



Online Continuing Education for Professional Engineers
Since 2009

Ethics for Executive Branch Employees

PDH Credits:

3 PDH

Course No.:

EEB101

Publication Source:

US Office of Government Ethics
"An Ethics Handbook for Executive Branch Employees"

Release Date:

Jan. 1995

DISCLAIMER:

All course materials available on this website are not to be construed as a representation or warranty on the part of Online-PDH, or other persons and/or organizations named herein. All course literature is for reference purposes only, and should not be used as a substitute for competent, professional engineering council. Use or application of any information herein, should be done so at the discretion of a licensed professional engineer in that given field of expertise. Any person(s) making use of this information, herein, does so at their own risk and assumes any and all liabilities arising therefrom.

*"Always do right. This will
gratify some people and
astonish the rest."*

Mark Twain
(Samuel Longhorne Clemens)
1835-1910

Do It Right

Message from the Director

One of the most important responsibilities of the Office of Government Ethics is to promote among Federal employees an understanding of ethical standards for public service. This handbook represents one part of the Office's effort to meet this responsibility. It illustrates a number of ethics-related problems commonly faced by Federal employees and is a good place to start familiarizing yourself with the rules of conduct to which you must adhere during your Federal service. The handbook is not exhaustive of the types of issues that may arise and is not intended to replace the applicable regulations and statutes. Its purpose is simply to convey a sense of the scope of the Federal ethics program.

Most Federal employees are honest, loyal, and hardworking men and women who are eager to meet the high standards the public expects of its public servants. Understandably, these men and women may ask why they need to read this handbook. The answer is that although many of the standards of conduct are highly intuitive, some are not. The rules in this handbook derive from detailed statutes, regulations, and executive orders. When ethical principles are reduced to rules, lines necessarily are drawn that might have been placed somewhat differently. Nonetheless, it is the responsibility of the Federal employee to observe the lines as drawn.

Although these rules of conduct are vitally important, we must recognize that adherence to them is merely a minimum requirement of Federal service. As the Council for Excellence in Government in its "Ethical Principles for Public Service" has noted, the hallmark of true Federal service is willingness to go beyond what is legally required to act affirmatively to honor the public's trust. The true Federal servant combines personal integrity with service in the public interest and, among other attributes, is eager to accept responsibility, has the courage of his or her convictions, and is willing to tell the boss what the boss does not want to hear. These are qualities that do not lend themselves to rule-making and they are, for the most part, beyond the purview of the Office of Government Ethics. But as we go about the business of educating Federal employees concerning the standards required of them, it is important not to lose sight of this distinction between not violating the public's trust and affirmatively acting to serve that trust. The success of our Government depends on the existence of a Federal workforce that meets both standards.

Stephen D. Potts
Director

Contents

Introduction	7
Gifts from Outside Sources	10
The basic rule	10
What is a gift?	10
Exceptions to the gift rule	11
Limits on use of the exceptions	12
Gifts between Employees	14
The basic rule	14
What is a gift?	14
Exceptions to the gift rule	14
Conflicting Financial Interests	17
What is a disqualifying financial interest?	17
Imputed interests	17
Resolving the conflict	18
What is a prohibited financial interest?	19
Impartiality in Performing Public Duties	20
What are situations raising appearance concerns?	20
Resolving appearance concerns	21
Extraordinary severance payments	22
Seeking Other Employment	23
Restrictions on Former Employees	24
Permanent ban on certain activities	24
Two-year ban on certain activities	24
Additional restrictions imposed by statute	25
Additional restrictions imposed by executive order	25

Misuse of Position	27
Use of public office for private gain	27
Use of nonpublic information	27
Use of Government property	28
Use of official time	28
Outside Activities	29
Is it all right to engage in outside activities while working as a Government employee?	29
Activities that would require disqualification from matters critical to performance of the employee's official duties	29
Representing a person or organization before a department, agency or court; serving as an expert witness; and related activities	29
Receiving salary, contribution to, or supplementation of salary from a source other than the United States	30
Teaching, speaking, and writing	31
Fundraising activities	32
High-ranking noncareer employees and Presidential appointees	32
Just financial obligations	34
Agency pre-approval requirements	34
Additional restrictions	34
Special Government Employees and Procurement Officials	35
Special Government employees	35
Procurement officials	35

Introduction

***"Government is a trust,
and the officers of the
government are trustees;
and both the trust and
the trustees are created
for the benefit of the
people."***

Henry Clay
1777-1852

You may have heard it said that "public service is a public trust." This means that each Federal employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws, and ethical principles above private gain. The public deserves and should expect no less.

The purpose of this handbook is to present an overview of the types of ethical issues that frequently arise and a summary of the laws and regulations relevant to those issues. The handbook is not intended to replace the applicable statutes, executive orders, and regulations. You will not find here answers to all the ethical questions you are likely to confront in connection with your work for the Government, but a careful reading of this handbook should help you recognize those questions as they arise.

Once you're aware of an ethical question, your response should be determined by the uniform Standards of Ethical Conduct for Employees of the Executive Branch. These regulations can be found in 5 C.F.R. part 2635. They set forth rules to be followed by executive branch employees in seven areas--

- gifts from outside sources;
- gifts between employees;
- conflicting financial interests;
- impartiality in performing official duties;
- seeking other employment;
- misuse of position; and
- outside activities.

