

UNITED STATES
DEPARTMENT OF COMMERCE

SUMMARY OF ETHICS RULES
FOR LOCALLY ENGAGED
STAFF OF THE UNITED
STATES COMMERCIAL
SERVICE

INTERNATIONAL TRADE
ADMINISTRATION
2009



UNITED STATES
DEPARTMENT OF COMMERCE
Ethics Law and Programs Division
Office of the Assistant General Counsel
for Administration
202-482-5384 – ethicsdivision@doc.gov
www.ogc.doc.gov/ethics.html

PUBLIC SERVICE IS A PUBLIC TRUST

As an employee of the Commercial Service of the International Trade Administration (ITA), U.S. Department of Commerce, you have been placed in a position of trust and, like all United States Government employees, are held to a high standard of ethical conduct. This handout contains a summary of applicable ethics rules, including those set forth in conflict of interest statutes, the *Standards of Ethical Conduct for Employees of the Executive Branch*, and the Foreign Affairs Manual. You should retain this handout and use it as a reference source. The rules are almost identical to those that apply to most employees of the U.S. Department of Commerce, but differ in some respects from stricter rules applicable to United States citizen-employees in the Commercial Service who were hired in the United States.

For advice about ethics rules, contact the Ethics Law and Programs Division of the Office of the Assistant General Counsel for Administration, U.S. Department of Commerce, at 202-482-5384 (telephone) or 202-482-2998 (fax) or ethicsdivision@doc.gov.

Office of the Assistant General Counsel for Administration

To obtain legal advice regarding administrative law issues, call the following offices:

- Employment and Labor Law Division at 202-482-5017 – for advice regarding personnel law and labor law issues
- General Law Division at 202-482-5391 – for advice regarding appropriations law issues and general administrative law issues.

Designated Agency Ethics Official:

Barbara S. Fredericks, Assistant General Counsel for Administration

Alternate Designated Agency Ethics Official:

David Maggi, Chief, Ethics Law and Programs Division

Office of Inspector General – The Ethics Law and Programs Division provides advice but does not investigate allegations of violations of law. To report fraud, waste, abuse, or other violations of law, or to request an investigation, call the U.S. Department of Commerce's Office of Inspector General HotLine at 800-424-5197 or e-mail hotline@oig.doc.gov.

FINANCIAL CONFLICTS OF INTEREST

Financial Conflicts of Interest. You may not, as part of your U.S. Government duties, participate in any matter that will have a direct and predictable effect on your personal financial interests. This rule applies to matters involving specific parties in which you have a financial interest and to broad policy matters that affect many entities, including ones in which you have an interest. If you have such an interest, you must disqualify yourself from participating in the matter, unless an exemption or waiver applies.

Financial Interests of Relatives and Business Associates. The financial interests of some persons are considered so intertwined with your own that they are considered the same as your own interests for purposes of determining conflicts of interest and you are barred from participating in matters affecting these interests. These include the financial interests of: your spouse, minor children, general partners (but not limited partners), and non-U.S. Government employers; a prospective employer (meaning anyone with whom you are negotiating for employment); and any entity with which you are serving as a director, officer, or trustee.

Exemptions. Exemptions permit you to participate in matters affecting a financial interest if the financial interest is a:

- holding in a U.S.-registered diversified mutual fund;
- holding in a U.S.-registered industry sector-specific mutual fund or geographic sector-specific mutual fund valued at US\$50,000 or less (if all interests in the sector total US\$50,000 or less);
- publicly-traded stock or bond holding of US\$15,000 or less in a U.S. company if the company is a party to a matter (or US\$25,000 or less if the company is not a party to a matter) with regard to a specific-party matter; or
- publicly-traded stock or bond holding of US\$25,000 or less in a U.S. company with regard to a broad policy matter (if total holdings in the industry or group affected by the matter are US\$50,000 or less).

Waivers. ITA employees serving outside the United States may obtain a waiver for interests that are not covered by the exemptions if they are not substantial in value (i.e., are US\$50,000 or less in value). Contact the Ethics Law and Programs Division at 202-482-5384 or ethicsdivision@doc.gov to obtain such a waiver.

CONFLICTS OF INTEREST DUE TO PERSONAL RELATIONSHIPS

Appearances of Impropriety concerning Matters Affecting Relatives and Associates.

Unless you receive specific authorization, you may not participate in a matter as a Commercial Service employee if one of the parties to the matter is (or is represented by) a person with whom you have a close family or business tie (a “covered relationship”) and if your participation is likely to create an appearance of loss of impartiality.

