



U.S. Department of Justice

Public
Comment
on Non-Agenda

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MEMORANDUM FOR ALL DEPARTMENT EMPLOYEES

FROM: Lee J. Lofthus
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SUBJECT: Off-Duty Conduct

The recent participation of some Federal employees in a range of activities that have brought discredit on the government raises concern about the level of awareness on the part of Department employees regarding every employee's obligation to refrain from off-duty conduct that may negatively impact their ability to perform their jobs or distract from the Department's mission. The following sets forth the basis for the expectation that Department employees will comport themselves appropriately on and off the job; explains the legal foundation for the principle that off-duty conduct may be grounds for discipline; and gives examples of off-duty activities that have resulted in employee discipline.

BACKGROUND

Executive Order 12674 as modified by Executive Order 12731 provides that "Public Service is a public trust, requiring employees to place loyalty to the Constitution, the laws, and ethical principles above private gain." Relevant to activities outside of the workplace, the Executive Order states that

Employees shall [1] satisfy in good faith their obligations to citizens, including all just financial obligations...that are imposed by law...[2] adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap...[and 3] avoid any actions creating the appearance that they are violating the law or the ethical standards promulgated pursuant to this order.¹

¹ It is important to note that Executive Order 12731, which is implemented at and forms the basis for much of the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR Part 2635, has not been amended to reflect other advances in the Nation's equal opportunity policy affecting federal employees, particularly with respect to gay, lesbian, bisexual and transgender employees. Nevertheless, the Department is also bound by more recent Executive Orders (see, e.g., Executive Orders 13087 and 13672) and the Department's current EEO Policy, all of which prohibit discrimination on the basis of gender identity or sexual orientation,

Office of Personal Management Regulations provide at 5 CFR 735.203 that

[a]n employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

Additional specific provisions of relevant statutes and regulations require federal employees to pay our just financial obligations, prohibit gambling on federal property, and bar illegal drug use at all times.

NEXUS TO OFFICIAL DUTIES

Employees may be disciplined for off-duty conduct if there is a nexus (connection) between the offending conduct and the employee's job-related responsibilities such that the proposed discipline would "promote the efficiency of the Service." See 5 U.S.C. § 7513(a).

An agency may show nexus between off-duty misconduct and the efficiency of the service by three means: (1) a rebuttable presumption in certain egregious circumstances; (2) preponderant evidence that the misconduct adversely affects the appellant's or co-workers' job performance or the agency's trust and confidence in the appellant's job performance; or (3) preponderant evidence that the misconduct interfered with or adversely affected the agency's mission. Hoofman v. Department of the Army, 112 M.S.P.R. 532, ¶ 16 (2012). This most often applies where the employee engages in the very type of behavior which the agency and/or the employee is charged with preventing or addressing. Brown v. Department of the Navy, 229 F.3d 1356, 1361 (Fed. Cir. 2000); Prather v. Department of Justice, 117 M.S.P.R. 137, ¶ 32 (2011).

Some off-duty conduct is considered to be so egregious that the nexus between the conduct and federal employment "speaks for itself" and raises a rebuttable presumption of nexus to the efficiency of the service. Graham v. U.S. Postal Service, 49 MSPR 364, 367 (1991). For example, there is an automatic presumption that a federal employee's commission of a violent crime adversely affects the efficiency of the service and is so grievous as to raise a rebuttable presumption that discipline is appropriate. Hayes v. Department of the Navy, 727 F.2d 1535, 1539 (Fed. Cir. 1984). Similarly, sexual misconduct with minors is regularly held to provide a presumption of nexus warranting removal. Graham, 49 M.S.P.R. at 367.

Higher-level employees and those entrusted with sensitive responsibilities, including attorneys and law enforcement officers, are subject to closer scrutiny and greater potential discipline for off-duty misconduct reflecting on honesty and integrity than those employees with less responsibilities. For example, law enforcement officers are entrusted with responsibilities (such as conducting arrests, searches and seizures, and providing testimony in criminal proceedings) which, if abused, could severely impact the lives of innocent people. Therefore, law enforcement officers may be more severely punished than other federal employees for many types of off-duty misconduct that reflect negatively on their ability to perform their official duties, and/or may be punished for some conduct for which other employees would not be punished at all. Prather, 117 MSPR 137, ¶ 36.

