

January 15, 2008

SUMMARY OF GOVERNMENT ETHICS RULES FOR NEW DEPARTMENT OFFICIALS

Laws and Regulations

Most of the ethics restrictions are found in sections 202 to 209 of Title 18 of the U.S. Code and in Executive Order 12674 as modified by EO 12731. The Executive Order is implemented by regulations at 5 CFR 2635. The Justice Department has supplemented these branch-wide regulations with specific rules that apply to Department employees at 5 CFR 3801. This document is only a summary. You should refer to the actual laws and regulations cited below when you have a question.

Seeking Advice

The Designated Agency Ethics Official (DAEO) for the Department is the Assistant Attorney General for Administration, and the Alternate DAEO is the Deputy Assistant Attorney General, Management, Policy and Planning, Justice Management Division. The ethics program is managed centrally by the Departmental Ethics Office which coordinates the Department program through a network of Deputy DAEOs in all components. You may call the ethics office at (202) 514-8196 for general advice or to obtain the name and telephone number of your Deputy DAEO who will be your main source of information and advice on the rules discussed below. You will receive approval and waivers referred to in this document from your determining official¹ in concurrence with your Deputy DAEO.

You will not be subject to disciplinary action for violating the standards of conduct for actions taken in reliance on the advice of an ethics official as long as you provide the ethics official with all the relevant facts concerning your proposed action.

Conflicts of Interest

The governing statute on financial conflicts of interest is 18 U.S.C. § 208. It prohibits participating in matters that affect your financial interests as well as those of your spouse, minor child, or a general partner; an organization which you serve as an officer, director, trustee, partner

¹For most employees, the determining official is the head of their component. The Deputy Attorney General is the determining official for component heads reporting to him, for the Associate Attorney General and for employees in the Office of the Attorney General. The Associate Attorney General is the determining official for component heads reporting to him and for the Deputy Attorney General. The determining officials for U.S. Attorneys and for U.S. Trustees and their employees are the Directors of their respective Executive Offices.

or employee; or an organization you are negotiating with for future employment.

Remedies to section 208 include an automatic exemption for an interest in a diversified mutual fund, for an interest in certain employee benefit plans, and for interests in securities that do not exceed \$15,000 when participating in a matter having parties and \$25,000 (\$50,000 for all affected interests) when participating in a matter of general applicability. A determining official may also grant an individual waiver when an interest is not large. The remedy used most frequently to resolve a conflict is disqualification from participation in the matter. Only rarely would you be required to sell an asset, but if you are, you may qualify for a tax deferral on gains from an asset sold to prevent a conflict of interest. 5 CFR 2634.1001-.1004.

If you have a continuing financial interest in your former employer, to include a law firm, you would have to disqualify yourself from or seek a waiver for any matter affecting the former employer's interests. If your spouse is a partner in, or owner of, a firm, you also would have to disqualify yourself or seek a waiver before participating in any matter affecting that firm.

Impartiality in Performing Duties

The standards of conduct address matters that do not affect your financial interests but which could reflect on your impartiality. You may not participate, without a waiver, in a particular matter involving specific parties which you know is likely to affect the financial interests of a member of your household. You also may have to disqualify yourself from a matter if someone with whom you have a personal or business relationship is a party or represents a party to the matter. This would include a former employer, even without a continuing financial interest, your former clients, an organization you worked for actively in the last year and your spouse's employer. 5 CFR 2635.501 & .502.

If you are an attorney, you would have to disqualify yourself from any case in which you participated before entering government. Generally, you would not be allowed to remain on leave of absence from a law firm while with the Justice Department.

If you received a payment in excess of \$10,000 from a former employer prior to entering government service that is not part of an established benefits program, you will have to disqualify yourself for two years from any matter in which your former employer is a party or represents a party. 5 CFR 2635.503.

Financial Disclosure

Officials appointed by the President, members of the Senior Executive Service and most Schedule C employees will be required to submit an initial financial disclosure report and annual reports thereafter that are available to the public. Such officials are notified each year of the requirement to file an annual report by May 15. One more report must be filed upon leaving government service.

Outside Activities in General

Generally, you should not engage in outside employment that conflicts with your duties. 5 CFR 2635.802. A Justice Department rule prohibits the outside practice of law unless it is uncompensated and in the nature of community service or on behalf of yourself, your parents, spouse or children. You are also prohibited from engaging in employment that involves a criminal matter or a matter in which the Department is or represents a party. These prohibitions may be waived by the Deputy Attorney General in unusual cases. You must obtain approval for the outside practice of law that is not otherwise prohibited and any outside employment, including unpaid service as an officer or board member, which involves the responsibilities of your component. 5 CFR 3801.106.

