

2014 – UNITED STATES DEPARTMENT OF COMMERCE – 2014

SUMMARY OF ETHICS RULES FOR PERSONS CONSIDERING EMPLOYMENT WITH THE U.S. DEPARTMENT OF COMMERCE



PUBLIC SERVICE IS A PUBLIC TRUST

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ETHICS LAW AND PROGRAMS DIVISION
OFFICE OF THE ASSISTANT GENERAL COUNSEL FOR ADMINISTRATION
202-482-5384 – ethicsdivision@doc.gov – www.commerce.gov/ethics

Ethics
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PUBLIC SERVICE IS A PUBLIC TRUST

Employment with the Federal Government can be rewarding, providing an opportunity to formulate and implement policies and programs that will have a significant impact on Americans in all walks of life. This is particularly true regarding service in the U.S. Department of Commerce, which has a broad range of responsibilities and positions for persons with a large variety of backgrounds. However, with this responsibility comes obligations. Public service is a public trust and Federal employees are subject to restrictions beyond those that apply to most persons in the private sector and that differ significantly from those serving in other public sector positions, such as with Congress or a state or local government. This handout is a summary of ethics rules that will apply to you if you accept employment with the Federal Government.

If you have questions about any of these rules, or their application to a specific situation, please contact an attorney in the Department of Commerce's Ethics Law and Programs Division; an attorney can be reached at ethicsdivision@doc.gov or 202-482-5384.

FINANCIAL HOLDINGS

In the Department of Commerce, there are no specific investments that employees are barred by law from holding or obtaining (other than a bar on United States Patent and Trademark Office employees obtaining interests in a patent). However, depending on your position, some investments may present a conflict of interest and would need to be divested shortly after your appointment and could not be obtained while you hold your Department position.

Disqualification Requirement. A conflict of interest statute provides that a Federal employee cannot work on any matter as a Government official affecting the employee's personal financial interests or those of the employee's spouse or minor children. This means that once appointed you cannot work on a policy or program that will affect a company in which you (or your spouse or minor child) owns stock, including an effect on the company as a member of an industry sector or other group, with some exceptions. This restriction does not apply to stock holdings of \$15,000 or less (if the stock is traded on a U.S. exchange) or stock held through a diversified mutual fund. However, other holdings could result in the need to disqualify yourself from participating in important policy matters. If such disqualification will so limit you that you cannot effectively perform in your designated Federal position, you (or your spouse or child) may need to divest the financial interest.

Selling Financial Holdings to Avoid A Conflict of Interest. If you (or your spouse or children) are required to sell a financial interest to avoid a conflict of interest, there is a procedure to defer any capital gains taxes on the proceeds from such a sale, depending on the nature of the asset and how the proceeds will be reinvested. You should speak to a Commerce ethics official if you anticipate the need to sell any asset.

NON-FEDERAL EMPLOYERS AND OUTSIDE ORGANIZATIONS

As with financial holdings, there are no specific outside positions that employees are barred by law from holding (except a position with a foreign government, which is barred by the U.S. Constitution). However, employees will be subject to disqualification regarding matters in which an outside employer has an interest, or in which an outside client is a party, which may mean that the employment or outside activity is incompatible with service with holding a specific Department position. There are also some limits on compensation a Federal employee can receive from non-Government sources and limits on the types of activities in which a Federal employee may engage.

Payments from Former Employers. If you will be receiving any severance pay or other compensation from a former employer after you enter into Government service, you may be required to provide evidence that the amount of such payment is not related to your Federal position (which would be an improper supplementation of your Federal salary). Furthermore, Federal employees are generally barred from receiving compensation relating to representational activities before a Federal agency or Federal court, even if the representational activities are not by the employee. Thus, if you are receiving payments after appointment to Commerce from a firm that has a Federal practice, such as a partnership distribution from a law firm with a Federal practice, you should discuss with an ethics official whether the payments will present any legal problem. This will likely depend on whether the amount due is a pre-set payment determined prior to your appointment.

