

# **How To Keep Out Of Trouble**

**2008 Summary of the Ethics Rules**

**U.S. Department of Labor**



**U.S. Department of Labor  
Office of the Solicitor  
Office of Legal Counsel  
Counsel for Ethics Tel. No. (202) 693-5528**

## HOW TO KEEP OUT OF TROUBLE

As a Department of Labor employee, you have been placed in a position of trust and are held to a high standard of ethical conduct. In one of his first acts, President George W. Bush issued a memorandum to the heads of Executive Branch Departments and Agencies noting that “[e]veryone who enters into public service for the United States has a duty to the American people to maintain the highest standards of integrity in Government.”

This handout contains a summary of the rules set forth in conflict of interest statutes and the *Standards of Ethical Conduct for Employees of the Executive Branch*. It also covers several related matters that may arise while you are an employee at the Department. You should retain this handout and use it as a handy reference source.

The world of ethics can be a complex one. The purpose of this summary is to help you recognize some potential trouble spots that may arise during your service with the Department. This summary should not be regarded as definitive or comprehensive. The resolution of many ethics issues depends on the specific facts involved. Therefore, you are encouraged to seek advice of an ethics counselor when an ethics issue arises.

The legal bases for the ethics requirements described in this guide are numerous and varied. Many of the requirements are statutory and *persons who violate them may be subject to removal from Federal office and criminal penalties, which may include fines and imprisonment*. Other requirements are the subject of government-wide regulations issued by the U.S. Office of Government Ethics (OGE). These OGE regulations set forth the basic code of conduct for all Federal employees and are a starting point for resolving most ethics-related questions. All employees are given a copy of these regulations and are obligated to be familiar with their provisions. In addition, the Department of Labor also has its own regulations and internal policies for a number of areas described in this summary.

There are several ways to ensure that you are fully aware of your responsibilities in this area. First, you should review the OGE ethics regulations at an early point in your tenure and attend ethics training when it is offered. Most employees receive ethics training as part of their orientation shortly after arriving at the Department. Additionally, if you are required to file a public financial disclosure report, you are required to attend a “live” ethics briefing annually. Employees required to file a confidential financial disclosure report are required to attend a “live” ethics briefing once every three years. The Department will provide written ethics materials to confidential financial disclosure filers during the years that a “live” briefing is not required. [Note: Your personnel office will notify you as to

whether you are required to file a public or confidential financial disclosure report.] Ethics briefings may also be provided upon the request of an office.

Finally, you are strongly encouraged to ask questions whenever you have any concerns about ethics-related matters. In this area, “preventive medicine” is the best course of action to avoid embarrassment to you, the Secretary, and the Department. Each Department and agency has a Designated Agency Ethics Official and an Alternate Designated Agency Ethics Official; see below for this and other contact information.

**Designated Agency Ethics Official:  
Gregory F. Jacob, Solicitor of Labor**

**Alternate Designated Agency Ethics Official:  
Robert A. Shapiro, Associate Solicitor,  
Office of Legal Counsel**

### **Office of Legal Counsel**

For advice about ethics laws and regulations and restrictions on political activities and lobbying, you should contact the **Counsel for Ethics**, Rob Sadler, at (202) 693-5528.

**“Warranties and Limitations”** This document is designed to be a basic, “user-friendly” summary of the ethics requirements. It is not an independent regulation and does not supersede any of the legal authorities described above. This summary is meant solely to familiarize you with the requirements, help you recognize and deal with potential pitfalls, and alert you to when additional advice by an ethics counselor would be useful.

## **PRINCIPLES OF ETHICAL CONDUCT**

To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each Federal employee shall respect and adhere to the

following fundamental principles of ethical service:

- (a) Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws, and ethical principles above private gain.
- (b) Employees shall not hold financial interests that conflict with the conscientious performance of duty.
- (c) Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.
- (d) An employee shall not, except pursuant to such reasonable exceptions as are provided by regulation, 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.
- (e) Employees shall put forth honest effort in the performance of their duties.
- (f) Employees shall make no unauthorized commitments or promises of any kind purporting to bind the Government.
- (g) Employees shall not use public office for private gain.
- (h) Employees shall act impartially and not give preferential treatment to any private organization or individual.
- (i) Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.
- (j) Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.
- (k) Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.
- (l) 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.

(m) 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 disability.

(n) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards promulgated pursuant to Executive Order.