Representations Before the Federal Government

Generally, you may not represent someone 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. There are exceptions for testifying under oath, for representing yourself or members of your immediate family, for representing someone in personnel administration proceedings and for representing a nonprofit organization that is composed substantially of government employees. 18 U.S.C. §§ 203 & 205.

You 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 it is authorized as being in the interest of the government. 5 CFR 2635.805.

Teaching, Speaking and Writing

The following restrictions must be considered by an employee who would like to engage in teaching, speaking and writing for pay.

Presidential appointees are subject to an absolute ban on the receipt of outside earned income, which does not include income from military service, pensions, investment activities, royalties, or travel expenses. The outside earned income of a noncareer (political) official above GS-15 is limited to 15% of the Executive Level II salary.

Executive Order 12674, § 102 and 5 U.S.C. app. 7 § 501(a).

Employees are prohibited from accepting compensation for speaking or writing, and in some

cases, teaching² that relates to official duties. These activities relate to your official duties if you were invited to speak or write because of your official position or by someone whose interests you may affect in performing your duties, if the information you convey is not publicly available or the subject deals with:

1. Any matter to which you are presently assigned or have been assigned during the previous one-year period;
2. Any ongoing or announced policy, program or operation of the Department; or
3. **In the case of a noncareer (political) 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, employees at this level must have approval from the Assistant Attorney General for Administration/DAEO official to engage in teaching for compensation.**

There should be no use of your official title to promote your teaching, speaking or writing except for inclusion in biographical details or in a scholarly article with a disclaimer. 5 CFR 2635.807.

Other Restrictions on Certain Noncareer Employees

A noncareer (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. 5 U.S.C. app. 7 § 502.

Fundraising

You may not engage in fundraising in your official capacity unless authorized by statute or regulation.

You may engage in fundraising in your personal capacity if you do not solicit funds from a subordinate or from someone who has or seeks business with the Department, and you do not use your official title. There are exceptions for solicitations using the media or mass mailings if they are not **targeted** to your subordinates or persons having business with the Department; and for a speech related to your official duties that is given at a fundraiser, provided the event is appropriate for the dissemination of official information and you do not request donations. 5 CFR 2635.808.

Partisan Political Activities

²Most employees may accept compensation for teaching a course requiring multiple presentations as part of the curriculum of a recognized institution of learning even when the subject matter relates to their official duties.

Most employees, except career members of the Senior Executive Service (SES), administrative law judges, employees of the Criminal Division, the National Security Division and the Federal Bureau of Investigation, and all Criminal Investigators and Explosives Enforcement Officers in the Bureau of Alcohol, Tobacco, Firearms and Explosives, may participate actively in partisan campaigns. However, because of the sensitivity of the Department's law enforcement role, Attorneys General in the past have determined that Justice Department political appointees should be held to stricter rules, most recently to the same restrictions applicable by statute to the employees mentioned above.

All employees may vote, contribute money, sign petitions, express their views and display political stickers and buttons, except when on duty. However, no employee may solicit funds from the public nor use his official authority or influence to interfere with an election. No employee may solicit or discourage the political activities of anyone with business before the Department. No employee may be a partisan candidate for office, nor engage in any political activities, to include wearing buttons, while on duty or in a government office, a government vehicle or while wearing an official uniform. 5 U.S.C. §§ 7321-26.

Purchase of Forfeited Property

You may not purchase or use any property forfeited to the government and offered for sale by the Department without a specific waiver from your determining official. 5 CFR 3801.104.

Misuse of Position

You are generally prohibited from using your public office for your own private gain or that of friends, relatives, or persons with whom you are affiliated. This includes a non-profit organization in which you hold office or are a member, and persons with whom you have, or seek, employment or business relations.

You may not use your position or title to coerce someone, including a subordinate, to provide benefits to any of the above or to imply that the government sanctions your personal activities or those of another. You are allowed to provide recommendations on request using your official position and Department stationery for someone with whom you work or have worked in the government or for someone who is seeking a government job. You may not use your public office to endorse a product or service.

You may not use nonpublic information to further your own or another's interests. Information designated nonpublic ranges from that protected from disclosure by law, to information that has not been authorized to be made available to the public.

