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Pension Benefit Guaranty Corporation
1200 K Street, N.W., Washington, D.C. 20005-4026

VIA EMAIL

PBGC 2017-000412

February 8, 2017

Re: Request for copy of Ethics Handbook

I am responding to your request submitted to the Pension Benefit Guaranty Corporation's (PBGC) Disclosure Division via email on January 1, 2017. You requested a digital/electronic copy of the PBGC Ethics Handbook. We processed your request in accordance with the Freedom of Information Act (FOIA) and the PBGC's implementing regulation.

Pursuant to your request, we conducted a search of agency records and located 66 pages of responsive records. Enclosed you will find a PDF copy of PBGC's Ethics Handbook. The Disclosure Officer has determined that the information is fully releasable.

Although this response is not a denial of your records request, I am providing you with your administrative appeal rights in the event you wish to avail yourself of this process. The FOIA provides at 5 U.S.C. § 552(a)(6)(A)(i) (2014) amended by FOIA Improvement Act of 2016, Pub. L. No. 114-185, 130 Stat. 538 that if a disclosure request is denied in whole or in part by the Disclosure Officer, the requester may file a written appeal within 90 days from the date of the denial or, if later (in the case of a partial denial), 90 days from the date the requester receives the disclosed material. The PBGC's FOIA regulation provides at 29 C.F.R. § 4901.15 (2015) that the appeal shall state the grounds for appeal and any supporting statements or arguments, and shall be addressed to the General Counsel, Attention: Disclosure Division, Pension Benefit Guaranty Corporation, 1200 K Street, N.W., Washington, D.C. 20005. To expedite processing, the words "FOIA Appeal" should appear on the letter and prominently on the envelope.

In the alternative, you may contact the Disclosure Division's Public Liaison at 202-326-4040 for further assistance and to discuss any aspect of your request. You also have the option to contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

This request has been categorized as an "all other request." These requests are assessed search and duplication fees.¹ As the total cost for your request was below the PBGC's nominal fee threshold of \$25.00, no fees have been assessed for its processing. This completes the processing of your request. You may submit future requests for PBGC records by accessing FOIAonline, our electronic FOIA processing system, at <https://foiaonline.regulations.gov>, or by email to Disclosure@pbgc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Gamez", with a stylized flourish at the end.

Maria E. Gamez
Government Information Specialist

Enclosures

¹ See 5 U.S.C. §552(a)(4)(A) (ii)(1).



Public Service is a Public Trust

Ethics Handbook

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Introduction

Public service is a public trust. This means that each employee must place loyalty to the United States Constitution, Federal laws and regulations, and ethical principles above private gain. Although the Standards of Ethical Conduct for Employees of the Executive Branch can be complex, they embody 14 general principles that should guide you in your conduct.

The PBGC has its own ethics staff whose mission is to train, counsel, and advise employees regarding ethical conduct and avoiding conflicts of interest. If you have any questions regarding ethics, you should contact the ethics counselors listed on the back cover of this handbook.


Judith R. Starr
General Counsel

I. *14 Principles of the Standards of Ethical Conduct*

1. Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.
2. Employees shall not hold financial interests that conflict with the conscientious performance of duty.
3. Employees shall not engage in financial transactions using non-public Government information or allow the improper use of such information to further any private interest.
4. An employee shall not, except as permitted by subpart B of 5 C.F.R. § 2635, 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 non-performance of the employee's duties.
5. Employees shall put forth honest effort in the performance of their duties.
6. Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.
7. Employees shall not use public office for private gain.
8. Employees shall act impartially and not give preferential treatment to any private organization or individual.
9. Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.
10. Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.
11. Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.
12. Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those—such as Federal, State, or local taxes—that are imposed by law.
13. Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.
14. Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or ethical standards set forth in 5 C.F.R. § 2635. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

II. *Gifts*

Receiving and, in some cases, giving gifts can raise ethical issues. This Chapter explains what a gift is, when the gift rules apply, how they operate, and the exceptions to the rules.

What is a gift?

A gift is anything having monetary value.

A. GIFTS FROM OUTSIDE SOURCES

The Basic Rule

The public has a right to expect that governmental decisions will be based on the merits, rather than influenced by private interests. Therefore, with certain exceptions, you may not solicit or accept a gift from any person or entity seeking official action from the PBGC, doing business with the PBGC, or regulated by the PBGC. Specifically, you may not accept gifts that are given because of their official positions or that come from certain interested persons, known as “prohibited sources.” Prohibited sources include persons (or an organization made up of such persons) who:

- are seeking official action by, are doing business or seeking to do business with (i.e., contractors), or are regulated by the PBGC (e.g., premium payors); or
- have interests that may be substantially affected by performance or nonperformance of your official duties.

In addition, you may never solicit or coerce the offering of a gift or accept a gift in return for being influenced in the performance of an official act. You also may not accept gifts so frequently that a reasonable person might think that you were using your public office for private gain.

Things That Are Not Gifts

The Office of Government Ethics (OGE) has issued regulations that exclude certain items from the definition of gift; you may, therefore accept these types of items. Acceptable items include:

1. Loans from banks and other financial institutions at rates and on terms generally available to all members of the public.
2. Opportunities and benefits, including favorable rates and discounts, available to the public or to all Government employees.
3. Rewards and prizes given to competitors in contests or events, including random drawings, open to the public, unless the employee’s entry into the contest or event is required as part of the employee’s official duties.