The Standards of Ethical Conduct are based on Executive Order 12674, as amended by Executive Order 12731, and a number of ethics-related statutes. The executive order sets forth 14 principles of ethical conduct that Federal employees must follow and on which the Standards of Ethical Conduct build. The relevant statutes deal with matters such as conflicts of interest, gifts, and post-employment.

In addition to the Standards of Ethical Conduct and the statutes, you will need to be aware of any supplemental regulations adopted by your agency that address concerns unique to your agency. Noncareer employees appointed to their positions on or after January 20, 1993, who are either "senior" appointees or involved in trade negotiations, will need, in addition, to become familiar with the post-employment restrictions in Executive Order 12834.

Some of the rules of conduct set forth in this handbook are very basic and obvious. Others are not. If you are confused or have doubts about the applicability of any of these rules, consult with your agency's ethics official. The official is there to answer your questions and help you understand what is required of you.

You should know that failure to follow the uniform Standards of Ethical Conduct or your agency's supplemental regulations could lead to reprimand, suspension, demotion, or even removal, depending on the circumstances. If the conduct also involves violation of one of the civil or criminal statutes, the penalty could include a monetary fine and/or imprisonment. Failure to adhere to the post-employment restrictions in Executive Order 12834 could lead to debarment from lobbying and/or civil proceedings for declaratory, injunctive, or monetary relief.

Don't put everything you've worked so hard to achieve at risk. Think before you act. Become familiar with the rules. And, if you have any concerns, talk to your agency ethics official.

Fourteen Principles of Ethical Conduct for Federal Employees

***"Our differences are
policies, our agreements
principles."***

William McKinley
1843-1901

- (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 by the Standards of Ethical Conduct, 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 nonperformance 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 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 the Standards of Ethical Conduct. Whether particular circumstances 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.
-

Gifts from Outside Sources

"Only he can be trusted with gifts who can present a face of bronze to expectations."

Henry David Thoreau
1817-1862

The basic rule

Donna works at the Environmental Protection Agency assembling data on the incidence of pesticide poisoning nationwide. In the course of her work she has occasionally spoken to Paul, a representative of a particular pesticide manufacturer. They've discovered that they were both raised on farms in Kansas. One day Paul stops by Donna's office and proudly presents her with an expensive signed and framed print depicting a typical Kansas farm scene.

May Donna accept the print? No.

A Federal employee may not accept gifts from any person or organization that --

- Seeks official action by the employee's agency;
- Does business or seeks to do business with the employee's agency;
- Conducts activities regulated by the employee's agency;
- Has interests that may be substantially affected by performance or nonperformance of the employee's official duties;
- Is an organization a majority of whose members are described above; or
- Gives the gift because of the employee's official position.

What is a gift?

Jake, an employee at the Fish and Wildlife Service, attends a 2:30 p.m. meeting with officials of a local environmental organization that is concerned about a proposed FWS regulation. The meeting is held at the offices of the environmental organization, which sends out for coffee and donuts. Jake would like to help himself to the refreshments but wonders whether they might be considered a prohibited "gift."

May Jake accept the snacks? Yes.

The term "gift" includes almost anything of monetary value. But there are some items that won't be considered gifts. Among these are soft drinks, coffee, donuts, and other modest refreshments offered other than as part of a meal.

Other items that won't be considered gifts include--

- Items of little intrinsic value which are intended solely for presentation, such as greeting cards, plaques, certificates, and trophies;
- Anything paid for by the Government, secured by the Government under Government contract, or accepted by the Government in accordance with a statute;
- Anything for which the employee pays market value;
- Most rewards and prizes in contests open to the public;
- Commercial discounts available to the general public or to all Government or military personnel;
- Loans from banks and other financial institutions on terms generally available to the public; and
- Payments under pension and similar employee benefit plans.

Exceptions to the gift rule

Nick's job at the Federal Trade Commission is to provide economic input on issues involving consumer protection. He is given a ballpoint pen worth about \$18 from a member of a consulting firm that frequently makes presentations before the FTC on behalf of affected clients.

May Nick accept the pen? Yes.

There are a number of exceptions to the rules against acceptance of gifts and one of these permits employees to accept unsolicited gifts with a market value of \$20 or less per occasion.

This "\$20 rule" does not apply to gifts of cash or investment interests. Also, under the rule, gifts received from any one source may not, in the aggregate, exceed \$50 in a calendar year.

. . .

Jenny is employed as a researcher by the Veterans Administration. Her cousin and close friend, Zach, works for a pharmaceutical company that does business with the VA. Jenny's 40th birthday is approaching and Zach and his wife have invited Jenny and her husband out to dinner to celebrate the occasion.

May Jenny accept? Yes.

Gifts are permitted where the circumstances make it clear that the gift is motivated by a family relationship or personal friendship rather than the position of the employee. It would be improper, however, for Jenny to accept the dinner if Zach charged the meal to his employer because then it would no longer be a gift from Zach.