One of law enforcement officers' most important responsibilities is to provide objective and unbiased testimony during criminal and related proceedings. Federal Rule of Evidence 608(b) allows defense counsel to impeach an officer during cross examination by asking about specific instances of past conduct which are probative of veracity or bias. Giglio v. United States, 405 U.S. 150, 154 (1972); Brady v. Maryland, 373 U.S. 83 (1971). Accordingly, while the most serious misconduct -- e.g., the commission of a violent crime or illegal drug use -- may well be the basis for criminal prosecution, any off-duty conduct on the part of a law enforcement officer that would undermine his or her credibility or demonstrate bias could adversely affect the ability of such officer to perform his or her official duties, and could reasonably be a basis for management's loss of confidence in the employee's ability to adequately perform his or her job, can therefore be a basis for discipline. Nguyen v. Department of Homeland Security, 737 F.3d 711, 715-17 (Fed. Cir. 2013).

Specific off-duty conduct which has resulted in federal employees being disciplined, and in some cases removed from federal service, includes:

- sexual misconduct;
- racist or sexist remarks or conduct;
- threats against coworkers or supervisors;
- fraud
- falsification to obtain employment, employment benefits, workers compensation, disability, or sick leave;
- failure to pay just debts, including taxes;
- misuse of a government credit card; and
- conflicts of interest (improper use of one's official position for private gain).

The Attorney General previously reminded all employees that they are prohibited from soliciting, procuring, or accepting commercial sex. This rule applies at all times during an individual's employment, including while off-duty or on leave, and applies regardless of whether the activity is legal or tolerated in a particular jurisdiction, foreign or domestic. Department personnel are also reminded that marijuana is still a controlled substance under Schedule I of the Controlled Substance Act and knowing and intentional possession is illegal, regardless of whether individual states have decriminalized the use of marijuana and allowed its use in certain circumstances. All federal employees are required to refrain from the use of illegal drugs, whether on or off duty. Executive Order 12564, Drug-Free Federal Workplace.

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Attached to this memorandum is a summary of the ethics and related rules that apply to our conduct and activities, on- and off-duty, or on personal leave. Individual components may issue additional guidance on applying the rules to specific circumstances, including conduct while overseas. Employees who have questions about these rules or the Department's policies should consult their supervisors, Human Resources or their Deputy Designated Agency Ethics Official.

Attachment

Ethics Handbook for On and Off-Duty Conduct

U.S. Department of Justice
January 2016



INTRODUCTION

This Ethics Handbook for On and Off-Duty Conduct summarizes the principal ethics laws and regulations governing the conduct of Department of Justice employees. The purpose of this handbook is to increase your awareness of the ethics rules and their applications, including when you are not in a duty status or are on leave. We have included citations after each rule and we suggest that you consult the full text of the law or regulation when you have specific questions.

The ethics rules condensed here include the conflict of interest statutes found at 18 USC §§ 202 to 209; Executive Order 12674 on Principles of Ethical Conduct as amended by EO 12731, the Uniform Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR Part 2635, Department of Justice regulations at 5 CFR Part 3801 that supplement the uniform standards, and additional Department regulations at 28 CFR Part 45, and Executive branch-wide standards of conduct at 5 USC § 735.

The Designated Agency Ethics Official (DAEO) for the Department is the Assistant Attorney General for Administration. The Departmental Ethics Office is responsible for the overall direction for the ethics program in the Department. Each Bureau, Office, Board and Division has a Deputy DAEO who should be your first contact for advice. Your component may have additional guidance that addresses specific circumstances, in particular with off-duty conduct and employees serving in foreign countries. Employees are responsible for knowing and adhering to any component specific guidance.

The ethics statutes and regulations may be found on the website of the Departmental Ethics Office. If you do not have access to the internet, contact your Deputy DAEO to obtain a paper copy of the regulations. If you do not know who your ethics official is, call the Departmental Ethics Office on (202) 514-8196 or consult the website for a list of ethics officials within the Department.

Some of these rules require analysis when applying them to specific situations. You should use this handbook as a means of keeping yourself apprised of the general prohibitions, but you should always seek advice from an ethics official if you are contemplating an action that you think might be covered by the rules, especially where it may be necessary to obtain a waiver or approval in advance.

Generally, an employee who provides all the facts to an ethics official and follows the advice given will not later be disciplined for violating the standards of conduct if subsequent inquiry reveals a possible violation consistent with the facts provided. Heads of components in consultation with the appropriate Deputy DAEO grant most formal determinations on ethics questions, including waivers and approvals.