Persons with whom you are considered to have a “covered relationship” include:

- persons with whom you have or are seeking a business or a financial relationship (other than a routine consumer transaction);
- members of your household;
- your close relatives;
- employers and clients of your parents, dependent children, and spouse (and their prospective employers and clients);
- former non-U.S. Government employers and clients, for a one-year period (or a two-year period if you received an extraordinary severance payment from the former employer before entering U.S. Government service); and
- organizations in which you are an active participant (other than political organizations).

Exception. Authorization to participate in a matter in which one of these persons or entities is a party (or represents a party) may be granted if the International Trade Administration’s need for your participation outweighs appearance concerns. To seek such an authorization, contact the Ethics Law and Programs Division at 202-482-5384.

GIFTS, BRIBES, AND SALARY SUPPLEMENTATION

Bribes and Salary Supplementation. As an employee of the United States Government, you may not solicit or receive anything of value for taking action or failing to take action in your U.S. Government position. You also may not accept payment for performing your Commercial Service duties from a source other than the U.S. Government.

Personal Gifts. Generally, you may not accept a gift from anyone who has a contract, grant, or other business with the U.S. Department of Commerce or is seeking such business; is regulated by the Department; or has interests that may be affected by performance of your Commercial Service duties. You also generally may not accept a gift that is given to you because of your U.S. Government position. Gifts to your spouse or minor children are considered gifts to you in most circumstances.

Exceptions. However, exceptions permit you to accept:

- items of little intrinsic value (cards, plaques, trophies);
- gifts whose value is the equivalent of US\$20 or less (other than cash) (up to US\$50 per year from the same source);
- gifts from relatives or friends (if based on a personal relationship);
- invitations to widely-attended events (if from the host of the event (generally) and if your supervisor approves as being in ITA's interest and as outweighing any appearance concern);
- meals outside the United States, if a non-United States citizen who is not a U.S. Government employee is present (up to the *per diem* rate for the city under U.S. travel regulations);
- discounts available to a broad range of persons;
- awards and honorary degrees (in specified circumstances);
- meals, lodging, transportation, and other benefits based on an outside business or employment relationship; and
- gifts from a non-U.S. government valued at US\$335 or less; gifts of over US\$335 may be accepted, but become property of the United States Government.

If a gift may not be accepted for personal use, but if its refusal would cause offense or embarrassment, you should consider accepting it as a gift to ITA if it would further an

agency mission and not create an appearance of loss of impartiality.

Gifts between Employees. In general, you may not offer a gift to a supervisor or accept a gift from a subordinate. However, *exceptions* permit you to give or accept:

- a gift for a special occasion (such as a wedding or birth or adoption of a child);
- items valued at the equivalent of US\$10 or less, given occasionally;
- food shared in the office;
- personal hospitality at one's home; and
- a gift to a host or hostess.

Gifts to the U.S. Government. All U.S. Government agencies may accept (but not solicit) travel payments for employees to attend meetings and similar functions. You should report such gifts on a form CD-210, Record of Gift or Bequest, and a form SF 326, Acceptance of Payment from a Non-Federal Source for Travel Expenses. Non-travel gifts may also be accepted to support agency activities. You should report such gifts on a form CD-210. However, such gifts may be accepted only if they would not create an appearance of impropriety, such as a gift from an ITA contractor or grantee. Honoraria may not be accepted.

You may solicit gifts that would support an agency activity (except that you may not solicit a payment or donation for travel by a U.S. Government employee). You should not solicit from companies that have contracts with or grants from ITA, or from a company or other entity that has controversial matters before ITA. Solicitations should be non-preferential, so solicitations should be broad-based, such as to an organization representing a significant number or percentage of companies in an industry sector or geographic area or to a broad spectrum of companies in an industry sector or geographic area. You may not promise a donor access to Government officials or information for making a donation. You may publicly acknowledge a gift. A gift of more than the equivalent of US\$35,000 in value must be approved by the Secretary of Commerce.

Gifts from a Government (other than the U.S. Government). You may accept a gift from an official of the government in which your office is located (or any other non-U.S. government) or from an international organization, if it cannot be graciously declined. If such a gift is valued at the equivalent of US\$335 or less, you may keep it as a personal gift; if it more than US\$335, you may accept it on behalf of the U.S. Government. Report all such gifts on a form CD-342, Record of Gifts and Decorations from Foreign Governments (and, if it is for travel outside the U.S., on an SF 326).

EMPLOYMENT WITH A PRIVATE BUSINESS OR ORGANIZATION AND OTHER NON-GOVERNMENT ACTIVITIES

Non-Government Employment and Activities. You may be employed by a private company or organization or someone other than the United States Government and engage in other personal activities, provided that the employment or activities does not conflict with your Commercial Service position. Employment or an activity that requires disqualification from important ITA duties or that creates an appearance of using your U.S. Government position for personal benefit creates such a conflict. You must disqualify yourself from participating in a matter as a Commercial Service employee that affects the financial interests of a private employer or in which an organization in which you are an active participant is a party or is representing a party.