The public has a right to expect that governmental decisions will be based on the merits, rather than influenced by private interests.

4. Modest items of food and refreshments, such as soft drinks, coffee and doughnuts, offered other than as part of a meal.
5. Greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, intended solely for presentation.
6. Anything for which market value is paid by you or by the Government.
7. Anything accepted by the PBGC under its statutory gift acceptance authority, including travel, subsistence, and related expenses accepted by the PBGC under 31 U.S.C. § 1353, in connection with an employee's attendance at a meeting or similar function that is away from the PBGC and related to the employee's official duties. Such acceptance requires advance written approval by the employee's supervisor, CPAD, and a PBGC ethics official.
8. Free Attendance at a Conference where a PBGC employee is attending as a Speaker: If the PBGC assigns an employee to speak or serve as a panel member on behalf of the PBGC at an event, the employee may accept from the event sponsor an offer of free attendance at the event on the day of his/her presentation. Free attendance includes waiver of the conference fee, acceptance of food, refreshments, entertainment, instruction, and materials furnished to all attendees as an integral part of the event. It does not include meals taken in other than a group setting with all other attendees. PBGC Directive IM 10-4 requires an employee to obtain advance written approval from the employee's supervisor, the Communication and Public Affairs Department (CPAD), and the concurrence of the Office of the General Counsel (OGC) before accepting an invitation to speak at or attend certain meetings, conferences, or similar functions in an official capacity. Also, under the Directive, you must obtain ADVANCE written approval from the PBGC Designated Agency Ethics Official or Alternate Agency Ethics Official before accepting the gift of free attendance, travel, meals, and lodging. Remember that you may not solicit or coerce the offering of a gift.

Exceptions to the Gift Prohibition – When a Gift may be Accepted

You may accept gifts in certain circumstances. The gifts below have been deemed to not violate the ethics rules. Even though the acceptance of a gift may be permitted by one of the exceptions, it is never inappropriate and is frequently prudent for you to decline a gift offered by a prohibited source or because of your official position.

1. GIFTS OF \$20 OR LESS. On any one occasion, you may accept an *unsolicited* gift with a market value of \$20 or less from a prohibited source. These unsolicited gifts may not exceed a total of \$50 from any one prohibited source in a calendar year. If the gift is worth more than \$20, you may not pay the amount over \$20. Instead, you must either decline the gift or pay the total value. Please contact a PBGC ethics counselor for assistance with valuing a gift.

Example: As part of a project, a PBGC employee and a contractor employee sit side-by-side in a PBGC office. The contractor employee offers the PBGC employee a free box seat ticket (worth \$35) to a Washington Nationals baseball game. The PBGC employee must decline the offer because the face value of the ticket exceeds \$20. The PBGC employee may not offer to pay \$15 for the ticket and rely on the \$20 exception to make up the difference. The employee may, however, pay the full \$35 and attend the game.

Example: A PBGC employee has become friends with four contractor employees he works with and who all work for the same contractor. If the PBGC employee receives a gift from three of the contractor employees with a market value of \$15 over the course of the calendar year, the PBGC employee may not accept another gift worth more than \$5 from any employee of the contractor because all the contractors are employed by the same prohibited source and the last gift would exceed the \$50 calendar year limit.

2. GIFTS BASED ON A PERSONAL RELATIONSHIP. You may accept a gift, even if it is worth more than \$20, if it is clear that the gift is based on a personal or family relationship.

Example: A contractor employee has been given two \$25 tickets by his boss to a basketball game. He offers a ticket to a PBGC employee, who refuses because the contractor employee is a prohibited source. The contractor employee, however, contends that he is offering the tickets solely out of friendship. Although a personal relationship can justify the acceptance of a gift, the facts show that the contractor employee and the PBGC employee have no history of prior friendship, seldom socialize outside the office, and have only worked together for six months. In this case, the gift does not arise from a personal relationship.

Key factors in analyzing whether a gift is a personal gift include the history of the relationship and whether the friend personally pays for the gift. A gift likely does not fit the exception for one based on a personal relationship if the source of funds for the gift is the employer of the contractor employee.

Example: A PBGC employee's daughter, Jill, works as a contractor employee in BAPD. The contractor has given Jill \$25 tickets for a Wizards basketball game. Jill offers a ticket to her mother. Jill's mom may accept the ticket because it is clear that her daughter is offering her mom the ticket because of their personal relationship.

Situations involving the exception for personal relationships are fact-specific. You should consult with a PBGC ethics counselor on cases involving this exception.

3. WIDELY ATTENDED GATHERINGS (WAGs). Unsolicited invitations to attend receptions, luncheons, and other events free of charge are a type of gift that may be accepted if the event is considered to be a WAG. The rules for WAGs are complex. Contact a PBGC ethics counselor to determine if the event you want to attend might fit within this exception.

If the offeror is a prohibited source, before accepting the invitation, you must obtain a written determination by a PBGC Designated Agency Ethics Official or Alternate Agency Ethics Official that the PBGC's interest in your attending the event outweighs the concern that acceptance of the gift of free attendance may or may not appear to improperly influence you in the performance of your official duties. The agency must also determine that your attendance is in the interest of the PBGC and that your attendance will further agency programs and operations. Although an oral determination will suffice when the offeror is not a prohibited source, to protect you and the PBGC, you should obtain an advance written approval by a PBGC ethics official.