We hope you will find this handbook useful

The Departmental Ethics Office

14 General Principles of Ethical Conduct

The following general principles apply to every employee and may form the basis for the standards contained in this part. Where a situation is not covered by the standards set forth in this part, employees shall apply the principles set forth in this section in determining whether their conduct is proper.

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 [these standards of 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 their official Government duties and responsibilities.
11. Employees shall disclose waste, fraud, abuse, and corruption to the 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.

14 General Principles of Ethical Conduct, continued

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 this part. 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

5 CFR 2635.101 (b)



Ethics Handbook

Conduct Prejudicial to the Government

An employee shall not engage in criminal, infamous, dishonest, immoral or disgraceful conduct, or other conduct prejudicial to the government. In connection with overseas service, the State Department has defined notoriously disgraceful conduct as conduct which, were it to become widely known, would embarrass, discredit, or subject to opprobrium the perpetrator and the United States.

5 CFR 735.203, 3 FAM 4139.14

Gambling

An employee is prohibited from participating in any gambling activity while on-duty or on government property, although there is an exception for activity necessitated by the employee's official duties. Employees must seek and adhere to their component's guidance on such gambling activity.

5 CFR 735.201

Commercial Sex

An employee is at all times prohibited from soliciting, procuring, or accepting commercial sex, whether on or off-duty or on personal leave, and regardless whether the activity is legal or tolerated in a particular jurisdiction, foreign or domestic.

Attorney General Memorandum, April 2015

Intoxicants

An employee is prohibited from habitually using alcohol or other intoxicants to excess. Components may have more specific guidance and limitations, including for off-duty alcohol use. Employees must know and adhere to the specific limitations that apply to the employee.

5 USC 7352

Just Financial Obligations

An employee shall satisfy in good faith the obligations as a citizen, including all just financial obligations, especially those – such as Federal, state and local taxes – that are imposed by law.

5 CFR 2635.809

**Equal
Opportunity**

An employee shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, sexual orientation, gender identity, national origin, age or handicap.

5 CFR 2635.101 (b)(13), 5 USC 2302

EO 13087, EO 13672

**Appearance of
Impropriety**

An employee shall endeavor to avoid any actions creating the appearance that the employee is violating the law or the ethical standards set forth in this part.

5 CFR 2635.101(b)(14)

Nepotism

An employee may not appoint, employ, or promote a relative to a position in the Department, or advocate a relative for appointment, employment, promotion or advancement. Employees should be cautious when assisting in any way relatives who are seeking employment, appointment, or advancement in Department positions.

5 USC 3110

**Security
Clearances**

As a reminder for employees for whom a security clearance is required for performance of their official duties, any above - noted prohibited conduct, and more, may be grounds for suspension or revocation of a clearance. This could also result in adverse disciplinary action, including suspension or removal. Consult your security program manager for more guidance.

Misuse of Official Position

General Rule

You may not use your public office for your own private gain or for the gain of persons or organizations with which you are associated personally. Your position or title shall not be used: to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to you or to friends, relatives, or persons with whom you are affiliated in a nongovernmental capacity; to endorse any product or service; or to give the appearance of governmental sanction. For example, you may use your official title and stationery only in response to a request for a reference or recommendation for someone you have dealt with in Federal employment or someone you are recommending for Federal employment.

5 CFR 2635.702

Use of Government Property and Time

Generally, you should be mindful of your responsibilities to make an honest effort to use government property and official time, including the time of a subordinate, for official business only, and to protect and conserve government property. However, as a Justice Department employee, you are generally authorized to make minimal personal use of most office equipment and library facilities where the cost to the government is negligible and where it does not interfere with official business, where permitted by security rules, and on your own time. This limited personal use is a privilege, not a right, and employee use must conform to all restrictions. Employees may not use government property including computer systems and individual electronic devices for commercial purposes; to send solicitations, lobby, or engage in prohibited political activity; for activities that are illegal, inappropriate or offensive to fellow employees or the public; or to create, download, view, or store, copy or transmit sexually explicit or sexually oriented materials or materials related to illegal gambling, illegal weapons, terrorist activities or other illegal activities; or any other prohibited uses as set forth in Department and component orders or guidance. Employees may not use Government equipment as a substitute for personally-owned equipment. Personal activities should be conducted on personal equipment, except to the minimal degree that personal use on Government equipment is permitted by Department policy.

