Government position. Gifts to family members because of their relationship to you are considered gifts to you. Note that because of the broad range of Commerce Department responsibilities, almost all gifts to you would be barred under this general rule, but the exceptions listed below allow acceptance of most gifts if not related to your Federal service.

Exceptions to the General Rule concerning Personal Gifts. You can accept:

- meals, lodging and travel if based on an outside business relationship* or a spouse's employment;
- gifts of \$20 or less (other than cash/cash card) (up to \$50 per year);*
- gifts from a relative or friend (if based on your personal relationship);
- invitations to "widely-attended gatherings" (if your supervisor approves);*†
- business meals overseas (if a foreign person is present, in most cases);*
- discounts generally available to the public;
- awards and honorary degrees (in some cases);*
- items of little intrinsic value (greeting cards, plaques, trophies); and
- gifts from a foreign government of \$415 or less—a gift of over \$415 can be accepted on behalf of the United States Government.

* *If you are a political appointee, you cannot use this exception for a gift or invitation from a registered lobbyist or lobbying organization unless: (1) it is an invitation to an event at which you are speaking on behalf of the Government or (2) the gift or invitation is from a lobbying organization that is a 501(c)(3) organization or a media company (and the invitation was not extended by a person who is a lobbyist).*

† *An event is a "widely-attended gathering" (WAG) if a large and diverse number of people from outside the U.S. Government are expected to attend and the event is not primarily entertainment; if the invitation is from someone other than the host of the event, more than 100 persons must be attending and the value must be \$415 or less to use this exception. An ethics official can advise you whether an event is a WAG and can provide an approval form.*

General Rule concerning Gifts between Employees. You cannot offer a gift to a supervisor or accept a gift from a subordinate *unless* one of the exceptions below applies.

Exceptions to the General Rule concerning Gifts between Employees. You can offer a gift to a supervisor or accept a gift from a subordinate if it is:

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

Gifts to an Agency for Official Travel. Payments of travel expenses may be offered in connection with your Government travel. You cannot ask anyone to pay for your travel but offers may be accepted if acceptance would not cause a reasonable person to question the integrity of agency programs or operations. This generally means that travel payments may be accepted if they are not from an agency contractor or grantee or from someone regulated by your agency. However, you cannot accept: (1) first-class airline tickets or (2) an honorarium or speaking fee in connection with Government travel.

Forms Relating to Gifts. Forms for reporting gifts and for obtaining a supervisor's approval to accept an invitation are available at the Commerce Ethics website: www.commerce.gov/ethics.

Applicable Law: 5 U.S.C. §§ 7342, 7351, and 7353; 15 U.S.C. § 1522; 16 U.S.C. § 1442; 18 U.S.C. §§ 201 and 209; 5 C.F.R. §§ 2635.201-2635.205 and 2635.301-2635.304; 41 C.F.R. § 304-1; Executive Order 13989 (January 20, 2021); Department Administrative Order 203-9

SEEKING EMPLOYMENT

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

General Rules. You can only use Government resources, including Government equipment, supplies, services, and duty time, for authorized purposes. You cannot use your Government title in connection with your personal activities. Furthermore, nonpublic information you learn through your Federal job cannot be used for personal purposes, including nonpublic trade data, economic analyses, census data, private personnel information, and other nonpublic information, unless the information is readily available to the public. You also cannot use your Government authority, including business contacts obtained through Federal employment, for your personal benefit or the benefit of friends and relatives.

Exceptions to the General Rules regarding Use of Your Title, Frequent Flier Benefits, and Access to the Internet and Email. You can use your Government title for personal activities as part of general biographical data and, if you include a disclaimer, when writing for a scientific or technical publication. You can use frequent flier miles and other benefits obtained from Government travel for personal purposes, including personal travel or upgrades on official travel. Access to the internet and email can be used for some personal purposes, but there are restrictions, as explained below.

Use of the Internet and Email. You can use Government access to email and the internet, as well as Government devices, for personal activities if your use does not interfere with office operations, is not prohibited by your agency, and you do not use such access for:

- business activities or profit-making ventures;
- political activities;
- 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.

You can use office printers for personal purposes if such use does not consume excessive resources.

Applicable Law: 18 U.S.C. § 641; 5 C.F.R. §§ 2635.701-2635.705; Department of Commerce Internet Use Policy; United States Patent and Trademark Office (USPTO) Internet Use Policy

POST-EMPLOYMENT RESTRICTIONS

discussions (or until two months have passed with no response after submitting a résumé), except that if you contact a prospective employer only by sending an unsolicited résumé or application the disqualification applies only to matters involving the employer individually, until you receive a response. (Note that if you are a political appointee who served as a registered lobbyist or registered foreign agent in the 2 years prior to your appointment, you may not seek or accept employment with a Federal agency that you lobbied or engaged in activities as a foreign agent.)