## FINANCIAL CONFLICTS OF INTEREST

**General Rule.** You may not, as part of your Government duties, participate in any matter that would have a direct and predictable effect on your financial interests. This rule applies to any matter involving deliberation, decision, or action that is focused on the interests of specific parties or a discrete and identifiable class of entities. If you have such interests, you must disqualify yourself from participating in the matter unless an exemption applies or you are granted a waiver.

**Financial Interests of Relatives and Business Associates.** The financial interests of certain other persons are considered so intertwined with your own that they are attributed to you for purposes of the rule forbidding you from participating in matters affecting your interests. These persons include your spouse, minor children, general partners, non-Federal employers, and prospective employers (including persons with whom you are negotiating for employment), groups and organizations of which you are an officer, director, or trustee, and members of your household.

*Remedies:* Generally, the following remedies are utilized to address such conflicts:

- *Disqualification*—the employee disqualifies him or herself from working on the matter;
- *Divestiture*—where a financial interest would cause an employee to disqualify from central responsibilities, selling the interest may be necessary; and
- *Resignation*—from the outside position when it poses such a conflict.

*Exemptions.* Disqualification is not necessary if the interest is:

- held in a broadly diversified mutual fund (a fund which, according to the fund's prospectus, does not concentrate its investments in a particular industry sector or geographic area);
- held in a sector mutual fund (i.e., a fund investing in a specific industry sector) and (1) the affected holding is not invested in the sector in which the fund concentrates; or (2) the aggregate market value of the disqualifying interest in all sector mutual funds (including those of persons whose interests are imputed to the employee) does not exceed \$50,000;
- a publicly-traded stock or bond holding of \$15,000 or less (unless the matter involves specific parties and holdings in all affected parties total more than \$15,000);
- a publicly-traded security or long term Federal or municipal security in an entity that is not a party to the matter, but may be affected by the matter, and the aggregate market value of the holdings does not exceed \$25,000; or
- a publicly-traded stock or bond holding of \$25,000 or less if the matter at issue is a general policy matter and the total value of investments in the entities likely to be affected by the policy is \$50,000 or less.

*Waivers.* There are limited circumstances in which the disqualification requirement may be waived, thereby allowing you to participate in matters affecting your financial interests. The waivers must be prepared by the Counsel for Ethics and approved by the head of your agency or bureau.

## APPEARANCES OF BIAS

**General Rule.** In addition to the statutory restrictions above, there is an additional restriction in the Standards of Conduct that prohibits you from participating in matters in which certain persons with whom you have close ties ("covered relationships") are parties or are representing parties, if, under a reasonable person standard, participation would cause an appearance of loss of impartiality. The key test for determining if participation in a particular matter creates the appearance of loss of impartiality is whether, in your judgment, a reasonable person with knowledge of the relevant facts would question your impartiality in the matter. Persons with whom you have a "covered relationship" include:

- persons with whom you are seeking business;
- members of your household;
- close relatives;
- employers and clients (and prospective employers and clients) of your parents, dependent children, and spouse;
- former non-Federal employers and clients (generally for a one-year period or for a two-year period if you received an extraordinary payment from the former employer); and
- organizations (other than political parties) in which you are an active participant.

*Exceptions.* When the needs of the Government outweigh appearance concerns, special authorization to participate in the matter may be available. The Counsel for Ethics must evaluate whether a waiver is appropriate and can assist in the preparation of the necessary documentation in such cases.

**BRIBES, GIFTS, AND SALARY SUPPLEMENTATION**

**General Rule concerning Bribes and Salary Supplementation.** You may not accept payment for performing your official duties from a source other than the Government. You may not receive anything of value from a non-Federal source for taking action or failing to take action in your Government position.

**General Rule concerning Personal Gifts from non-Federal sources.** You may not accept gifts given to you because of your Government position. You may not accept gifts from a person or firm that has a contract, a grant, or other business with your agency or is seeking such business; is regulated by your agency; or has interests that may be affected by performance of your duties. Gifts to your spouse or minor children are considered gifts to you in most circumstances.

**Exceptions regarding Personal Gifts.** You may, under regulatory exemptions, accept:

- gifts of \$20 or less (other than cash) (up to \$50 per year from the same source);
- gifts based on a personal relationship (such as from a relative or friend);
- invitations to widely attended events (if your supervisor approves);
- items of little intrinsic value (such as cards, plaques, trophies);

- discounts available to a broad range of persons;
- awards and honorary degrees (in specified circumstances);
- meals, lodging, transportation, and other benefits offered because of an outside business relationship or outside employment (or your spouse's business or employment);
- business meals overseas (if a foreign national is present) (up to the *per diem* for the city); and
- gifts from a foreign government of \$335 or less (gifts of greater value may be accepted, but become property of the United States Government).