You may not use your DOJ contact information including email address for non-official matters except as emergency contact information and for persons such as close family and friends, children's school, and in similar limited circumstances, where it is clear your communication is not on behalf of the Department and you are not attempting to exert official influence.

*5 CFR 2635.704, DOJ Order 2740.1A
28 CFR 45.4*

Misuse of Official Position, continued

Government Vehicles

Use of government vehicles is governed by statute, including penalties for misuse. Employees should consult their components' guidance for authorized use of government vehicles

31 USC 1344 & 1349 (b)

Use of Nonpublic Information

You may not engage in a financial transaction using nonpublic information or allow the use of such information to further your private interests or those of another. Nonpublic information is information you gain on the job, which has not been made available to the general public, and is not authorized to be made available on request such as through the FOIA. (There are also statutory prohibitions on the misuse of information involving national security, trade secrets, individuals and government procurement.)

5 CFR 2635.703, 5 USC 522 & 522a

18 USC 798, 50 USC 783 (a)

18 USC 1905, 41 USC 423 (a) & (b)

Political Activities

The Hatch Act

All federal employees may vote, express opinions and make political contributions. Under the Hatch Act, active participation in partisan political activities by federal employees is restricted, and employees serving in certain positions are more restricted than others. All federal employees are barred from using their official authority or influence to interfere with an election, from engaging in political activity while on duty, in a government office, wearing an official uniform or using a government vehicle, and from soliciting or discouraging the political activity of anyone who does business with the Department. The rules are specific and may be complex. Any employee seeking to actively engage in partisan political activity should consult the guidance available on the Department's website, and the guidance issued by his or her component.

5 USC 7321-21

5 CFR 733 & 734

Employees May Not:

- Use official authority or influence to interfere with or affect the result of an election.
- Participate in political activities (to include wearing political buttons) while on duty; while wearing a uniform, badge or insignia of office; while in a government occupied office or building; or while using a government owned or leased vehicle.
- Solicit, accept or receive a political contribution from a member of the public.
- Solicit political contributions in a speech given at a fundraiser.
- Sponsor a fundraiser.
- Allow official title to be used in fundraising or other political activities.
- Solicit, accept or receive uncompensated volunteer services from a subordinate.

- Be a candidate for partisan political office except as an independent candidate in certain communities.
- Solicit or discourage the political activity of anyone who is a participant in any matter before the Department.

Most Employees May:*

- Express opinions on political subjects and candidates.
- Campaign for or against a referendum, constitutional amendment or ordinance.
- Participate in civic, professional and other similar activities.
- Sign a political petition.
- Display signs, stickers, badges or buttons for candidates for partisan political office except when on duty.
- Register and vote.
- Run as a candidate or support a candidate in a non-partisan election.
- Contribute to a political party, or a candidate in a partisan election.
- Join, organize and serve as an officer of a political party or group.
- Address a convention, caucus, rally or similar gathering of a political party for or against a partisan political candidate.
- Participate in a nominating caucus, convention, rally or other political gathering.
- Initiate and circulate a nominating petition for a partisan candidate.
- Canvass for votes for or against a candidate for partisan political office.
- Endorse or oppose a partisan political candidate.
- Participate in and manage the campaign of a partisan political candidate.
- Serve as a poll watcher, election judge or clerk for a partisan candidate or party.
- Drive voters to polls on behalf of a partisan political candidate or party.
- Attend, address, but not solicit funds, at a political fundraiser.
- Solicit, accept or receive volunteer services except from a subordinate.
- Solicit, accept or receive certain contributions from a fellow member of a federal labor organization or other employee organization who is not a subordinate.
- Run as an independent candidate in a partisan election in certain communities and accept and receive but not solicit contributions from the public.

***In DOJ, political appointees, career SES, ALJs, explosives enforcement officers in the ATF, and employees of the Criminal Division, the FBI, and the National Security Division are FURTHER RESTRICTED with regard to political activities, and may NOT engage in many of these actions. These employees should seek specific guidance from their ethics official before engaging in any partisan political activity.**

Outside Employment and Activities

General Rule

You should not engage in any outside employment or other activity that conflicts with your official duties and responsibilities. Employees are prohibited from engaging in outside employment that involves criminal matters, the paid practice of law or matters in which the Department is a party or represents a party. Only the Deputy Attorney General may waive these prohibitions.