Reporting Employment Contacts and Discussions. There are four circumstances in which you must report contacts or discussions about future employment.

- (1) If you are a member of the Senior Executive Service (SES), a political appointee, or otherwise required to file a public financial disclosure report (OGE Form 278e), including some Senior Foreign Service members, SL/ST employees, and NOAA Corps officers, you are required to report the employment discussions or an agreement regarding future employment to an ethics official within three business days of the beginning of the discussions or the agreement, including a statement that you are disqualifying yourself from participating in matters in which the prospective employer has an interest. A form to report such employment discussions is available on the Commerce Ethics website at www.commerce.gov/ethics; it should be downloaded, signed, and provided by email to ethicsdivision@doc.gov or an ethics official or sent to the Ethics Office, 1401 Constitution Avenue, NW, Room 5898C, Washington, D.C. 20230; alternatively, you can send an email to ethicsdivision@doc.gov identifying the prospective employer and the date negotiations began, and stating that you are aware of and will comply with disqualification requirements.
- (2) If you are participating in a procurement of greater than \$250,000 in value and you contact, or are contacted by, competing contractors in the procurement, you must provide written notification to both an ethics official (which can be by email to ethicsdivision@doc.gov) and your supervisor, even if you do not pursue discussions after the initial contact.
- (3) If you accept travel payments from a prospective employer, you must notify either an ethics official (at ethicsdivision@doc.gov) or your supervisor in writing that you are disqualifying yourself from matters in which it has an interest.
- (4) If you are assigned a matter concerning a prospective employer, you should notify the person who gave you the assignment that you cannot work on it.

Applicable Law: 5 U.S.C. app. 4 § 101 note [Pub. L. No. 112-105, § 17(a), 126 Stat. 291, 303]; 18 U.S.C. § 208; 41 U.S.C. § 423; 5 C.F.R. Part 2635.601-2635.606; Executive Order 13989 (January 20, 2021)

Post-Employment Restrictions. After you leave Federal service you cannot:

- contact a Federal agency or court on behalf of someone else to influence Government action concerning a matter involving specific parties (a matter with identified and named parties, such as a contract or grant) on which you worked as a Government official;
- for 2 years, contact a Federal agency or court on behalf of someone else to influence Government action concerning a matter involving specific parties that was under your responsibility (such as a matter on which a subordinate worked) during your last year of Government service; or
- disclose or use protected nonpublic Federal information, such as treaty negotiation information, personnel information, trade secrets, or national security information.

Senior Employees (employees whose base pay is \$176,201 or more) – If you are a senior employee, in addition to the restrictions on all employees, you cannot:

- for 1 year, contact your former agency on behalf of someone else to influence Government action or
- for 1 year, represent before any branch of the United States Government a foreign government or foreign political party, or advise or assist a foreign government or party in its dealings with the U.S. Government.

Procurement Officials and Program Managers – If you are a procurement official or program manager of a procurement of \$10,000,000 or more, you cannot:

- for 1 year, accept compensation from the bidder or contractor of the procurement.

Exceptions and Additional Post-Employment Restrictions. Exceptions to these rules apply concerning providing testimony or representing state and local governments, international organizations, and educational and medical institutions, in some cases. Additional restrictions apply to attorneys under bar rules, USPTO employees (regarding obtaining patent rights within one year of leaving USPTO), and EDA employees (regarding working for a firm receiving financial assistance within two years of leaving EDA). You may contact an ethics official for advice on these rules, even after leaving Federal service.

Applicable Law: 5 U.S.C. § 3524; 18 U.S.C. § 207; 41 U.S.C. § 2103; 42 U.S.C. § 3216; 5 C.F.R. Part 2641; 15 C.F.R. §§ 15.11–15.18

FINANCIAL DISCLOSURE

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 to help ensure that you do not inadvertently engage in prohibited activities.

For ethics officials to be able to provide 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:

- 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.

If you serve on a Federal advisory committee, your financial disclosure report is used to prepare a waiver of disqualification requirements that would otherwise apply regarding entities in which you have financial or employment interests. Therefore, it is particularly important to provide a report as soon as possible and before attending a committee meeting.

If you need assistance filling out your report, contact an Ethics official at 202-482-5384 or ethicsdivision@doc.gov.

Applicable Law: 5 U.S.C. App. 4 §§ 101-111; 5 C.F.R. Part 2634

For guidance on these rules, contact the
Ethics Law and Programs Office at
202-482-5384 or ethicsdivision@doc.gov.

Additional information is also available at:
www.commerce.gov/ethics.