- (a) What is meant by "widely attended"? An event fits the definition of "widely attended" if it is expected that a large number of persons will attend and that persons with a diversity of views or interest will be present. For example, if the event is either: 1) open to members from throughout the interested industry or profession; or 2) those in attendance represent a range of persons interested in a given matter, then the event fits the definition of widely attended.

How many is a "large number of persons"?

If the unsolicited gift of free attendance is made by the sponsor of the event, OGE only states that a "large number of persons" need to be in attendance, but does not specify a specific number. There must, however, be a diversity of views or interests represented.

If the gift of free attendance is offered by someone other than the sponsor of the event, then there also must be at least 100 persons in attendance and the value of the gift (free attendance) must not exceed \$350.

- (b) What is included in "free attendance"? Free attendance includes waiver of all or part of the attendance fee, acceptance of conference materials, and food and/or refreshments that are integral to the event.

It does NOT include travel or lodging expenses, entertainment not integral to the event or meals taken other than in a group setting with all other attendees.

The PBGC may authorize you to accept an unsolicited invitation of free attendance for an accompanying spouse or guest when others in attendance will generally be accompanied as well and the unsolicited invitation is from the same person who invited you.

- (c) What type of approval do I need to attend a WAG? If the person or entity that has extended the invitation has interests that may be substantially affected by the performance or nonperformance of your official duties, the PBGC Designated Agency Ethics Official or Alternate Agency Ethics Official must issue an ADVANCE written determination that your participation in the event outweighs the concern that acceptance of the gift of free attendance may or may appear to improperly influence the performance of your official duties.

Example: ABC Actuarial Firm offers a PBGC employee a free ticket to attend a cocktail party being held by the Society of Actuaries on Capitol Hill during the Society's annual conference. Tickets for the event cost \$135 per person and attendance is open to allow members of the Society of Actuaries and members of Congress. The Society of Actuaries anticipates that approximately 300 people will attend the cocktail party. As this invitation is from someone other than the sponsor of the event, the employee may only attend if an agency ethics official makes an advance written determination that the employee's attendance is in PBGC's interest. In addition, because the ABC Actuarial Firm has interests that may be substantially affected by the employee's performance of her duties, the employee may only attend if the PBGC Ethics Official first makes a written determination that PBGC's interest in the employee's attending the cocktail party outweighs the concern that acceptance of the gift of free attendance may or may appear to improperly influence the employee in the performance of her official duties. Provided the PBGC Ethics Official does make that determination, the employee may accept the invitation from the ABC Actuarial Firm because more than 100 people will attend and the cost of the ticket is less than \$350. The event fits the definition of widely attended because the event is open to all members of the Society of Actuaries.

Example: A PBGC employee and her husband have been invited to a small dinner party hosted by an airline executive. Also in attendance will be a few other airline executives and their spouses, as well as a representative from the Airline Pilots Association and his spouse. The PBGC employee believes that the dinner party will provide her with an opportunity to socialize with and get to know those in attendance. The PBGC employee may not accept the free invitation under the WAG exception, even if her attendance could be determined to be in the interest of the agency because the small dinner party is not considered to be "widely attended." Furthermore, even if all other airline executives and their spouses attended, as well as the representative from the pilot's association and his spouse, the employee still could not attend since those in attendance would not be considered to represent a diversity of views or interests.

Example: A PBGC attorney receives an invitation to attend a law firm holiday party where it is expected the value of the food being consumed will exceed \$20. The invited guests include various advisory board members, heads of different Government agencies, members of industry associations, and Capitol Hill representatives. The law firm is a prohibited source; therefore, after determining that the event fits the definition of widely attended gathering (WAG), the PBGC Ethics Official issues a written determination that the attorney may attend because the holiday gathering will provide an opportunity for the informal exchange of ideas among a variety of individuals with a mutual interest in, and divergent views on, matters of concern to the PBGC. In addition, attending will help maintain an open line of communication with the firm, as it has provided helpful legal advice in the past.

4. SOCIAL INVITATIONS FROM A PERSON OTHER THAN A PROHIBITED SOURCE, EVEN IF EXTENDED BECAUSE OF YOUR OFFICIAL POSITION. You may accept food, refreshments, and entertainment, not including travel or lodging expenses, at a social event attended by several people where:
 - (a) The invitation is not from a prohibited source; and
 - (b) No one in attendance was charged a fee.

Example: Along with several other Government officials and a number of individuals from the private sector, a PBGC employee has been invited to attend the premier of a new action movie. The producer of the movie, who has no business or regulatory relationship with the PBGC, is paying all costs. The employee may accept the invitation since the producer is not a prohibited source and no attendance fee is being charged to anyone who has been invited.

5. AWARDS AND HONORARY DEGREES. You may accept gifts (other than cash or an investment interest) with an aggregate market value of \$200 or less if the gift is a bona fide award or given for meritorious public service or achievement by a person who has no interests that may be substantially affected by the performance of your official duties. Awards in excess of \$200 may be accepted upon a written determination by a PBGC ethics official that the award is part of an established program of recognition.
6. GIFTS BASED ON OUTSIDE BUSINESS OR EMPLOYMENT RELATIONSHIPS. When it is clear the benefits have not been offered or enhanced because of your official position, you may accept meals, lodging, transportation, and other benefits:
 - (a) Resulting from the business or employment activities of your spouse;
 - (b) Resulting from your outside business or employment activities; or
 - (c) Customarily provided by a prospective employer in connection with bona fide employment discussions as long as the prospective employer has no interests that could be affected by performance of your official duties. If the prospective employer has interests that could be affected, you must comply with the disqualification requirements applicable when seeking employment before accepting a gift. See further discussion of disqualification requirements when seeking employment in Chapter VI.

