
FOREWORD

January, 2010

This Ethics Handbook summarizes the various 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. We have included citations after each rule and we suggest that you consult the full text of the law or regulation when you have a specific question.

The ethics rules condensed here include the conflict of interest statutes found at 18 U.S.C. §§ 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.

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 of the ethics program in the Department. Each Bureau, Office, Board and Division has a Deputy DAEO who should be your first contact for advice.

Within 90 days of entering on duty, each new employee of the Department should be given this handbook and must be allowed at least one hour of official duty time to review the Standards of Ethical Conduct for Employees of the Executive Branch and the supplemental Justice Department regulations referred to above. These 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 web site for a list of ethics officials within the Department.

Some of these rules are complex and 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.

Generally, an employee who provides all the facts to an ethics official and follows the advice given will not be disciplined for violating the standards of conduct. 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 the handbook useful.

The Departmental Ethics Office

CONFLICTS OF INTEREST

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 an 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 U.S.C. § 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 present 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

Extraordinary Payments

If you received a payment in excess of \$10,000 from a former employer that was not pursuant to an employee benefit plan, you must disqualify yourself from matters affecting that former employer for two years unless you receive a waiver.

5 CFR 2635.503

CONFLICTS OF INTEREST

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 may seek a waiver of the prohibition under 18 U.S.C. § 208(b), or 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 a matter 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 in non-parties affected by the matter. And, you have an exemption of \$25,000 per asset when participating in a matter of general applicability, such as regulations and most legislation, with a combined limit of \$50,000 in all entities affected by the general matter.

5 CFR 2640.201-202

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.

5 U.S.C. § 3110

Financial Disclosure

You may be required to file a financial disclosure report which will be used to identify potential or actual conflicts of interest. Check with your Deputy DAEO if you are uncertain of your filing status.

5 CFR 2634

OUTSIDE ACTIVITIES

General Rule

You should not engage in any outside employment or other outside activity that conflicts with your official duties. Employees are prohibited from engaging in outside employment that involves criminal matters, the paid practice of law or matters in which the Department is 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 outside employment including the practice of law that is not otherwise prohibited or 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 an agency or court of the Federal Government on 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 U.S.C. § 203

You also may not represent someone before an agency or court of the Federal Government, with or without compensation, on a matter in which the U.S. is a party or has a substantial interest.

18 U.S.C. § 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 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. There is an exception for giving an official speech at a fundraiser.

5 CFR 2635.808

OUTSIDE ACTIVITIES

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

Official Speaking and Writing

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

18 U.S.C. § 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 a non-career employee classified at GS-15 and below, what relates to your duties is a present assignment or one assigned during the past year, or a policy, program or operation of your component. If you are a noncareer employee above GS-15, what relates to your duties is broader. 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

If you are in a non-career position above GS-15 you must have advance authorization from the DAEO before engaging in teaching for compensation.

5 CFR 2636.307

Outside Earned Income

If you are a full-time Presidential appointee, you may not receive earned income for any outside activity performed during that appointment. If you are a noncareer official in a position classified above GS-15, your outside earned income is limited to 15% of the salary for Executive Level II. Also, if you are a political appointee classified above GS-15, you are subject to other restrictions related to providing fiduciary services for compensation.

5 CFR 2636.302 -.306

ACCEPTING THINGS OF VALUE

Gifts, Entertainment and Favors from Outside Sources

You may not solicit or accept a gift given because of your official position or from a prohibited source to include 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.

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 one person.
- Discounts and similar benefits offered to a broad class, including a broad class of government employees.
- Most genuine awards and honorary degrees although in some cases you will need prior approval.
- 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 approval. If you are invited to an event by someone other than the sponsor, the cost must not exceed \$335 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.

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

ACCEPTING THINGS OF VALUE

Supplementation of Salary

You may not receive any supplementation of your government salary from any source except the Government for performing your official duties.

18 U.S.C. § 209

Foreign Gifts

You are allowed to accept certain gifts from foreign governments if they do not exceed a minimal value presently set at \$335. See your Deputy DAEO for information on how to report the acceptance of a foreign gift.

5 U.S.C. § 7342

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 the employee is a subordinate. There is an exception for voluntary gifts of nominal value made on a special occasion 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 on other less significant occasions.