Disqualification Requirements Regarding Former Employers and Clients. After you are appointed as a Government official, you cannot work on any matter for the Government in which one of the parties is someone you worked for recently or was a client recently. For political appointees, the restriction applies to former employers and clients you had during the year before your appointment, and the restriction applies for the first two years of your Government service. For career employees, the restriction applies only for one year after the employment or client relationship ends. This restriction applies only to matters before the Government in which specific named parties are identified, such as contracts, grants, law suits, licenses, and patents; it does not apply to general policy issues, such as regulations and legislation. If you will work primarily on policy matters, this restriction should not significantly interfere with your ability to perform important duties. On the other hand, if you are being appointed to work primarily on a specific contract or grant and had an employment or consultant relationship with the contractor or grantee, you should discuss this disqualification requirement with a Commerce ethics official.

Disqualification Requirements Regarding Outside Employers and Organization in Which You Are Active. You will also be disqualified from participating in matters as a Government official that will affect the financial interests of any outside (non-Federal) employer you have or an organization in which you hold a position as an officer or director. This disqualification will apply not only to matters affecting the company or organization individually, but policy matters, including regulations and legislation, affecting the entity as a member of an industry sector. A similar, but more limited disqualification will apply to organizations in which you are active, such as organizations in which you serve on a committee or organize events (but not

organizations in which you pay dues and attend meetings but are not otherwise active). This more limited disqualification applies only to matters in which the organization is a party (or represents a party) before the Government. If such employment, position, or activities will impair your ability to perform your duties because of this disqualification requirement, you may be required to resign from the position or limit your activities. If you are a political appointee, there are also restrictions on serving with a professional organization that provides services in a fiduciary capacity (such as a law firm) or being affiliated with such a firm. Furthermore, there are limits on the compensation you can receive from outside employment if you are a senior political appointee. Presidential appointees in Senate-confirmed positions cannot receive any outside earned income. Approval is also required for some outside activities, such as teaching if you are a senior political appointee. Contact a Commerce ethics attorney if you anticipate doing any outside work during the period of your Federal employment.

Representing Others before the Federal Government. You cannot serve as someone's representative before a Federal agency or Federal court while you serve in the United States Government. Representation includes acting as an agent or attorney or, if paid, any communication to a Federal agency or court on behalf of someone other than yourself. This restriction even applies to communications made on behalf of a family member, although with prior approval such communications may be allowed regarding a spouse, parent, child, or someone for whom you are a legal guardian. You also cannot receive payments based on the representational activities before Federal agencies or courts, which may be the case, for example, if you are a partner in a law firm or consulting firm that has a Federal practice.

Work as a Lobbyist. Current Administration policy is to not appointment persons to political appointee positions or positions on boards or committees who are registered lobbyists. Therefore, if you are a political appointee you should not engage in any activity while you serve in the Department of Commerce that will require you to register as a lobbyist under the Lobbying Disclosure Act. If you are a career employee you should seek guidance from an ethics attorney before engaging in such activities.

Work for a Foreign Government. You cannot be a foreign agent or be employed by a foreign government while you serve as an employee of the United States Government.

GIFTS

Federal employees are subject to limits on gifts they may accept from anyone with interests before their agency. Because of the broad scope of the responsibilities of the Department of Commerce, a gift from almost any company or organization would be covered by this rule, although exceptions allow you to accept gifts in a number of circumstances, such as gifts of minimal value in most cases or invitations to receptions and other widely-attended events (after you receive approval). However, gifts from lobbying organizations to political appointees are barred in most cases.

Gifts and Parties Upon Appointment to the Government. If you anticipate receiving gifts or a party in your honor after your appointment to the Government from a former employer or

others, such as a farewell party or a party to celebrate your new position, please speak with a Commerce ethics official about whether such an event will present a problem and whether it can be organized in such a way as to avoid legal problems.