What do you do with a gift that you cannot accept?

For any tangible item, you should return it or reimburse the gift-giver its market value. For example, if a contractor, with whom you have no personal relationship, sends you a book and it is worth more than \$20, send it back to the contractor or promptly reimburse the contractor the value of the book. If the gift is perishable, and it is not practical to return it, you may, at the discretion of your supervisor or an agency ethics official, donate the item to charity, share it within the office, or destroy it.

For an intangible item, such as entertainment, a favor, or service, you should reimburse the gift-giver the market value. Returning a favor or service does not constitute reimbursement.

Gifts and Financial Disclosure Forms

See Chapter XII for discussion regarding the filing of financial disclosure forms, which may require an employee to provide information regarding gifts from outside sources.

B. GIFTS BETWEEN PBGC EMPLOYEES

You may not give a gift or make a donation toward a gift for an official superior or ask another employee for a contribution toward a gift for an official superior. An official superior is your immediate supervisor and any other employee whose official responsibilities include directing or evaluating you in the performance of your official duties.

In addition, you may not accept a gift from an employee receiving less pay than you.

Keep in mind that a gift is anything having monetary value.

There are exceptions:

1. ON OCCASIONS WHEN GIFTS ARE TRADITIONALLY GIVEN OR EXCHANGED, such as on a birthday or during the holiday season, you may give a gift (other than cash) to an official superior and an official superior may accept a gift (other than cash) from a subordinate or other employee receiving less pay.
 - Gifts should not exceed aggregate market value of \$10 or less per occasion. Items such as food and refreshments may be shared in the office among employees, including official superiors.
 - You may not solicit fellow employees or pool voluntary contributions to purchase a group gift for an official superior for gifts under this exception. You may, however, solicit *voluntary contributions* or make *voluntary contributions of nominal amounts* for items such as food and refreshments to be shared among employees at the office.
2. PRIOR PERSONAL RELATIONSHIP BETWEEN THE OFFICIAL SUPERIOR AND EMPLOYEE. Although you may generally not accept gifts from other employees who receive less pay, this prohibition does not apply if:
 - The two employees are not in a superior-subordinate relationship
AND
 - A personal relationship justifies the gift.

If these two criteria are met, you may exchange gifts of any value at any time of the year. Generally, a personal relationship implies that you spend time together socially outside of the office.

***Example:** A new employee in DISC was the college roommate of a supervisor in TPD. The TPD supervisor collects coffee mugs and her former college roommate has traditionally brought her a new mug whenever she travels. Even though the DISC employee receives less pay than the TPD supervisor, the DISC employee may continue to give her former college roommate coffee mugs from various cities since they are not in a superior-subordinate relationship and they have a personal relationship that justifies the gift.*

3. ON SPECIAL, INFREQUENT OCCASIONS OF PERSONAL SIGNIFICANCE, such as marriage, the birth or adoption of a child, or retirement, a gift appropriate to the occasion may be given to and accepted by an official superior or accepted from a subordinate or other employee receiving less pay.
 - There is no dollar limit on the value of the gift, but it should be appropriate for the occasion.
 - You may solicit from fellow employees *voluntary* contributions of a *nominal amount* and may make voluntary contributions of a nominal amount towards the purchase of an appropriate group gift for an official superior.

***Example:** A supervisor in FOD is getting married. Her employees know that she and her fiancé enjoy wine. Her employees may solicit voluntary contributions to purchase a number of bottles of wine to give as a gift from the group.*

4. HOSPITALITY GIFTS. You may give to an official superior, or accept from subordinate employees and other employees receiving less pay than you, personal hospitality gifts if the gift of hospitality is provided at a residence and is of a type and value customarily provided by the employee to personal friends even if the cost of these customary gifts exceeds \$10.

***Example:** Your supervisor has invited you and your co-workers to a holiday dinner at the supervisor's house. You would like to show your appreciation by bringing a box of candy, a bouquet of flowers, or a basket of fruit worth about \$15. Can you do it? Can your supervisor accept?*

Yes. Candy, flowers or fruit of such value are examples of permissible gifts given in connection with the receipt of personal hospitality. Gifts in this category may exceed the \$10 maximum, provided they are of a type and value customarily given on such occasions.

***Example:** Your supervisor has invited you and your co-workers to watch the Super Bowl at his house. You would like to show your appreciation by bringing him a Joe Montana 1981 Topps Rookie Card worth \$150. May your supervisor accept the football card?*

No. A rare football card is not customarily given when invited to view a Super Bowl game. Only gifts customarily given when attending a Super Bowl party may exceed the \$10 limit.

Caution: The ethics rules prohibit PBGC employees from soliciting a gift from a contractor.

When soliciting voluntary contributions for a gift to a PBGC employee, you should avoid asking contractor employees to contribute. If, however, a contractor employee hears about an effort to collect money and offers an *unsolicited* voluntary contribution, it is permissible to accept the contribution, but the contribution may not exceed \$20.00.