NOTE: Remember that the appearance of favoritism or impropriety can cause embarrassment to both you and the Department. Thus, even where acceptance of a gift may be permitted by one of the above exceptions, it is never inappropriate and often prudent to decline a gift.

**General Rule concerning Gifts between Employees.** You may not offer a gift to a supervisor or accept a gift from a subordinate.

**Exemptions concerning Gifts between Employees.** You may, under regulatory exemptions, offer to a supervisor or accept from a subordinate:

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

**Travel and Related Expenses.** As a general rule, the travel and related expenses associated with the exercise of your official duties should be paid for with appropriated funds. However, in certain limited and exceptional circumstances, an agency head or the Deputy Secretary may authorize acceptance of travel and related expenses if an unsolicited offer is received from certain types of organizations.

An Assistant Secretary or other head of a DOL agency may authorize approval of acceptance of travel and related expenses under the Government Employees Training Act. This authority allows the agency head to approve acceptance of certain expenses incident to attendance at training sessions or meetings. Approval may only be given to accept expenses from nonprofit and tax-exempt ["501(c)(3)"] organizations and expenses paid from the treasury of a state, county, or municipality. Agency heads may not approve acceptance of these expenses where approval would create the appearance of favoritism or undue influence or if it would be otherwise unethical or improper to do so.

Additionally, under the Federal Travel Regulations, the Assistant Secretary for Administration and Management may approve the acceptance, by an agency head, of travel and related expenses from 501(c)(3) organizations, government

entities, and foreign entities so that an agency employee may attend a meeting or similar function. **Such travel-related gifts may not be solicited. Official approval must be given in advance of the trip.** Accordingly, any such request should be made well in advance of the travel.

## NON-FEDERAL EMPLOYMENT AND OUTSIDE ACTIVITIES

**General Rule on Outside Activities.** You may not engage in outside employment or any other outside activity that conflicts with your Government position. This restriction includes employment that requires disqualification from significant duties and activities that create an appearance of using your public office for private gain. (For instance, disqualification is required from matters affecting private employers.) Also, some DOL agencies may have their own rules governing outside activities. Accordingly, it is important to check with your agency before participating in an outside activity.

**Working for a Foreign Government.** The Emoluments Clause of the U.S. Constitution prohibits you from accepting any compensation, including salary or travel expenses, from any foreign government, except as authorized by statute.

**Outside Practice of Law.** There are special rules for employees of the Office of the Solicitor who may be thinking of engaging in the practice of law. Some *pro bono* activities may be allowed, as long as the individual or organization seeking *pro bono* services does not have business before your agency and the activity does not include representation before a Federal agency or Federal court. Other situations will need to be determined on a case-by-case basis. If you are an attorney, you should consult both your applicable bar rules as well as Federal ethics rules.

**Teaching, Speaking, and Writing.** Generally, you may teach courses at accredited colleges, universities, and other educational institutions if such activity will not interfere with the performance of your Government duties. However, there may be restrictions on receiving payments for other types of teaching, speaking, or writing that relates to official duties. Call the Counsel for Ethics for specific advice.

**Honoraria.** Generally, you may accept honoraria in connection with outside speaking engagement and other activities, provided the activity is unrelated to your official responsibilities.

**Special Rules for PAS and Other Non-Career Senior Officials.** A Presidential appointee to a full-time, non-career position may not receive any outside earned income for outside employment or any other outside activity performed during his or her tenure in that office. Non-career senior officials (those occupying a position classified above GS-15 of the General Schedule) may not receive outside earned income that exceeds 15% of the annual rate of basic pay for level II of the Executive Schedule in a calendar year. For calendar year 2008, that amount is \$25,830. In addition, non-career senior officials may not receive compensation for:

- practicing a profession which involves a fiduciary relationship;
- affiliating with or being employed to perform professional duties by a firm, partnership, association, corporation, or other entity which provides professional services involving a fiduciary relationship; or
- permitting your name to be used by any of the foregoing entities.