Exceptions to the rule against acceptance of gifts allow employees to accept--

- Unsolicited gifts with a value of \$20 or less;
- Gifts clearly given because of a family relationship or personal friendship;
- Free attendance at an event on the day an employee is speaking or presenting information on behalf of the agency;
- Free attendance at certain widely-attended gatherings;
- Certain discounts and similar opportunities and benefits;
- Certain awards and honorary degrees; and
- Certain gifts based on outside business or employment relationships.

You should be aware that there are limitations on the applicability of some of these exceptions. For example, use of the widely-attended gathering exception would require an advance determination by your agency that your attendance is in the interest of the agency. Also, there are more exceptions than those listed above. When you are faced with a gift issue, it's a good idea either to get advice from your agency ethics official or to look up the relevant provisions in the regulations.

Limits on use of the exceptions

Once you've determined that a gift falls within one of the exceptions to the gift rules, are you free to accept it? Not necessarily. None of the exceptions may be used to--

- Accept a gift in return for being influenced in the performance of an official act;
- Solicit or coerce the offering of a gift;
- Accept gifts so frequently as to create an appearance that you are using public office for private gain;
- Accept a gift of vendor promotional training in contravention of applicable procurement policies; or
- Accept a gift in violation of any statute.

Among the statutes you should know about are those prohibiting--

- Solicitation or receipt of bribes (18 U.S.C. § 201(b));
- Receipt of salary or any contribution to or supplementation of salary as compensation for Government service from a source other than the United States (18 U.S.C. § 209); and
- Solicitation or receipt of gifts from competing contractors by procurement officials (18 U.S.C. § 423(b)(2)).

Remember also that just because you may accept a gift under one of the exceptions to the gift rule doesn't mean that you must accept the gift. It is never wrong and is often wise to decline a gift offered by a person or organization whose interests could be affected by actions of the agency where you work or a gift offered because of your official position. Exercising your discretion to decline a gift may be particularly smart when a gift is offered by a person or organization whose interests could be affected by your official actions.

Gifts between Employees

"Government is more than the sum of all the interests; it is the paramount interest, the public interest. It must be the efficient, effective agent of a responsible citizenry, not the shelter of the incompetent and the corrupt."

Adlai Ewing Stevenson
1900-1965

The basic rule

Joe is delighted with his new boss, Dan. In a few short months Dan has brought about creative changes in the division's work product while, at the same time, improving efficiency and boosting office morale. The two workers have also developed a friendship based on mutual respect and shared outside interests. Because of a conflicting family commitment, Joe and his daughter will be unable to use their season tickets for the next Orioles home game, so Joe thinks he'd like to give them to Dan.

May he do so? No. And it would be impermissible for Dan to accept the tickets if offered.

An employee may not--

- Give or solicit for a gift to an official superior; or
- Accept a gift from a lower-paid employee, unless the two employees are personal friends who are not in a superior-subordinate relationship.

In this context, the words "superior" and "subordinate" refer to people in the employee's chain of command.

What is a gift?

The term "gift" has the same meaning and excludes the same items set forth in the preceding section on Gifts from Outside Sources.

Remember that if you pay market value for what is given, then it won't be considered a "gift." Joe could give Dan the Orioles tickets if Dan paid Joe the face value of the tickets. Note also that carpooling arrangements between employees won't be considered gifts if you bear your fair share of the expense or effort involved.

Exceptions to the gift rule

For Christmas, Samantha, a secretary at the National Park Service, gives her supervisor a plant purchased for \$10.

Eli, a claims examiner at the Department of Veterans Affairs, takes his vacation at the beach. When he returns to work, he brings his supervisor a bag of saltwater taffy purchased on the boardwalk for \$8.

Susan, a section chief in the Department of Justice, invites an attorney on her staff to a dinner party at her home. The staff attorney brings her a \$15 bottle of wine.

Are the plant, the taffy, and the wine permissible gifts? Yes. They fall within the exception for certain gifts given on an occasional basis. This exception would allow gifts given, for example, on Christmas, a birthday, or a return from vacation, provided that they consist of--

- Items other than cash which, considered together, are worth no more than \$10 for each occasion;
- Personal hospitality provided at a residence;
- Gifts to a host or hostess given in connection with the receipt of personal hospitality, even if the cost of these customary gifts is in excess of \$10;
- Food and refreshments shared in the office; or
- Leave sharing as permitted by Office of Personnel Management regulations.

. . .

A second exception permits the giving and accepting of appropriate gifts recognizing special, infrequent events provided that the events are--

- Occasions of personal significance such as marriage, illness, or the birth or adoption of a child; or
- Occasions that terminate a subordinate-official superior relationship such as retirement, resignation, or transfer.

Jim works as the assistant to Carol, the personnel director of the Tennessee Valley Authority. Carol is in the hospital recovering from surgery and Jim would like to send her a \$30 floral arrangement.

Joan is a chemist employed by the Food and Drug Administration. The lab director who is her official superior, Glenn, is being promoted to a higher-grade position within the supervisory chain at the FDA. In honor of Glenn's promotion, Joan plans to send him a fancy fruit basket with a card stamped "FDA approved."

Are the floral arrangement and the fruit basket permissible gifts?