Example: Your supervisor is retiring and you are collecting contributions for a gift. You send an email to the entire department, including contractor employees, with a deadline to contribute. A contractor employee approaches you with a contribution. You may not accept the contribution. The email is considered a solicitation for contributions and should not have been sent to contractor employees. Please see the section on “Gifts from Outside Sources” for further guidance.

Example: Your supervisor is retiring and you are collecting contributions for a gift. You send an email only to other PBGC employees in your department with a deadline to contribute. A contractor employee overhears two PBGC employees discussing your email. She approaches you and asks to contribute to the gift. You may accept her contribution since it is an unsolicited contribution.

Example: Your supervisor breaks her hip and is on extended leave after surgery. Can you donate leave to your supervisor?

*No. The leave is a gift because it has monetary value. You may not donate your leave to your **immediate** supervisor but may donate leave to another employee.*

III. *Conflicts of Interest*

It is extremely important for PBGC employees to be keenly aware of conflicts of interest, which are policed not only by the ethics rules, but by Federal criminal laws.

A. FINANCIAL CONFLICTS [18 U.S.C. § 208]

Section 208(a) of Title 18 of the U.S. Code makes it a crime for you to work for the PBGC:

- On any particular matter;
- In which you or any person whose financial interests are imputed to you;
- Has a financial interest;
- If the particular matter will have a direct and predictable effect on that interest.

This law applies to all PBGC employees. The key purpose behind this law is to prevent the personal interests of Government employees from affecting their official actions. It means you may not work on assignments that would affect your financial holdings, or as explained below, a matter that would affect financial interests that are imputed to you.

As a PBGC employee, your focus should be solely on the Government's interests.

1. PARTICULAR MATTER. The term "particular matter" refers to matters that involve deliberation, decision or actions that are focused upon the interests of specific parties or of a discrete and identifiable class of persons (particular matters of general applicability). Specific party matters include judicial or administrative proceedings, applications for benefits, requests for rulings, and contracts.

Particular matters of general applicability include legislation or rulemaking that is narrowly focused on the interests of a discrete and identifiable class of persons, such as matters focusing on a particular industry or geographic sector. Because there are only approximately 1500 multi-employer plans, multi-employer legislation or regulations are considered a "particular matter of general applicability."

Particular matters do not involve consideration or adoption of broad policy options directed to the interests of a large and diverse group of persons.

2. FINANCIAL INTERESTS. Financial interests are your ownership interests in stocks, bonds, mutual funds, partnerships, real estate, or a business. A salary, loan, or an employment relationship also creates a financial interest. Financial interests arise whenever there is the potential for gain or loss to you, or other persons whose interests are imputed to you (see 4 below), as a result of governmental action on the particular matter. The amount or magnitude of any gain or loss

...you may not work on assignments that would affect your financial holdings, the holdings or financial interests of family members, or your or family members' business associates.

that can result from the Government's action on the matter is irrelevant. The conflict of interest laws do not allow for even minimal gains or losses.

3. **DIRECT AND PREDICTABLE EFFECT.** A particular matter affects a financial interest only if that effect is "direct and predictable." A particular matter will have a direct effect on a financial interest if there is a close causal link between any decision and action to be taken in the matter and any expected effect of the matter on the financial interest. A predictable effect is a real, as opposed to a speculative, possibility that the particular matter will affect the financial interest. For example, your work on a premium refund request by a partnership in which your spouse is a partner would have a direct and predictable effect on your spouse's financial interest. Your work on the matter need not affect your own financial interest in order to violate the law. Rather, certain close personal and business interests will also be considered and may be imputed to you.
4. **IMPUTED INTERESTS.** In addition to your own financial interests, the financial interests, of which you have knowledge, of the persons below are attributed to you for purposes of the conflict of interest law:
 - Your spouse and minor child
 - Organization or entity for which you serve as officer, director, trustee, general partner, or employee (Organizations that give rise to potential financial conflicts include both for-profit and non-profit entities, as well as family trusts.)
 - Person with whom you are negotiating or have an arrangement concerning prospective employment (see Chapter VI for additional discussion)
 - Interests of individuals who are your general partners in a venture outside of your employment at PBGC

***Example:** A PBGC employee works on an agency contract. The employee's spouse is hired by the contractor to work on the same contract. The spouse's continued employment and possible advancement with the company depend on the company's success with this particular PBGC contract. Absent a waiver, the PBGC employee may not work on the contract even if the employee does not personally review the work of the spouse or even participate in the same part of the contract in which the spouse is involved.*

***Example:** A PBGC employee's spouse works for an agency contractor. She participates in the company's stock purchase program and also receives periodic cash bonuses tied to the company's profitability. Therefore, she has a financial interest in any contract that her company has with the agency, even if her own work does not involve the particular contract and she does not work in the same division of the company that is performing the contract. The PBGC employee may not participate in any contract with the company, absent a waiver.*

Example: The spouse of a PBGC employee is a partner at a law firm that is representing a disappointed bidder in a bid protest against the agency. As a partner, the spouse has a financial interest in all particular matters in which her firm is representing a client, including matters in which she herself is not providing services. The PBGC employee may not work on the bid protest, without a waiver.

Example: A PBGC employee's spouse owns a controlling interest in a private company. A potential contractor on a Government contract plans to use the spouse's company as a subcontractor on the contract. The employee may not participate in the procurement, absent a waiver.

In some cases, however, the spouse will not have any financial interest in a particular matter.