## POLITICAL ACTIVITIES

**General Rule Concerning Engaging in Political Activities.** Under the Hatch Act, you may not engage in political activities during duty hours or while on Government premises (unless you are a Presidential appointee in a position requiring Senate confirmation). However, most employees may actively engage in a wide range of political activities during non-duty hours, although you may not solicit or receive campaign contributions or host a political fundraiser. You also may not run for office in a partisan political election (except as an independent candidate in certain localities). In addition, you may not use Government equipment, supplies, services, staff, or your Government title for partisan political purposes.

Please contact the Counsel for Ethics for a more comprehensive handout on the rules governing political activity.

## LOBBYING THE GOVERNMENT

**General Rule.** You may not contact any Federal agency or Federal court on behalf of others to influence Government action, unless authorized as part of your official duties.

**Exceptions.** You may represent the following parties before Federal entities if you receive prior approval and you do not accept compensation:

- your parents;
- your spouse
- your children
- an estate or trust; and
- other Federal employees (in some personnel disputes, provided that such representation does not conflict with the employee's official responsibilities).

In addition, you may also represent professional, recreational, and similar groups before the Government if: (1) the majority of the organization's members are Federal employees or their spouses or dependents; (2) the matter does not involve claims against the Government, proceedings in which the organization is a party, or Government financial benefits to the organization; and (3) you do not receive compensation. Contact the Counsel for Ethics if you need to obtain approval to represent others before the Government.

**The Anti-Lobbying Act.** Federal law prohibits any appropriated funds from being used for “grass roots” lobbying activities. In addition, an appropriation rider prohibits use of DOL funds for publicity or propaganda purposes designed to support or defeat legislation before Congress. These laws have been construed as permitting agencies to inform Congress of the Administration’s position on matters before Congress and otherwise responding to oversight requests. Additionally, these regulations do not prohibit the Department from informing the public about pending legislation affecting the Department or even expressing the Department’s view on pending legislation. They do, however, prohibit the Department from engaging in or promoting grass roots lobbying, i.e., the Department may not contact outside individuals or organizations for the purpose of encouraging them to contact legislators to advocate views on legislative matters or use Department resources to assist a private lobbying effort.

<p style="text-align: center;"><b>MISUSE OF GOVERNMENT POSITION AND RESOURCES</b></p>
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**General Rule.** You may only use Government resources for official, authorized Government activities. This includes Government equipment, supplies, services (including telephone and fax services), and the time of Government personnel.

**In particular, your official title may not be used in connection with non-Government activities.** You are prohibited from using public office for your own private gain or the private gain of another. Therefore, you should generally not endorse any product, service, organization or enterprise in an official capacity. For example, if you serve as an honorary co-chair of a charitable event, you may not do so in your official capacity, and you must be listed on the invitation or program by name only, or preceded by the term “Honorable,” if appropriate.

Information you learn as part of your Federal employment may not be used for private activities, unless it is information readily available to the public at large. Restrictions on personal use apply to nonpublic data, economic analyses, private personnel information, census data, and other nonpublic information. The improper disclosure of certain information (privacy, trade secrets, national security) is subject to criminal penalties.

**Sponsorship and Co-Sponsorship of Outside Organizations.** A frequent question that arises is whether the Department may co-sponsor conferences and other events with non-governmental entities. However meritorious these events or organizations may be, Department employees must be very cautious about lending the Department’s name or seal to such an event or entity and should consult with the Office of the Solicitor to make sure the relationship does not violate any law or policy. In addition, because such arrangements generally raise other issues aside from ethics considerations, such as appropriations and Federal Advisory Committee Act issues, you should consult with appropriate contacts in the Office of Legal Counsel.

**Fundraising.** Similarly, you may not engage in fundraising in your official capacity unless such action is specifically authorized, as in the case of the Combined Federal Campaign. You may engage in fundraising (other than political) in your personal capacity so long as it is not done during duty hours and involves no official resources. Also, you should not allow your official title to be used in connection with private fundraising activities. Finally, you should not personally solicit from people or organizations you know to be regulated by or are seeking action from your DOL component, or that may have an interest in matters that can be affected by your official duties.

**Government Office Equipment, Internet and E-mail Services.** The Department has a policy that allows personal use of Government office equipment (computers, facsimile, photocopiers, telephones), the Internet and e-mail during duty hours on a limited basis (infrequent and short duration), if it does not interfere with performance of your duties or office operations, unless your agency has a policy prohibiting such use. However, you may not use Government office equipment, the Internet or e-mail at any time for:

- operating a commercial business or profit-making venture;
- partisan political activities;
- prohibited lobbying activities;

- any use that results in an additional charge to the Government;
- engaging in prohibited conduct;
- obtaining, viewing or distributing sexually explicit material;
- any activity that would discredit the Department; or
- any action that would violate a statute or regulation.