Approval Requirement for Locally Engaged Staff Overseas. You must receive approval from the Chief of Mission before accepting any non-United States Government employment. Approval will be granted unless the activity:

- would violate any law of your country of assignment; or
- could damage the interests of the United States.

Service with Private Organizations. You must receive approval from both the Chief of Mission and an ethics official before you or your spouse or a family member serves as an officer, director, or trustee of a private organization in a personal capacity. You also should seek guidance from the Ethics Law and Programs Division regarding service with a private organization in an official capacity on behalf of the United States Government. In most cases, official service as a board member or officer is not permitted. Fund-raising for a private organization in an official capacity is permitted in some circumstances, with the approval of the Chief of Mission, if it will advance U.S. foreign policy interests; you should seek advice prior to engaging in such fund-raising.

Political Activities. You may exercise political rights deriving from your non-U.S. nationality pertaining to elections in your country of assignment during off-duty hours, but you may not use United States Government resources for political activities, including office equipment, telephone services, office supplies, Government information, your U.S. Government title, or official time. You may not solicit, accept, or receive funds in connection with a United States partisan election or campaign.

CONTACTING THE UNITED STATES GOVERNMENT ON BEHALF OF OTHERS

Contacting a United States Government Official on Behalf of Someone Else.

Generally, you may not serve as an agent or attorney or, if paid, otherwise represent anyone before a U.S. Federal agency or U.S. Federal court. For purposes of this restriction, representation includes any communication, whether by telephone, by e-mail, in writing, or in person, that is made with the purpose of influencing U.S. Government action. Requests for publicly-available information are not barred, nor are factual responses to Government requests for information.

Exceptions. You may represent:

- your spouse, children, parents, or an estate (if you receive prior approval through the Ethics Law and Programs Division);
- a United States Government employee in a personnel dispute (if you receive no compensation and it does not conflict with your Commercial Service position); and
- an organization composed primarily of U.S. Government employees or their spouses or dependents (if you receive no compensation and if the matter does not involve claims against the Government, proceedings in which the organization is a party, or Government financial benefits to the organization).

Receiving Compensation based on the Lobbying Activities of Others. In addition to being barred from representing others before the United States Government, you are also barred from receiving any payments that are based on representational activities of others before a United States Federal agency or U.S. Federal court during a period in which you serve as a United States Government employee.

MISUSE OF UNITED STATES GOVERNMENT RESOURCES OR POSITION

Use of United States Government Resources. You may use U.S. Government resources only for authorized Government activities. This includes U.S. Government equipment, supplies, services, and the time of Commercial Service personnel. You may not use information you receive in the course of your employment for personal purposes, unless the information is also available to the public. However, you may use frequent flier miles and other benefits you earned from U.S. Government travel for personal purposes, including personal travel or upgrades for official travel.

Use of Telephone Services, the Internet, and E-mail. You should follow the rules established for your post regarding the use of office access to the Internet, e-mail services, or other communications services for personal purposes. These rules may vary depending on your post. However, you may not use of access to the Internet or e-mail for political purposes.

Use of Your United States Government Position. You may not use your U.S. Government position, including business contacts obtained through Commercial Service employment, for personal activities. In addition, you may not use your Commercial Service title in connection with a non-Government activity, except that you may use your U.S. Government title in connection with personal activities as part of general biographical data if it is given no more prominence than other significant biographical details.

SEEKING FUTURE EMPLOYMENT

Seeking Employment. Once you begin to seek employment from someone other than the United States Government, you must disqualify yourself from working as a Commercial Service employee on any matter in which the possible future employer has a financial interest. Your disqualification must continue until negotiations end through a clear statement by either you or the possible future employer, or until two months have passed after you have submitted an unsolicited employment proposal (such as a résumé) with no response from the future employer. Additionally, if you are participating in a procurement of over \$100,000, you must notify your supervisor and the Ethics Law and Programs Division, in writing, of any employment contacts with or from a competing contractor.

Post-Employment Restrictions. After leaving U.S. Government service, you may not:

- contact any U.S. Federal agency or U.S. Federal court on behalf of someone else concerning a matter that involves specific parties if you personally worked on the matter
- for 2 years, contact any U.S. Federal agency or U.S. Federal court on behalf of someone else concerning a matter that involves specific parties if a subordinate or yours worked on it or it was otherwise under your responsibility at any time during the last year of your service with the U.S. Government;
- disclose or use protected nonpublic information gained during the course of U.S. Government employment, including information obtained from a treaty negotiation, private personnel information, trade secrets and proprietary business information, and national security information; or
- for 1 year, accept compensation from the winning contractor of a major procurement (over \$10,000,000) if you served as a procurement official or program manager.