The floral arrangement is fine. Although it is to be given to an official superior and to be accepted from a lower-paid employee, it falls within the exception for infrequent occasions of personal significance. The fruit basket, on the other hand, is not permissible. Unlike a retirement or resignation, Glenn's promotion does not terminate his official-subordinate relationship with Joan. Neither is it an infrequent occasion of personal significance.

. . .

A third exception to the gift rule permits voluntary contributions of nominal amounts and solicitation of voluntary contributions of nominal amounts for gifts to official superiors--

- Recognizing special infrequent events as described above; and
- For food and refreshments to be shared in the office.

Sonya is taking up a collection for a tennis racquet from everyone in her section to be presented to her section chief on the occasion of his retirement. She tells each person that the contribution amount is \$5.00.

Is this arrangement permissible? No.

The occasion is special and infrequent and, as such, would allow for a group gift made up of voluntary contributions. Sonya's method of collection is improper, however, because it could result in contributions not voluntarily given. Sonya may suggest a nominal amount but must indicate to all employees solicited that they are free to contribute less or nothing at all.

. . .

Of course, even if a gift from a subordinate to his superior falls within one of the exceptions, it would still be impermissible if it were coerced by the superior.

Conflicting Financial Interests

***"No one should be judge
in his own case."***

Publilius Syrus
1st century B.C.

What is a disqualifying financial interest?

Fred, an employee at the National Institutes of Health, is responsible for reviewing proposals for a new library computer search system. Computer Corporation, a closely held company in which Fred owns a majority of the stock, has submitted a proposal for the new system.

Would Fred's review of the proposals for the new library computer system present a problem? Yes.

Under the Standards of Ethical Conduct and by criminal statute, 18 U.S.C. § 208(a), an employee is prohibited from participating personally and substantially in an official capacity in particular matters in which, to his knowledge, the employee has a financial interest. For a conflict to exist, it is not necessary that the extent of the possible gain or loss be known. The actual amount of the gain or loss is not important. However, to trigger the disqualification requirement, the matter in which the employee would otherwise participate must have a direct and predictable effect on his financial interest.

Imputed interests

Suppose that Fred's wife instead of Fred owns a majority of the stock in Computer Corporation. Would her interest in Computer Corporation disqualify Fred from reviewing the proposals for the new system? Yes.

Under the law, the financial interests of certain persons and entities, if known to the employee, will result in disqualification of the employee just as if the interests were the employee's own. These persons and entities include--

- The employee's spouse;
- The employee's minor child;
- The employee's general partner;
- An organization which the employee serves as officer, director, trustee, general partner or employee; and
- A person with whom the employee is negotiating for or has an arrangement concerning prospective employment.

Resolving the conflict

If you suspect that you may have a disqualifying financial interest, you should notify the person responsible for giving you the conflicting assignment or consult with your agency ethics official. To do otherwise may result in a criminal violation. With the aid of these persons, you should consider the alternatives for resolving the conflict. They include--

- **Disqualification**

The usual requirement is not to participate in the particular matter. It may also be necessary to take steps to ensure that others do not mistakenly involve you in the matter. A formal written statement of disqualification usually is not necessary but may be desirable in order to create a record of your actions.

- **Divestiture**

In some instances, sale or other divestiture of the asset creating the financial interest presents an alternative to disqualification from participation in the matter. If the decision is made to divest, it may be possible to defer the tax consequences of divestiture, but only if the asset is sold pursuant to a certificate of divestiture issued by the Office of Government Ethics. For this reason, it's important to see your ethics officer before selling any assets.

- **Waiver**

In some instances a waiver of general applicability may already cover the situation. Alternatively, the specific circumstances may warrant grant of an individual waiver by an authorized agency official. A waiver permits continued participation in a matter even in the absence of divestiture.

What is a prohibited financial interest?

Denise has received an offer of employment from a Federal agency that regulates certain chemical substances. Her prospective supervisor informs her that, under the agency's supplemental regulations, she will have to resign her board position with and divest her stock interests in Chemical Manufacturing Corporation.

Can the agency require Denise to take these actions as a condition of employment? Yes.

An employee may not acquire or hold any financial interest that the employee is prohibited from acquiring or holding--

- By statute;
- By agency supplemental regulation; or
- By reason of an agency determination that an individual employee's acquiring or holding of a particular financial interest would present a substantial conflict.

When an employee holds a prohibited financial interest, divestiture or termination of the interest is required if the employee is to continue on the job.

Impartiality in Performing Public Duties

"When a fellow says it hain't the money but the principle o' the thing, it's the money."

Frank McKinney "Kin" Hubbard
(Abe Martin)
1868-1930

What are situations raising appearance concerns?

Pete's work at the Food and Drug Administration requires him to participate in the process for review and approval of certain new drugs. His mother has just taken a senior position with a biomedical research company producing a new drug that would typically be subject to Pete's review. Pete is concerned that it might "look bad" if he participates in the review and approval process for the drug, but after doing some research he determines that his mother's employment with the research company is not a "disqualifying financial interest" under 18 U.S.C. § 208(a).

Should Pete disregard his concerns and proceed to review the drug? No. Pete is right to be concerned. In addition to the financial conflict of interest situations discussed above, there are a number of situations that raise "appearance" concerns and, consequently, require employees to take certain steps to avoid an appearance of the loss of impartiality.