Because this limited use is considered a privilege, employees have no inherent right or entitlement to use DOL office equipment for personal use. In addition, DOL employees do not have a right or expectation of privacy while using any Government office equipment at any time, including accessing the Internet and using e-mail. The full Department policy is contained in DLMS 9, Chapter 900.

### SEEKING EMPLOYMENT RESTRICTIONS

**General Rule.** While you are a Department employee, you may enter into discussions or agreements regarding future employment with anyone. However, once an employment search begins you must disqualify yourself from participating as a Federal employee on any matter likely to affect an entity that you have contacted, or that has contacted you, regarding future employment. This restriction applies whether the contact is direct or through an intermediary, such as a headhunter. Your disqualification must continue until:

- you leave Federal service;
- either you or the prospective employer rejects future employment;  
or
- two months have passed since you sent an unsolicited notice of interest in employment.

**Special Rule for Procurement Officials.** If you are participating in a procurement of more than \$100,000, you must report prospective employment contacts to your supervisor and the Counsel for Ethics in writing.

### POST EMPLOYMENT RESTRICTIONS

**General Rule.** After leaving Federal service, you will be permanently barred from representing others before Federal agencies or courts concerning particular

matters involving specific parties (such as contracts, licenses, litigation, and investigations) if you participated in the particular matters personally and substantially while with the Federal Government. You will also be barred for two years from representing others concerning specific-party matters that were pending under your official responsibility during the last year of your Government service, such as matters on which a subordinate worked, even though you did not participate personally and substantially.

“Representational activities” include attending meetings, writing letters, making telephone calls and engaging in other communications to Government officials with the intent to influence Government action. They do not include behind-the-scenes activities or requests for publicly available information.

You are also barred from disclosing nonpublic information regarding certain ongoing trade or treaty negotiations.

**Rule for Senior Employees.** If you are a senior employee, you will be barred for one year from contacting your former agency or from representing or assisting in representing a foreign government or foreign political party in matters involving the United States Government. The term “senior employee” includes employees whose rate of basic pay exceeds 86.5 percent of the rate for level II of the Executive Schedule (EL II). For 2008, that amount is \$148,953.

**Special Rule for Procurement Officials.** Employees may not accept compensation from the contractor on a contract valued at over \$10 million for one year after they have served either as a procurement official on the procurement, as a program manager, or as an administrative contracting officer on that contract.

**Exceptions to Post Employment Restrictions.** There are some exceptions to the post employment restrictions. For instance, in certain circumstances, you can represent state and local governments, international organizations or hospital or medical research organizations. An exception also exists relating to testifying in court.

For more information, contact the Counsel for Ethics for advice or to obtain a handout further explaining the rules regarding post employment restrictions.

<b>FINANCIAL DISCLOSURE</b>
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**Basic Guidelines.** The following people are required to file Public financial Disclosure Reports (SF 278 forms): Presidential Appointees, members of the

Senior Executive Service, employees in career or non-career policy-making positions and procurement officials.

High-level officials in the Executive Branch are required to report certain financial interests publicly to ensure that every citizen can have confidence in the integrity of the Federal Government. These forms are available to the public upon request.

Other employees whose performance of Federal duties could have a significant impact on the interests of members of the public are required to file Confidential Financial Disclosure Reports (OGE Form 450). These forms are, except in very limited circumstances, exempt from public disclosure.

Financial disclosure reports are collected upon entry into a position for which such reports are required and annually thereafter, and upon termination from federal service. If you are designated as required to file such a report, please keep in mind that the information you disclose is used to provide advice to you in order to ensure that you do not inadvertently engage in prohibited activities. In order to provide this advice (and to certify that the report includes all necessary information) it is important that the information you provide be as complete as possible.

Specifically, please be sure to include the following information:

- the full name of any mutual fund (not just the generic name of the company managing the fund);
- specific holdings in any pension funds, trusts, or investment accounts;
- a short description of the activities or industry sector of any privately-held company or limited partnership; and
- assets and sources of income of your spouse.

**For more information about any of these rules contact  
the Counsel for Ethics at (202) 693-5528.**

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