Example: A PBGC employee is assigned to work on a contract involving her spouse's employer. The contractor is a large company with many different contracts and business operations. The spouse works in an area of the company's business that is unrelated to the contract with the PBGC. Moreover, the spouse receives a straight salary from the company, without any equity or profit-sharing interests. The conflict of interest laws would not prohibit the PBGC employee from working on this contract

Note, however, that even if the spouse does not have a financial interest in the contract on which the Government employee is working, there still may be impartiality issues. See below in section IV.

If you are concerned that other circumstances not specifically covered by the regulations could raise a question regarding your impartiality, please discuss the matter with a PBGC ethics counselor.

B. RESOLUTIONS OF FINANCIAL CONFLICTS OF INTERESTS

1. **RECUSAL.** Recusal, or disqualification, means that you do not participate in the particular matter. Unless you are authorized to participate by a waiver granted after consultation with a PBGC ethics official, or the conflicting interest has been divested, you must not participate in a particular matter, in which, to your knowledge, you or any other person whose interests are imputed to you has a financial interest. Note that there are a few exceptions which are discussed in paragraph 4 below.
2. **DIVESTITURE OF THE DISQUALIFYING ASSET.** In some cases, you may be required to sell, or divest, the conflicting financial interest if the PBGC determines that a substantial conflict exists between your financial interest and your duties. Upon sale or other divestiture of a financial interest that causes your disqualification from participation in a particular matter, you are no longer prohibited from participating in the matter.
3. **INDIVIDUAL WAIVERS.** In some circumstances, you may obtain a written waiver that permits you to work on a matter despite a conflicting financial interest.

However, you must consult with a PBGC ethics official to obtain the waiver *before* beginning work on the assignment. The waiver will permit you to participate in a particular matter even if the matter could affect your financial interest. The waiver will be based on a determination that the disqualifying financial interest in a particular matter is not so substantial as to be deemed likely to affect the integrity of your services to the Government. In making this determination, the PBGC ethics official may consider the nature of the interest, the identity of the person whose financial interest is involved, the dollar value of the interest, the nature and importance of your role in the matter, and the sensitivity of the matter. The waiver will be issued by a PBGC ethics official, after consultation with the Office of Government Ethics.

***Example:** A PBGC employee inherits stock in a company valued at \$16,000. The stock constitutes the employee's entire investment portfolio. The company is a potential bidder for a contract to provide on-site support for PBGC employees. If the employee is assigned to work on the procurement, the stock constitutes a financial interest. Unless a waiver is granted, the PBGC employee may not participate in the selection of the contractor. It is unlikely that a waiver would be granted under these circumstances since this stock makes up his entire portfolio and the award may affect the company's earnings and the value of employee's stock.*

***Example:** A PBGC employee and a contractor employee get married. The contractor employee will receive a bonus based upon the success of the contract being performed at the PBGC worksite. The PBGC employee could not participate in the evaluation of the contractor's performance and it is unlikely a waiver would be granted due to the appearance issues it would raise.*

***Example:** A PBGC employee owns \$16,000 worth of stock in Microsoft. This stock is approximately 1% of the employee's investment portfolio. Microsoft is bidding on a contract. May this employee sit on the Technical Evaluation Panel for the contract? Only if a waiver is granted. In this instance, it is likely that a waiver would be granted, since the stock only constitutes 1% of the employee's investment portfolio.*

4. REGULATORY EXEMPTIONS. The OGE has issued regulations that exempt certain financial interests from the § 208 prohibition. The regulation exempts, among others, interests arising from the ownership of diversified mutual funds, publicly traded securities valued under specified thresholds, and certain employee benefit plans. If an exemption applies, you may participate in a matter affecting the exempt financial interest without obtaining a waiver.
 - (a) Diversified Mutual Funds. A fund is diversified if it does not have a policy of concentrating its investments in an industry, business, single country other than the U.S., or State. You may participate in any particular matter affecting one or more holdings in a "diversified" mutual fund.
 - (b) Sector Mutual Funds. A sector mutual fund concentrates its investments in an industry, business, single country other than the U.S., or State. A sector

fund may have incidental holdings as part of the fund that are outside of the fund's area of concentration, or sector. You may participate in any particular matter affecting one or more of the incidental holdings of the sector mutual fund. If, however, the disqualifying interest is in the area, or sector, in which the fund concentrates, you may participate if the aggregate market value of your sector fund or funds in that area of concentration, or sector, does not exceed \$50,000.

Sometimes, the fund's name may indicate if the fund is a sector fund. For example, if the fund name contains the word "telecommunications" or "Canada" or "energy," it's a good indication that the fund is concentrated in those areas and therefore not diversified. Ultimately, however, it is the fund's principal investment strategy or fund objective that determines whether a fund is considered a diversified or a sector fund for purposes of the regulatory exemption.

***Example:** You work in DISC and have been assigned to the General Motors matter. You own a "large cap" mutual fund, which has amongst its many stocks spread over a variety of industries, some shares of General Motors. You may participate in this matter without obtaining a waiver. If, however, the mutual fund were a sector fund that has a policy of concentrating in the automobile sector and was worth more than \$50,000, you could not participate in the matter without obtaining a waiver from a PBGC ethics official.*

- (c) \$15,000 De Minimis Exemption for Specific Party Matters. You may participate in any particular matter involving specific parties in which the disqualifying financial interest arises from ownership by you, your spouse, and your minor children of publicly traded, long-term federal government, or municipal securities and the aggregate market value of your holdings does not exceed \$15,000. For example, you may participate in a particular matter involving specific parties that affects a company in which you own stock if the market value of your stock is \$15,000 or less and the stock is publicly traded.