Situations presenting some of the most significant "appearance" concerns arise when an employee is called upon to participate in a particular matter involving specific parties and the employee knows that--

- The matter is likely to affect the financial interests of a member of the employee's household; or
- One or more of the parties to the matter is or is represented by--
 - A person or organization with whom the employee has or seeks a business relationship that involves something more than a routine consumer purchase;
 - A person who is a member of the employee's household, or who is a relative with whom the employee has a close personal relationship;
 - A person or organization for whom the employee's spouse, parent or dependent child is, to the employee's knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee;
 - Any person or organization for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee; or
- An organization, other than certain political organizations, in which the employee is an active participant.

The following cases are examples of situations raising appearance concerns:

Maria, who works for the General Services Administration, wants to begin an outside retail business. In her private capacity, she has made an offer to buy a store owned by a local developer. The developer has pending with GSA a proposal to provide Federal office space and Maria expects that she will be called upon to evaluate the bid.

Frank inspects manufacturing establishments for the Occupational Safety and Health Administration. His brother-in-law and friend, James, has just purchased a plant that Frank is assigned to inspect.

Rebecca recently resigned her position as vice president of an electronics company in order to join the Federal Aviation Administration. Her new boss at the FAA has asked her to participate in the administration of a contract for which her old company is a first-tier subcontractor.

Jeremy is an attorney at the Agriculture Department as well as a member of and publicity chairperson for the private organization Stop the Gypsy Moths. Stop the Gypsy Moths files a lawsuit against USDA and Jeremy's boss asks Jeremy for his legal analysis of the case.

Resolving appearance concerns

If you are faced with a situation that falls within one of the above categories, your first step is to decide whether a reasonable person with knowledge of the relevant facts would question your impartiality if you participated in the matter. In making this determination you may seek assistance from your supervisor, your agency ethics official, or the person specifically designated by your agency to address appearance problems (the "agency designee"). Remember that your honesty and integrity are not relevant considerations in this determination.

If you decide that a reasonable person would not question your impartiality, then you may participate in the matter, unless the agency designee reaches a different conclusion. If you or the agency designee decide that your impartiality would be questioned, then you should not participate unless the designee, considering all the circumstances, determines that the interest of the Government in your participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations.

You should be aware that not all appearance problems fall into the above categories. The steps outlined here also should be followed if you are concerned that other circumstances may raise a question about your impartiality.

Extraordinary severance payments

Appearance considerations may also require disqualification of an employee who, on departure from his prior job, received from his former employer an extraordinary payment or other item worth more than \$10,000. Under certain circumstances, such a payment may bar the employee from participating, for two years, in matters in which the former employer is a party or represents a party.

Seeking Other Employment

"Government is only as good as the men in it."

Drew Pearson
1897-1969

Karen serves on a panel at the National Science Foundation that reviews grant applications to fund research relating to deterioration of the ozone layer. A representative from X university, which has an application pending before Karen's panel, calls Karen to ask whether she might be interested in applying for a faculty position with the university. They discuss generally the duties of the position and Karen's qualifications to fill it. Karen indicates she may be interested.

May Karen participate in the review of X university's grant application? Not unless she first obtains a written waiver under 18 U.S.C. § 208(b).

An employee who is seeking employment may not participate in particular matters that would affect the financial interest of the prospective employer. Where, as in Karen's case, the parties are actually engaged in discussions regarding employment, this prohibition is imposed by a criminal statute, 18 U.S.C. § 208, and may be avoided only by obtaining a written waiver under section 208(b). As the example indicates, the prohibition may be triggered even before negotiation of specific terms and conditions of employment begins.

. . .

Karen hears about a job at Y university, which also has a grant application pending before the panel on which she serves at NSF. She mails her resume to Y university and is waiting to receive a reply.

Would Karen's participation in review of Y university's grant application present a problem? Yes.

Karen has not engaged in the kind of two-sided negotiation for employment that would bring her job search within the reach of section 208. Even mailing out an unsolicited resume, however, if it were sent to an organization that would be specifically and individually affected by Karen's performance of her official duties, could cause a reasonable person to question Karen's impartiality. For this reason, Karen may not participate in the review of Y university's application unless her participation is authorized in advance by the person designated by her agency to address such matters.

Make it your business to understand the legal consequences of job-hunting and job discussions. Consult with your agency ethics official *before* you begin your job search and *immediately upon* receiving unsolicited offers or inquiries, if a prospective employer has a financial interest in matters that cross your desk.

Restrictions on Former Employees

"Corrupt influence, which is itself the perennial spring of all prodigality, and of all disorder; which loads us, more than millions of debt; which takes away vigor from our arms, wisdom from our councils, and every shadow of authority and credit from the most venerable parts of our constitution."

Edmund Burke
1729-1797

Permanent ban on certain activities

Five years ago Sam left the Federal Maritime Commission to set up his own law firm specializing in maritime law. Recently he was asked to represent a carrier in an appeal to which the Commission is a party. Years ago, Sam realizes, he handled the same case on behalf of the Commission.

May Sam represent the carrier in the appeal? No.

A former employee is forever barred from representing another person or organization before a Federal department, agency, or court on certain matters in which the former employee participated personally and substantially while working for the Government. The bar is imposed by the criminal "post-employment" statute, 18 U.S.C. § 207, which is intended to prevent employees from "switching sides."