5 CFR 2635.802

5 CFR 3801.106

Approval for Certain Outside Activities

You are required to obtain written approval for certain employment including the practice of law that is not otherwise prohibited, and any outside employment involving a subject matter related to the responsibilities of your component.

5 CFR 3801.106

Representing Others

You may not receive compensation for the representation of anyone before a federal agency or official, or before any court in a matter in which the U.S. is a party or has a substantial interest. This prohibition applies whether or not you render the representation yourself.

18 USC 203

You also may not represent someone in connection with a claim against the United States or before a federal agency or official, or before any court, with or without compensation, in a matter in which the U.S. is a party or has a substantial interest.

18 USC 205

There are exceptions to the above statutes for representing your immediate family, testifying under oath, representing another employee in personnel administration proceedings, and representing employee organizations, in certain matters.

Fundraising

You may engage in fundraising in your personal capacity, off-duty, as long as you do not solicit your subordinates or persons having business with the Department. There is an exception for mass mailings that do not target the above persons. You may not engage in fundraising in your official capacity unless authorized by statute, executive order or regulation (e.g., the Combined Federal Campaign). There is an exception for giving an official speech at a fundraiser, when specifically authorized in advance after disclosure of all facts and circumstances regarding the event.

5 CFR 2635.808

**Service as an
Expert
Witness**

You may not serve as an expert witness in your private capacity in any proceeding before the United States in which the U.S. is a party or has an interest unless specifically authorized.

5 CFR 2635.805

Honoraria

You may not be paid by anyone but the Government for speaking or writing undertaken as part of your official duties.

18 USC 209

**Outside
Teaching,
Speaking and
Writing**

When you are teaching, speaking or writing in your private capacity, you may not use nonpublic information, nor should there be any use of your official title except as a biographical detail or where there is a disclaimer. Generally, you may not be compensated for teaching, speaking, or writing that relates to your official duties. However, there is an exception for teaching in certain educational settings. If you are a career employee, or non-career employee classified at GS-15 and below, what relates to your duties is a present or recent assignment, or a policy, program or operation of your component. If you are a non-career employee above GS-15, what relates to your duties is broader, and you must have advance authorization from the DAEO before engaging in teaching for compensation. You may not use your official time or that of a subordinate to prepare materials. Some components require advance review and clearance for certain written work and speeches.

5 CFR 2635.703, 705 & 807

5 CFR 2636.307

ACCEPTING GIFTS AND THINGS OF VALUE

Gifts, Entertainment And Favors From Outside Sources

You may not solicit or accept a gift 1) given because of your official position, or 2) from a prohibited source, which includes anyone who:

- Has or seeks official action or business with the Department;
- Is regulated by the Department;
- Has interests that may be substantially affected by the performance of your official duties; or
- Is an organization composed mainly of persons described above.

The definition of a gift is broad. It includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of training, transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

If you are offered a gift and you do not know the source, in circumstances where you cannot be certain it is a permissible gift, you should decline.

A gift does not include items such as publicly available discounts and prizes, commercial loans, food not part of a meal such as coffee and donuts, and items of little value such as plaques and greeting cards.

Unless the frequency of the acceptance of gifts would appear to be improper, you may accept:

- Gifts based on a personal relationship when it is clear that the motivation is not your official position.
- Gifts of \$20 or less per occasion not to exceed \$50 in a year from the same source.
- Discounts and similar benefits offered to a broad class, including a broad class of government employees.
- Most genuine awards and honorary degrees related to public service although in many cases you will need prior approval.

ACCEPTING GIFTS , continued

- Free attendance, food, refreshments and materials provided at a conference or widely attended gathering or certain other social events which you attend in your official capacity, with prior written approval. If you are invited to an event by someone other than the sponsor, the cost must not exceed \$375 and at least 100 people must be expected to attend.
- Gifts based on an outside business relationship such as travel expenses related to a job interview, as long as you are recused from matters affecting the donor.

5 USC 7353, 5 CFR 2635.202-204

You should return gifts not meeting the exceptions or contact your Deputy DAEO on how to dispose of them. Perishable items may be given to charity or shared by your office, with approval.

5 CFR 2635.205

Supplementation You may not receive any payment, or supplementation, of your government salary from any source except the Government for performing your duties.