Question: *Is an employee always prohibited from participating in a contract if he owns stock in the contractor?*

Not always. The \$15,000 limit applies to the sum of all stock owned by the employee, the employee's spouse, and the employee's minor children in all companies affected by the same contract (including subcontractors and competing offerors). It is important to remember that this exemption applies to publicly traded stock, not to stock or any other ownership interest in a privately held company. Also, in some cases, the PBGC may grant an employee an individual waiver under 18 U.S.C. § 208(b)(1), permitting participation where the employee owns more than \$15,000 in stock.

***Example:** A PBGC employee's spouse owns \$10,000 of stock in a private company that has submitted a bid on a small contract with the PBGC. The \$15,000 de minimis*

exemption does not apply because the stock is non-publicly traded; therefore, the employee may not participate in the procurement absent an individual waiver because there is a conflict of interest. On the other hand, if the company's stock were publicly traded, the employee could participate because the de minimis exemption would apply. However, if the employee also owned another \$10,000 in the stock of a competing bidder on the same contract, he would be deemed to have exceeded the \$15,000 limit and would, absent a waiver, have to recuse himself from participating in the procurement.

- (d) \$25,000 De Minimis Exemption For matters Affecting Non-parties. Another exemption allows you to participate in a particular matter when actions the PBGC may take could have an effect on a third party who may be indirectly impacted by PBGC actions. In such a situation, you may participate if you, your spouse, and minor children hold stock that is publicly traded, long-term federal government or municipal securities and the aggregate value of your holdings does not exceed \$25,000. For example, under this exemption, a DISC financial analyst could analyze the effects of a company's proposed merger even if the financial analyst held \$20,000 of stock in a competing firm (a non-party) that could be negatively affected by the merger if it were completed.
- (e) De Minimis Exemption For Matters of General Applicability. You may participate in any particular matter of general applicability, such as rulemaking or legislation, in which the disqualifying financial interest arises from ownership by you, your spouse, and your minor children of publicly traded or municipal securities and the aggregate market value does not exceed \$25,000 in any one entity affected by the matter and \$50,000 in all affected entities. This exemption also applies if the financial interests are long-term federal government securities and the aggregate market value does not exceed \$50,000.
- (f) Employee Benefit Plans. You may participate in a particular matter affecting one or more holdings of a diversified employee benefit plan provided that:
 - The plan is not a stock bonus or profit sharing plan and the investments of the plan are administered by an independent trustee; and
 - You do not participate in the selection of the plan's investments or designate specific investments (except for directing that contributions be divided among several different categories of investments, such as stocks, bonds or mutual funds).
- (g) Frequent Flyer and Other Commercial Discount and Incentive Programs. You may participate in any particular matter affecting the sponsor of a discount, incentive, or other similar benefit program if the otherwise disqualifying interest arises because of participation in the program provided that:
 - The program is open to the general public; and
 - Participation in the program involves no other financial interest in the sponsor, such as holding stock.

Example: A PBGC attorney, who is a member of a frequent flyer program sponsored by Alpha Airlines, may assist in an action against Alpha for failing to make required minimum funding contributions to its pension plan, even though the PBGC action will cause Alpha to disband its frequent flier program.

A pamphlet entitled *Conflicts of Interest and Government Employment* (2002) that explains the exemptions in greater detail is available on the OGE website under the link to *Forms, Publications & Other Ethics Documents* at http://www.usoge.gov/training/training_materials/pamphlets.aspx

IV. *Appearances Matter*

A. OUTSIDE PERSONAL AND BUSINESS RELATIONSHIPS

The Standards of Ethical Conduct regulations require that you take appropriate steps to avoid even the appearance of the loss of impartiality in the performance of your official duties. You should remove yourself from working on any matter where your impartiality may be questioned because of your personal or business relationships. Anytime your personal life intersects with one of your assignments, a caution flag should go up for you to consider the appearance issues. Unless you receive prior authorization from the Designated Agency Ethics Official or Alternate Agency Ethics Official, you should not participate in a particular matter likely to affect the financial interests of a member of your household, or in which you know that a person with whom you have a “covered relationship” is, or represents, a party.

You have a “covered relationship” with:

1. A person with whom you are doing or seeking a business, contractual, or other financial relationship (other than a routine consumer transaction, such as the purchase of a car);
2. A member of your household or a relative with whom you have a close personal relationship;
3. A person for whom your spouse, parent or dependent child serves (or seeks to serve) as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee;
4. Any person for whom you served, within the last year, as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee; or
5. An organization (other than a political party) in which you are an active participant.

Would a description of your conduct on the front page of the *Washington Post* embarrass the Corporation?

There are numerous other relationships that could raise “appearance” questions. The test is whether a reasonable person with knowledge of the relevant facts would question your impartiality in a matter. Think of this as a *Washington Post Test*—would a description of your conduct on the front page of the *Washington Post* embarrass you and/or the Corporation? If you have any doubt about the appropriateness of a matter you are working on or are concerned that other circumstances not specifically

covered by the regulations could raise a question regarding your impartiality, you should discuss the matter with a PBGC ethics counselor noted on the back cover of this handbook before working on the matter.