Two-year ban on certain activities

Shortly before Mary retired from her job at the Defense Department last year, an accountant Mary supervised began an audit focusing on cost overruns under a DOD contract with an electrical pads supplier. Since Mary retired before the audit was complete, she never signed or even read the audit report. Now the supplier wants Mary to represent him in his dealings with DOD on the contract.

May Mary represent the supplier before DOD? No.

The post-employment statute provides that, for two years after terminating Government employment, a former employee may not represent another person or organization before a Federal department, agency, or court on certain matters which were pending under the employee's supervision during the last year of his Government service. In the example, it does not matter that Mary never read the audit report. If she knows or should know that the audit was under her official responsibility, her representation of the supplier could subject her to criminal penalties.

Additional restrictions imposed by statute

The post-employment statute prohibits all former employees, for a period of one year after leaving Government service, from engaging in activities related to certain trade and treaty negotiations. The statute also imposes additional one-year restrictions on the activities of former senior and very senior Government employees. These are generally officials paid at level V of the Executive Schedule and above. The restrictions are on representations by these officials to the agencies that they served and, in the case of very senior employees, on representations to certain high ranking officials throughout the Government. Former senior and very senior employees are also subject to a one-year ban prohibiting certain services to foreign governments and foreign political parties.

Additional restrictions imposed by executive order

Some noncareer executive branch employees are also subject to post-employment restrictions imposed by Executive Order 12834 of January 20, 1993. Under this executive order, senior appointees (certain officials appointed to positions on or after January 20, 1993, by the President, Vice President, or an agency head) are required to sign and adhere to ethics pledges that impose restrictions on certain representations before or to agencies served by the appointees for five years after termination of their employment as senior appointees with those agencies. In the case of senior appointees in the Executive Office of the President, the restriction is on certain representations before or to agencies for which the appointees had personal and substantial responsibility at the EOP. In addition, all affected senior appointees are subject to lifetime restrictions on certain activities undertaken on behalf of foreign governments and foreign political parties.

Executive Order 12834 also imposes post-employment restrictions on certain persons appointed to noncareer executive agency positions on or after January 20, 1993, who are involved in certain trade negotiations on behalf of the Government. Such persons, whether senior appointees or not, are required to sign and adhere to pledges that impose a five-year prohibition on providing certain services to foreign businesses, governments and political parties. The five-year period begins to run upon termination of the official's personal and substantial participation in the trade negotiation.

Remember: The best time to consult with your agency ethics official regarding post-employment restrictions is *before* leaving the Government. However, you may also obtain advice from your agency ethics official whenever, *after* you've left the Government, you find yourself confronting a post-employment issue.

You should know that there are other sources of post-employment restrictions that could apply to your activities after leaving Government. These include statutes specific to particular agencies or to employees performing particular functions and, for lawyers, bar association rules.

Misuse of Position

"Stand the gaff, play fair, and be a good man to camp out with."

Theodore Roosevelt
1858-1919

Use of public office for private gain

Sylvia, an employee of the Securities and Exchange Commission, offers to help a friend with a consumer complaint by calling the manufacturer of a household appliance. In the course of the conversation with the manufacturer, Sylvia states that she works for the SEC and is responsible for reviewing the manufacturer's SEC filings.

Tony, an employee of the Department of Education, is asked to write a letter of recommendation to a private company for a person he knows socially. He writes the letter on official stationery and signs it using his official title.

Calvin, a Commissioner of the Consumer Product Safety Commission, appears on a television commercial to endorse as safe a product produced by his former employer. On the commercial he is identified as a Commissioner of the CPSC.

What do Sylvia, Tony, and Calvin have in common? They have all misused their public offices.

Employees may not use their public offices for private gain, either their own gain or that of others. In the examples, employees used their offices to induce a benefit, to secure employment, and to suggest Government endorsement -- all for private purposes.

Use of nonpublic information

Gail is a Navy employee who learns that her agency will award a contract to Supplier Corporation. Before the contract is publicly announced, Gail calls her stockbroker and purchases stock in Supplier Corporation.

Harry, a General Services Administration employee, discloses the terms of a proposal for a GSA construction contract to a friend whose company has submitted a competing proposal.

Are Gail and Harry making permissible use of nonpublic information?
No.

Employees may not use or allow the use of nonpublic information to further their own private interests or the private interests of others. In addition to violating the uniform Standards of Ethical Conduct, the actions described in the above examples may also violate Federal statutes prohibiting the use and disclosure of confidential and inside information.

Use of Government property

Will is a Government worker who also coaches his daughter's soccer team. On a slow day at work, he uses Government computer and photocopy equipment to type and reproduce the game and practice schedule for the soccer team.

Barbara works for the Government but is an avid gardening enthusiast in her spare time. She wants to have pens and paper pads on hand for notetakers at the garden club meeting at her house, so she "borrows" some from her agency's supply cabinet.

Are these permissible uses of Government property? No.

An employee has a duty to protect and conserve Government property and may not use Government property, or allow its use, for other than authorized purposes. In addition to the Standards of Ethical Conduct, there are statutes that apply to misuse of Government property. These include statutes proscribing theft of Government property.