Exceptions and Special Post-Employment Rules. There are exceptions to some post-employment rules regarding testimony under oath and representing state and local governments in the United States, international organizations, educational institutions, and medical institutions. Contact the Ethics Law and Programs Division at 202-482-5384 for a handout providing a more thorough description of these rules.

CITATIONS TO APPLICABLE LAW

Financial Conflicts of Interest

18 United States Code (U.S.C.) § 208
5 Code of Federal Regulations (C.F.R.) §§ 2635.401-2635.403, 2635.502, 2640.201,
and 2640.202
3 Foreign Affairs Manual (FAM) Part 4120

Conflicts of Interest Due to Personal Relationships

5 C.F.R. §§ 2635.501-2635.503

Gifts, Bribes, and Salary Supplementation

5 U.S.C. §§ 7342, 7351, and 7353; 15 U.S.C. § 1522; 18 U.S.C. §§ 201 and 209
5 C.F.R. §§ 2635.201-2635.205, 2635.301-2635-304; 41 C.F.R. Part 304-1

Employment with a Private Business or Organization and Other Non-Government Activities

18 U.S.C. § 208; 5 C.F.R. §§ 2635.801-2635.809
3 FAM Part 4120

Contacting the United States Government on Behalf of Others

18 U.S.C. §§ 203 and 205

Misuse of United States Government Resources or Position

18 U.S.C. § 641; 5 C.F.R. §§ 2635.701-2635.705

Seeking Future Employment and Restrictions after Leaving United States Government Employment

18 U.S.C. § 207; 41 U.S.C. § 423
5 C.F.R. Parts 2635, 2637, and 2641; 15 C.F.R. §§ 15.11-15.18; 37 C.F.R. Part 10

EXAMPLES

NO PROBLEM

1. An employee works on a contract in which one of the bidders is a company in which he owns US\$8,000 of stock.
2. A Commercial Service official is asked to make a recommendation regarding a trade agreement that will affect the U.S. computer industry sector, a sector in which she has stock holdings valued at US\$20,000.
3. An employee works on a project involving a company that she worked for three years ago.
4. An employee assists her neighbor in filling out a U.S. visa application.
5. A Commercial Service employee works part-time on matters unrelated to his ITA job after obtaining Chief of Mission approval.
6. A non-profit organization gives an ITA employee a US\$15 paperweight embossed with the organization's logo after she makes a presentation on a new U.S. Government policy at a conference.

PROBLEM

1. An employee works on a contract in which one of the bidders is a company in which he owns US\$18,000 of stock.
2. A Commercial Service official makes a recommendation regarding a trade agreement that will affect the U.S. computer industry sector, a sector in which she has stock holdings valued at US\$60,000.
3. An employee works on a project involving a company that she worked for three months ago.
4. An employee assists her neighbor in a meeting with U.S. State Department consular officials.
5. A Commercial Service employee works part-time on matters unrelated to his ITA job without first obtaining Chief of Mission approval.
6. A non-profit organization gives an ITA employee a US\$50 paperweight embossed with the organization's logo after she makes a presentation on a new U.S. Government policy at a conference.

EXAMPLES

NO PROBLEM

7. An employee gives a US\$50 wedding gift to his supervisor.

8. An employee writes a letter of recommendation regarding a former employee using ITA stationery.

9. An employee who is not a U.S. citizen actively works during non-duty hours on a local political campaign at her home.

10. An employee who is not a U.S. citizen is treated to a lavish business meal at which both United States and local business persons are present.

12. An employee who is asked to travel to speak at a conference explains to the conference organizer that he would be happy to participate, but that his office does not have the travel funds necessary for him to participate in the conference.

13. An employee sends her résumé to a firm about a job and then stops working on a project concerning the firm.

PROBLEM

7. An employee gives a US\$50 birthday gift to his supervisor.

8. An employee writes a letter of recommendation regarding a neighbor using ITA stationery.

9. An employee who is not a U.S. citizen actively works during non-duty hours on a local political campaign at her Government office.

10. An employee who is not a U.S. citizen is treated to a lavish business meal at which only United States business persons are present.

12. An employee who is asked to travel to speak at a conference explains to the conference organizer that he would be happy to participate, but that his office does not have the travel funds necessary for him to participate in the conference and he asks the organizer to pay for the travel.

13. An employee sends her résumé to a firm about a job and continues working on a project concerning the firm.

For further advice on ethics rules, contact the
Ethics Law and Programs Division
of the Office of the Assistant General Counsel for Administration,
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or ethicsdivision@doc.gov.

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