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, you may accept travel expenses incidental to attendance at meetings or similar functions related to your duties from non-Federal sources pursuant to the GSA regulations cited here. You may not accept travel expenses for a spouse accompanying you on official travel. Consult your Deputy DAEO on obtaining approval for yourself.

41 CFR 304

You may retain for personal use benefits from commercial sources, including bonus flights, that result from your 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 fly first class when on official business.

41 CFR 301

POLITICAL ACTIVITIES

Most Employees

May:

- Register and vote as they choose.
- Assist in voter registration drives.
- Express opinions on candidates and issues.
- Be a candidate for public office in nonpartisan elections.
- Contribute money to political organizations, in general.
- Attend and be active at political rallies and meetings.
- Attend political fundraisers.
- Join and be an active member of a political party or club.
- Circulate and sign nominating petitions.
- Campaign for or against referendum questions, constitutional amendments and municipal ordinances.
- Distribute campaign literature in partisan elections.
- Make campaign speeches for candidates in partisan elections.
- Campaign for or against candidates in partisan elections.
- Hold office in political clubs and parties.

No Employees

May:

- Be a candidate in a partisan election.
- Engage in political activity while on duty, in a government office, while wearing an official uniform or using a government vehicle.
- Solicit political contributions from the general public or collect contributions except from a fellow member of a Federal labor or employee organization who is not a subordinate.
- Solicit or discourage the political activity of anyone who has business with the Department.
- Use official authority or influence to interfere with an election.
- Wear political buttons while on duty.

5 U.S.C. §§ 7321-26
5 CFR 734

Under the statute, members of the Career Senior Executive Service, employees of the Criminal Division, the FBI, NSD, criminal and explosive investigators in ATF, and administrative law judges are subject to stricter rules under the pre-1994 law whereby they are prohibited from participating actively in political management or political campaigns. These stricter rules apply to all DOJ political appointees under Department policy.

In certain communities, including the suburbs of Washington, D.C. (but not Washington, D.C. itself), an employee may run as an independent candidate in a local partisan election and solicit and receive contributions. An election is partisan if any candidate for an elected public office is running as a representative of a political party whose candidates for presidential elector received votes in the last presidential election.

5 CFR 733

MISUSE OF OFFICIAL POSITION

General Rule

You may not use your public office for your own private gain or for that of persons or organizations with which you are associated personally. Your position or title should not be used to coerce; 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 responsibility to make an honest effort to use government property and official time, including the time of a subordinate, for official business only. 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.

5 CFR 2635.704

28 CFR 45.4

Government Vehicles

Generally, an official purpose does not include your transportation to and from the workplace; however, there are some statutorily authorized exceptions to this rule.

31 U.S.C. §§ 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 and which has not been made available to the general public and is not authorized to be made available on request. (There are also statutory prohibitions on the misuse of information involving national security, trade secrets, private individuals and government procurement.)

5 CFR 2635.703

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 for employment before you begin a job search.

18 U.S.C. § 208, 41 U.S.C. § 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" 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 an interest.

18 U.S.C. § 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 responsibility during your last year of government service and in which the United States is a party or has an interest.

18 U.S.C. § 207(a)(2)

One-year Ban

If you are a "senior official" 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 officials are Executive Level officials and SES officials compensated above \$155,441 as of January, 2010. The threshold salary to determine which SES officials are senior officials will increase when the salary for Executive Level positions increases.

18 U.S.C. § 207(c)

One-year Ban for Certain Procurement and Contracting Officials

If you served 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 that contractor for one year.

41 U.S.C. § 423

SPECIAL APPLICATIONS

Entering Employees

In certain circumstances, you may not be able to maintain a financial relationship with a former employer or accept a severance payment or moving expenses from a private source. Consult your Deputy DAEO for advice.

If you are an attorney, you will have to disqualify yourself in cases you handled before entering the Government, and from other matters involving your former law firm or clients for a certain period, usually several years.

Generally, you will not be allowed to remain on leave of absence from a law firm or another business entity while with the Department. See your Deputy DAEO about any repayment of your capital contributions over time or about retaining an interest in a contingent fee.

*18 U.S.C. §§ 203, 208 & 209
5 CFR 2635.502
Professional Codes*

Post Employment Compensation

There are restrictions on your 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 U.S.C. 203

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 booklet. 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 booklet, but also with relevant professional codes of conduct. Consult your Deputy DAEO or the Professional Responsibility Advisory Office for advice on which codes apply and what they require.