POLITICAL ACTIVITIES

You can be politically active and hold a position in a political organization, even after being appointed to the United States Government (unless you are being appointed to a career position in the Senior Executive Service or as a NOAA Corps officer). However, you must be careful not to engage in any political activities while on duty or on Government premises. You will also need to be careful not to use any Government resources (such as access to the internet or an email account) for political purposes.

Restrictions on Political Activities When Off-Duty. When off-duty, you will be subject to two restrictions regarding political activities:

- you cannot ask for or accept a political contribution for a candidate or political party—in other words, you cannot personally engage in any political fund-raising, such as by hosting a fund-raiser, serving on a host committee, or even just inviting others to a fund-raiser—but you can attend a fund-raiser and give a contribution to a candidate or party and
- you cannot run for office in a partisan election (meaning an election in which candidates are identified by party affiliation).

RESTRICTIONS AFTER LEAVING GOVERNMENT SERVICE

After you leave Government service you will be subject to some restrictions, primarily concerning contacting the United States Government on behalf of someone else.

Restrictions on Contacting the Federal Government and on Disclosing Nonpublic Information. After you leave Federal service you will be barred from using or disclosing nonpublic information to which you had access as a Federal employee and from contacting a Federal agency or court on behalf of others in some circumstances. Specifically, you will be barred from

- contacting a Federal agency or Federal court regarding a matter involving specific parties on which you worked or, for two years, on which you did not work but which was under your official responsibility during your last year of service;
- if you are a senior employee (base pay of \$156,776.50 in 2014), contacting anyone in your former agency for one year (for career employees) or two years (for political appointees) after you leave the Department; and
- if you are a senior employee, from representing a foreign government before any Branch of the United States Government (and from assisting or advising a foreign government in its dealings with the United States Government) for one year.

If you are a political appointee, you will also be barred from lobbying (providing services requiring registration under the Lobbying Disclosure Act) any political appointee in the Executive Branch for the remainder of the President's Administration.

DISCLOSURE OF FINANCIAL INTERESTS

If you will be a political appointee, a member of the Senior Executive Service (SES), a procurement official, or an employee with responsibilities likely to affect the public, you will be required to file a financial disclosure report within 30 days of your appointment (OGE Form 278 or OGE Form 450). Updated reports will need to be filed annually. If you are a political appointee or in the SES (or an equivalent position), you will also be required to report transactions of securities greater than \$1,000 within one month of the transaction. Reports of political appointees and SES members are available to the public.

Information That must Be Disclosed. On financial disclosure reports you must list:

- assets you hold (and, for political appointees and SES members, their value);
- sources of income (and, for political appointees and SES members, the amount of such income);
- liabilities over \$10,000;
- agreements you have with prior or future employers; and
- positions you hold outside the Federal Government.

You will need to file a new report every year, which will also include gifts you received during your Federal service and, for political appointees and SES members, information on the amount and dates of purchases and sales of stocks, bonds, and other financial holdings). Please be prepared to keep records on such information.

Transaction Reports and Notices of Employment Negotiations. In addition, if you will be serving as a political appointee, a member of the Senior Executive Service, or in a similar high-level position, you will be required to file a Transaction Report within 30 days of learning of a transaction involving a security greater than \$1,000 (including transactions by your spouse and minor children) (and no later than 45 days from the date of the transaction). If you serve in such a position, you will also be required to file a notice of employment negotiations with an ethics official within three days of commencing discussions regarding future employment with a non-Federal entity.

If you have a question on any of the matters addressed in this handout, or on other ethics-related issues, please contact an attorney in the Ethics Law and Programs Division of the Office of the Assistant General Counsel for Administration at ethicsdivision@doc.gov or 202-482-5384.

PREPARED BY THE ETHICS LAW AND PROGRAMS DIVISION,
OFFICE OF THE ASSISTANT GENERAL COUNSEL FOR ADMINISTRATION, UNITED STATES
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