Use of official time

In addition to her Government job, Christine runs a catering business. It's difficult to reach her clients after hours, so she discusses menus and gives bids by telephone during work hours.

Richard, a supervisor at a Government agency, has forgotten to use his lunch break to pick up the tennis racquet he dropped off for restringing last week. During the afternoon he remembers the racquet and his evening tennis date, so he asks his secretary to pick the racquet up for him.

Are Christine and Richard misusing official time? Yes.

Except as otherwise authorized, an employee must use official time in an honest effort to perform official duties and may not ask or direct a subordinate to perform activities other than those required in the performance of official duties.

Outside Activities

*"... A time like this
demands*

*Strong minds, great hearts,
true faith, and ready hands;
Men whom the lust of
office does not kill;
Men whom the spoils of
office cannot buy;
Men who possess
opinions and a will;
Men who have honor ;
Men who will not lie."*

Josiah Gilbert Holland
1819-1881

Is it all right to engage in outside activities while working as a Government employee?

Most employees may engage in outside activities, which may include paid employment and civic, charitable, religious, and community service work performed without compensation. But not all activities are permissible. Employees should be aware of a number of restrictions and prohibitions on outside activities.

Activities that would require disqualification from matters critical to performance of the employee's official duties

Juan's principal duty in his new position at the Environmental Protection Agency is to write regulations relating to the disposal of hazardous waste. He has been asked to serve, however, as president of a nonprofit environmental organization that routinely submits comments on such regulations.

May Juan serve as an officer of the environmental organization?

No.

An employee may not engage in an outside activity if the rules dealing with conflicting financial interests or the appearance of a loss of impartiality would require the employee's disqualification from matters so central or critical to the performance of the employee's official duties that his ability to perform the duties of his position would be materially impaired.

Representing a person or organization before a Federal department, agency or court; serving as an expert witness; and related activities

Ian is an attorney at the Federal Maritime Commission who has a small outside law practice. On a matter unrelated to his Federal service, he is thinking about accepting a fee to represent a contractor before the General Services Administration Board of Contract Appeals, to contest the Government's termination of its contract.

Catherine is an official at the Small Business Administration. From time to time she looks in on an elderly neighbor to see if she needs anything. On a recent visit, Catherine learned that her neighbor is upset over the Internal Revenue Service's assessment of a penalty against her because

of a claimed overdue payment. The neighbor is apprehensive about calling the IRS to explain the claimed IRS error, so Catherine would like to call for her. She does not intend to take any compensation.

Are the representational services Ian and Catherine propose to provide permissible? No.

Two overlapping Federal statutes, 18 U.S.C. §§ 203 and 205, prohibit an employee from making representations -- whether for compensation or not -- before any department, agency, or court if the matter is one in which the United States has a substantial interest. The statutes also prohibit an employee from--

- Taking compensation for such representational services provided by another; and
- Receiving consideration for assisting in the prosecution of a claim against the United States.

There are a number of exceptions to sections 203 and 205. An important one allows an employee, under certain circumstances, to represent himself, his parents, his spouse, his children, and certain others for whom the employee serves in a specific fiduciary capacity, such as a guardian.

There is also an exception in the statutes for giving testimony under oath. Use of this exception, however, is limited by the Standards of Ethical Conduct. The Standards provide that an employee may not serve as an expert witness for a private party in a proceeding before a court or agency of the United States in which the United States is a party or has a direct and substantial interest. This restriction applies whether compensation is received or not. It may be waived by the employee's agency ethics official under certain conditions.

Receiving salary, contribution to, or supplementation of salary from a source other than the United States

The Society for Ethical Conduct in Government, a private, nonprofit, and non-partisan organization, announces that it is sponsoring a number of two-year fellowships for individuals of high ethical character who are willing to serve in any policy position in the Federal Government during the pendency of the fellowship. To encourage people to apply for the fellowship, the Society has determined that benefits of the fellowship will include monthly payments from the Society that make up the difference

between the recipient's Federal salary and \$150,000. The fellowship program is completely the idea of the Society and there is no statute authorizing it. Warren, a Federal employee in a policy position, has applied for one of the fellowships.

If Warren is selected as one of the fellows, may he accept the monthly stipend? No.

Warren's acceptance of the money would probably be considered a violation of a criminal statute, 18 U.S.C. § 209. With some limitations, this statute prohibits an employee from receiving anything other than his Federal salary as compensation for services as a Government employee.

Teaching, speaking, and writing

Paula works in the public information office of the Internal Revenue Service. A private trade association offers to pay her to teach a short course on a new taxpayer assistance program being implemented by the IRS.

May Paula accept the offer? No.

An employee may not receive compensation -- including travel expenses for transportation and lodging -- from any source other than the Government for teaching, speaking or writing that relates to the employee's official duties. For most employees, teaching, speaking, or writing is considered "related to official duties" if--

- The activity is part of the employee's official duties;
- The invitation to teach, speak, or write is extended primarily because of the employee's official position;
- The invitation or the offer of compensation is extended by a person whose interests may be affected substantially by the employee's performance of his official duties;
- The activity draws substantially on nonpublic information; or
- The subject of the activity deals in significant part with agency programs, operations or policies or with the employee's current or recent assignments.