Foreign Gifts You are allowed to accept certain gifts from foreign governments and their representatives if they do not exceed a minimal value presently set at \$375. In addition, if approved in advance, employees may accept travel expenses from a foreign government for travel taking place entirely outside of the United States. Gifts whose value exceeds the minimal value are deemed to be accepted on behalf of the United States and may not be kept by the employee. In addition, an employee may accept meals and refreshments while in a foreign country provided by non-government persons in the course of a meeting when the employee is performing official duties, and where the event includes non- U.S. citizens or representatives of a foreign government or other entities. **Employees are responsible for knowing and adhering to their component's procedures for approval and reporting of gifts from foreign governments or accepted while in a foreign country, and any component specific restrictions.**

ACCEPTING GIFTS, continued

Gifts to Superiors

You may not give, or solicit a contribution for, a gift to an official superior, and you may not accept a gift from an employee receiving less pay than you if employee is a subordinate. There is an exception for voluntary gifts of nominal value made on special occasions such as marriage, illness or retirement. You also may give an individual gift to a superior costing \$10 or less, and contribute to shared food and refreshments in the office.

5 USC 7351, 5 CFR 2635.302 & .304

Travel

Generally, you may not accept reimbursement for travel and related expenses from any source other than the Government when you are traveling on official duty. However, with prior written approval, DOJ may accept travel expenses incidental to your attendance at conferences or similar functions related to your duties from non-Federal sources pursuant to the GSA regulations cited here. Travel expenses for a spouse accompanying you on official travel may not be accepted.

Consult your Deputy DAEO on obtaining approval for yourself.

- You may retain for personal use benefits from commercial sources, including bonus flights, that result from official travel. You may keep a bonus offered when you volunteer to take a later flight as long as the delay does not interfere with the conduct of your duties and you do not charge the Government for additional costs, but you may not keep such a bonus if you are bumped from a flight. In most cases, you may not travel other than coach class when on official business.

41 CFR 301

41 CFR 304

CONFLICTS OF INTEREST

Your nonfederal financial holdings and your outside activities and relationships can trigger the application of the conflict of interest statutes and regulations. Below are summaries and examples of how the conflict of interest rules may become applicable to you.

General Rule

You should avoid situations where your official actions affect or appear to affect your private interests, financial or non-financial.

Statutory Prohibition

You may not participate personally and substantially in a matter in which you, your spouse, minor child or general partner has a financial interest. This prohibition also applies if an organization in which you serve as officer, director, trustee, or employee has a financial interest or if a person or organization with which you are negotiating for future employment has a financial interest.

18 USC 208

Impartiality Standard

Generally, you should seek advice before participating in any matter in which your impartiality could be questioned. You may not participate without authorization in a particular matter having specific parties that could affect the financial interests of members of your household or where one of the following is a party or represents a party: someone with whom you have or are seeking employment, or a business, contractual or other financial relationship; a member of your household or a relative with whom you have a close relationship; a current or prospective employer of a spouse, parent or child; or an organization which you now serve actively or have served, as an employee or in another capacity, within the past year.

5 CFR 2635.502

Purchase of Forfeited Property

Without written approval, you may not purchase or use property that has been forfeited to the Government and offered for sale by the Justice Department.

5 CFR 3801.104

Negotiating for Future Employment

Generally, you may not take official action on a matter affecting the financial interests of an organization with which you are negotiating or have an arrangement for a job. Generally, you must disqualify yourself from a matter in order to negotiate for a job, and employees participating in a procurement have to report to certain officials in writing before negotiating with a contractor competing for that procurement.

You may also have to disqualify yourself when you are merely seeking employment, which includes sending a resume. You should get advice from your Deputy DAEO about seeking and negotiating for employment before you begin a job search.

*18 USC 208, 41 USC 423
5 CFR 2635.602*

Remedies For Conflicts

If you have a financial conflict of interest or believe your impartiality might be questioned, you must either disqualify yourself from taking action that could affect your interest, or see your Deputy DAEO about the following alternatives:

In the case of a financial interest, you either may seek a waiver of the prohibition under 18 USC§ 208 (b), or must divest yourself of the interest. (If you are directed to divest an interest, you may be eligible to defer the tax consequences of divestiture.) Your component head may grant you a waiver if your financial interest is found to be not so substantial as to affect the integrity of your services to the Government.