Generally, you may not use government property, including official time, for other than authorized purposes. You may not use the time of a subordinate for other than official duties or unless authorized by statute or regulation. 5 CFR 2635.701-.705. However, you may make

personal use of equipment such as word processors or library facilities as long as there is no more than a negligible expense to the government. 28 CFR 45.4.

Acceptance of Gifts and Other Things of Value

In general, you may not accept gifts from anyone who has or seeks business with the Department or an organization composed of such persons. You are also prohibited from accepting a gift given because of your official position. 5 CFR 2635.202.

There are Exceptions to Permit Acceptance of:

1. Gifts of \$20 or less per occasion and a total of \$50 from one source annually;
2. Gifts based on a personal or outside business relationship;
3. Discounts and similar benefits offered to a broad group as long as there is no discrimination based on grade;
4. Awards for meritorious public service or honorary degrees for which you may need approval;
5. Free attendance, food, and materials, from the sponsor of a conference where you are a speaker or your participation is seen to benefit the Department or a gathering of an industry or profession if your attendance is seen to further agency programs and is approved; and
6. Gifts from foreign governments up to \$335. 5 U.S.C. § 7342.

Food and refreshments not offered as part of a meal, greeting cards and plaques, favorable rates, commercial discounts, rewards and prizes in events open to the public are excluded from the definition of a gift. 5 CFR 2635.203 & 204.

You still may not accept gifts from the same or different sources so frequently that it would appear to be misuse of public office.

Acceptance of Expenses for Official Travel

With approval, you may accept expenses for official travel from:

1. A non-federal source for attendance at meetings and other functions, but not to carry out statutory functions. 31 U.S.C. § 1353 & 41 CFR 304.
2. Foreign governments when overseas. 5 U.S.C. § 7342.

You may use frequent flyer benefits earned from official government travel for personal travel. 41 CFR 301-53.

Supplementation of Government Salary

You may not accept compensation for services to the government from anyone but the government. 18 U.S.C. § 209. **You are generally prohibited from accepting financial assistance from a former employer such as moving expenses or other expenses incident to entry into government service. This does not bar the receipt of benefits under bona fide employer benefit plans as long as there is no preference given for entrance into government service. You may receive payments from a former firm that are based on past service and are guaranteed as to amount and payment schedule.**

Gifts to Superiors

You may not give gifts to an official superior or solicit a contribution from another employee for a gift to a superior, except on special occasions described below. You may not accept gifts from employees receiving less pay than you, unless you are not in a superior-subordinate relationship. 5 U.S.C. § 7351.

On occasions when gifts are traditionally exchanged, such as birthdays, you may give a gift to a superior or accept a gift from a subordinate of \$10 or less. You may share refreshments to mark the occasion and give and accept gifts of personal hospitality.

On special occasions generally not related to work, you may make, and solicit from fellow employees, voluntary contributions of a nominal amount for a gift to a superior or for shared refreshments. 5 CFR 2635.301-.304.

Seeking Other Employment

Under the standards of conduct, you may be required to disqualify yourself from participating in a matter that affects the financial interests of a prospective employer when you are seeking, but not yet negotiating for employment. Seeking employment generally includes sending a resume. 5 CFR 2635.601-.606.

Post-Employment Restrictions

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).

The Bar Rules prohibit behind-the-scenes work on such a matter and extend this bar to the entire law firm unless the proper screening mechanisms are in place to screen the former government employee. ABA Model Rule 1.11.

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).

For one year, former senior employees³ are prohibited from representing someone else before their former agency with the intent to influence on a matter which is pending before the Department or in which it has an interest. 18 U.S.C. § 207(c).

For two years, former cabinet level officials are prohibited from lobbying any other Executive Level official in the Executive Branch. 18 U.S.C. § 207(d).

For one year, officials subject to 18 U.S.C. §§ 207(c) and (d) are prohibited from representing, aiding or advising a foreign entity with the intent to influence a federal employee. 18 U.S.C. § 207(f).

A former employee is prohibited from sharing in fees resulting from representational services rendered by another at the time the former employee was with the government and concerning a matter in which the U.S. is a party or has a direct and substantial interest. 18 U.S.C. § 203. (This will affect former employees who leave government to become partners in a law firm.)

³ Senior employees include: Executive Level officials; SES and employees in other pay systems with an annual rate of basic pay (excluding locality adjustments) at or above 86.5 percent of the rate for level II of the Executive Schedule (\$148,953 as of January, 2008). Executive Level personnel will be barred from the whole Department, while those in the SES and other pay systems may only be barred from certain parts of the Department.