For certain high-ranking noncareer employees, teaching, speaking and writing will also be considered "related to official duties" if the subject of the activity deals in a significant part with the general subject matter area, industry, or economic sector primarily affected by the programs and operations of such an employee's agency.

There is an exception that, in certain circumstances, allows all employees to accept compensation for teaching certain courses involving multiple presentations even if the courses relate to the employee's official duties. Various requirements must be met, however, in order to use this exception.

Again, it's a good idea to consult with your agency ethics official before engaging in any outside teaching, speaking, or writing. In addition to helping you determine whether the proposed activity is "related to duties," the official will advise you regarding any restrictions on acceptance of honoraria for certain appearances, speeches, and articles. You should know that such restrictions may apply even if the proposed activity bears no relationship to an employee's official duties.

Fundraising activities

The Standards of Ethical Conduct also contain rules governing fundraising for nonprofit organizations by an employee in his personal capacity. There are specific rules limiting the use of official title, position, or authority to further a fundraising effort and rules restricting solicitation of funds from subordinates and persons whose interests may be affected by actions of the employee's agency.

High-ranking noncareer employees and Presidential appointees

Emily holds a noncareer Senior Executive Service position with a Federal agency and is paid at a rate of pay in excess of the GS-15 level. She also has an outside job as head of marketing for a very successful family mail order business. This outside job provides nearly half of Emily's annual earned income.

Are Emily's outside earnings permissible? No, not in that amount.

Certain noncareer employees whose rate of basic pay is equal to or greater than the annual rate of basic pay for positions classified above GS-15 are subject to a 15 percent limitation on outside earned income.

In any calendar year, their outside earned income may not exceed 15 percent of the annual rate of basic pay for level II of the Executive Schedule.

William is a noncareer employee of the White House who is paid in excess of the GS-15 level. A friend offers to pay him a small fee to draft wills for the friend and his wife.

Is the arrangement permissible? No.

Covered noncareer employees are subject to a number of restrictions on their outside activities in addition to the 15 percent limitation on outside earned income. They may not receive any compensation for --

- Practicing a profession, such as law, which involves a fiduciary relationship;
- Affiliating with or being employed by a firm or other entity which provides professional services involving a fiduciary relationship;
- Serving as an officer or member of the board of any association, corporation or other entity; or
- Teaching without prior approval from the designated agency ethics official.

In addition, and regardless of whether they receive any compensation, such employees also may not permit use of their names by any firm or other entity which provides professional services involving a fiduciary relationship. Note that for purposes of the "fiduciary relationship" restrictions, covered professions and professional services include law, medicine, insurance, architecture, financial services, accounting and the like.

Subject to certain exclusions, *Presidential appointees* to full-time noncareer positions may not receive *any* outside earned income during their Presidential appointments.

Just financial obligations

An employee must satisfy in good faith all his obligations as a citizen, including his just financial obligations. These include Federal, state, and local taxes imposed by law.

Agency pre-approval requirements

Some agencies require by supplemental regulation that employees obtain prior approval before engaging in outside activities. Even if advance approval is not required by your agency, however, it's a good idea to consult with an agency ethics official to make sure that the activity you're considering does not run afoul of applicable statutes, the Standards of Ethical Conduct, or other regulations specific to your agency.

Additional restrictions

There are a number of additional restrictions on the activities of Federal employees. These include--

- The Emoluments Clause of the United States Constitution, article I, section 9, clause 8, which prohibits acceptance of gifts and compensation from foreign governments;
- 18 U.S.C. § 219, which prohibits acting as an agent of a foreign principal under specified circumstances; and
- The Hatch Act, 5 U.S.C. §§ 7321 through 7328, which applies to political activities of Federal employees.

Special Government Employees and Procurement Officials

"In a civilized life, law floats in a sea of ethics."

Earl Warren
1891-1974

Special Government employees and procurement officials are two types of Federal employees that have a special status under applicable ethics laws and regulations.

Special Government employees

The term "special Government employee" is defined in 18 U.S.C. § 202(a). With some exceptions, it applies to employees who are retained, designated, appointed, or employed to perform temporary duties, either on a full-time or intermittent basis, with or without compensation, for a period not to exceed 130 days during any consecutive 365-day period. Special Government employees are subject to many of the ethics statutes and to most of the Standards of Ethical Conduct. However, parts of some of the statutes and certain Standards do not apply at all to these employees and some impose reduced standards.

Procurement officials

The term "procurement official" refers to employees who participate personally and substantially in certain activities, as defined at part 3.104-4(h) of the Federal Acquisition Regulation, during the award phase of a Government contract. Procurement officials, while subject to the ethics statutes and the Standards, are also subject to 41 U.S.C. § 423. This statute is implemented at part 3.104 of the Federal Acquisition Regulation and imposes more rigorous standards relating to gift acceptance, employment discussions, post-employment activities, and disclosure of procurement-sensitive information.

. . .

In the interest of brevity and simplicity, this handbook does not attempt to address the special rules unique to special Government employees and procurement officials. Employees who fall within one of these groups should ask their agency ethics officials for information on the ethics rules specific to them. Such information should then be used in conjunction with this handbook.