*18 U.S.C. 208(b)(1)
5 CFR 2634.1001-1004*

In a case where your impartiality might be questioned, you may obtain a formal determination from your component head that the Department's interest in your participation outweighs the concern that the integrity of the Department's operations would be questioned.

5 CFR 2635.502(d)

When participating in matters affecting your financial interests, you have an unlimited exemption for holdings in a diversified mutual fund and for certain employee benefit plans where the holdings may be affected by the matter. In addition, you have an exemption of \$50,000 for aggregated interests in sector mutual funds that may be affected by a matter in which you participate. You also have an exemption for interests in publicly-traded securities not to exceed \$15,000 in parties to a matter, and \$25,000 per asset when participating in a matter of general applicability, such as rulemaking and drafting of most legislation, with a combined limit of \$50,000 in all entities affected by the general matter.

Nepotism

You may not appoint, employ, or promote a relative to a position in the Department, or advocate a relative for appointment, employment, promotion or advancement. You should be cautious when assisting in any way relatives who are seeking employment, appointment, or advancement in Department positions.

5 USC 3110

POST-EMPLOYMENT RESTRICTIONS

Negotiating for Future Employment

You may not take official action on a matter affecting the financial interests of an organization with which you are negotiating or have an arrangement for a job. Generally, you would disqualify yourself from a matter in order to negotiate for a job, and employees participating in a procurement have to report to certain officials in writing before negotiating with a contractor competing for that procurement. You may also have to disqualify yourself when you are merely seeking employment, which includes sending a resume. You should get advice from your Deputy DAEO about seeking and negotiating employment before you begin a job search.

18 USC 208

41 USC 423

5 CFR 2635.602

Restrictions for After you Leave Government

There are statutory prohibitions on former government employees that generally prevent you from "switching sides" or representing someone other than the United States after leaving the Government. The following are the main restrictions, but see your Deputy DAEO for others:

Lifetime Ban

You are prohibited from communicating to or appearing before an employee of an agency or court of the Federal Government on behalf of another person, with the intent to influence, on a particular matter involving specific parties in which you participated personally and substantially while with the Government and in which the United States is a party or has interest.

18 USC 207(a)(1)

Two-year Ban

You are prohibited for two years from communicating to or appearing before an employee of a Federal court or agency on behalf of another person, with the intent to influence, on a particular matter involving specific parties which you know was pending under your official responsibility during your last year of government service and in which the United States is a party or has an interest.

18 USC 207(a)(2)

One-year Ban

If you are a "senior employee" you are subject to an additional restriction that generally prohibits you from communicating to or appearing before an employee of the Justice Department or your component on a matter on which you seek official action on behalf of another person. Senior employees are Executive Level officials and SES, SL and ST officials compensated above \$160,111.50 as of January, 2016. The threshold salary to determine which SES officials are senior officials will increase when the salary for the Executive Level II position increases.

18 USC 207(c)

One Year Ban for Certain Procurement and Contracting Officials

If you are serving in a certain critical position or made certain critical decisions on a procurement or a contract in excess of \$10 million, you may not receive compensation from the successful contractor for one year.

41 USC 423

ADDITIONAL CONSIDERATIONS

Supervisors

Supervisors are responsible for demonstrating integrity in their own conduct and adherence to the letter and spirit of the ethics rules; for ensuring that employees seek advice under the ethics rules when necessary or appropriate; and for taking appropriate action to report or refer employees when misconduct has occurred or appears to have occurred.

Special Government Employees

If you are a special government employee, that is, you expect to serve for no more than 130 days in a 365 day period, you are subject to most of the rules in this handbook. However, in some cases, they are applied less stringently. Consult your Deputy DAEO.

Attorneys

If you are an attorney with the Department, you are expected to comply not only with the rules in this Handbook but also with relevant professional codes of conduct. You will have to disqualify yourself in cases you handled before entering Government, and from other matters involving your former law firm or clients for a certain period of time.

Generally, you will not be allowed to remain on leave of absence from a law firm or another business entity while with the Department. In certain circumstances you may not be able to maintain a financial relationship with a former employer or accept a severance payment or other benefit. Also, there are specific rules on repayment of your capital contributions over time or about retaining an interest in a contingent fee.

Consult your Deputy DAEO or the Professional Responsibility Advisory Office regarding these issues.

**Post
Employment
Compensation**

There are restrictions on you receiving compensation, even after you leave, based on another's representations before the Federal government that took place while you were still a government employee.

18 USC 203