Example: If your favorite uncle is a participant in the XYZ plan, you should not work on the termination of the XYZ plan unless you receive a written ADVANCE authorization by the DAEO or AAEO.

Example: Your former classmate from college works as an actuary for Acme Consultants. You have not seen or communicated with the classmate since graduation ten years ago. You may serve on a Technical Evaluation Panel formed to evaluate proposals submitted by actuarial firms seeking provide services to the PBGC even though Acme is likely to submit a proposal. This is because you do not have a “covered relationship” with your former classmate. However, if you have a close ongoing relationship with your former college roommate, you should not work on that matter without first obtaining clearance of a PBGC ethics official because a reasonable person might question your impartiality. Similarly, if your brother worked for Acme Consultants, you would have a “covered relationship” and be precluded from serving on the Technical Evaluation Panel.

B. PROHIBITION ON REPRESENTING OTHERS BEFORE THE FEDERAL GOVERNMENT

Under 18 U.S.C. § 205, it is a crime for you to represent someone else, with or without compensation, before a Federal department, agency, or court in a matter in which the United States is a party or has a direct and substantial interest. A “representation” is any communication, either oral or written, made with the intent to influence the person or agency receiving it. The key issue prohibited by this statute is acting as an agent for another person. A mere factual representation by you—not controlled by the person you are representing—generally would not be prohibited unless there is some degree of control over your representation by the other person. For example, you may act as a tax preparer because you are making a mere factual representation, so long as the person for whom you are working does not exercise control over your preparation of the tax form. You may not, however, represent that client if the return is audited. Similarly, you may write letters of support in connection with an immigration hearing or sentencing hearing, but you may not appear as a representative in the proceeding.

Example: An on-site contractor has a dispute with the PBGC concerning contract performance. One of the contractor employees asks a PBGC employee to talk to the Procurement Department on behalf of the contractor. The PBGC employee would be subject to criminal sanctions if she were to have such a conversation with the Procurement Department.

Note: An exception to the prohibition permits an employee (e.g., a union steward) to represent another employee in a grievance or other union proceeding. That statutory exception does not require advance approval by the representative’s supervisor.

Two Exceptions Requiring Advance Approval by a Supervisor:

1. Representing a family member: An exception to 18 U.S.C. § 205 permits you to represent yourself, your spouse, parents, dependent child, or a person or entity for whom you serve as guardian, executor, administrator, trustee or other personal fiduciary, before the Government (except in matters relating to your government duties), *if* you obtain the PRIOR approval of your Department,

Division, or Office Director. Senior Level employees who do not report to a Department, Division, or Office Director should obtain the approval of the Deputy Director or Director.

2. Representing an employee in a personnel matter: Another exception permits you, if not inconsistent with the faithful performance of your duties, to represent, without compensation, another employee who is involved in disciplinary, loyalty, or other personnel administration proceedings (for example, an EEO matter).

The OGE emphasizes that the employee may not unilaterally decide that the exception applies; instead, in each and every instance, the employee must seek permission from his or her supervisor, who, in consultation with agency ethics officials, must determine whether representation is consistent with the faithful performance of the employee's duties. Circumstances in which participation might be inconsistent include representing a BAPD co-worker on a dispute with an OCC manager with whom you are working on a project, undertaking representational duties when you have time-sensitive PBGC assignments, or taking on so many of these matters that you will not be able to perform your regular PBGC duties effectively.

Example: A PBGC bargaining unit employee facing potential disciplinary action asks another PBGC employee, who is a union member, to represent him/her in the matter. The union member may represent the bargaining unit employee in the disciplinary matter because there is an exception found in 18 U.S.C. § 205(i)(1) stating that nothing in 18 U.S.C. § 205 prohibits an employee from acting pursuant to 5 U.S.C. Chapter 71, which covers Federal labor-management relations.

Compensation for Representational Services



**Forget to
talk to
Your Ethics
officer?**

Another of the criminal conflict of interest statutes affects compensation for representational activities. Under 18 U.S.C. § 203, you are prohibited from accepting compensation for representational services, *rendered by you or an associate*, of a third party in a matter in which the United States is a party or has an interest and where the compensation is tied to representational activities before the Government.

Example: A BAPD auditor who works part-time for an accounting firm may not share in the profits earned by a partner for representing clients before the IRS. The auditor may, however, accept compensation from the firm on an hourly or salaried basis because the firm's obligation to pay is unrelated to the partner's representation of third parties before the Government.

V. *Misuse of Position*

Another important area the ethics rules address involves the misuse of an employee's Federal position. Misuse of position occurs in the following ways, addressed by the OGE regulations codified at 5 C.F.R. § 2635, Subpart G:

- The use of nonpublic information;
- The use of official time;
- The use of government property; and
- The use of public office for private gain.

A. **UNAUTHORIZED USE OF NONPUBLIC INFORMATION**

You may not use, nor allow the improper use of, "nonpublic information" to engage in a financial transaction to further your own financial interests or the financial interests of another. The use of nonpublic information includes providing advice, making recommendations, or knowingly disclosing such information without authorization.

"Nonpublic information" is any information that you have access to in the performance of your official duties and that you know, or reasonably should know, has not been made available to the public. This includes information that you know, or should reasonably know, may not be disclosed under the Privacy Act or Trade Secrets Act, information that the PBGC has designated as confidential, or information that has not otherwise been disseminated to the public and is not authorized for disclosure upon request. It also includes information about internal agency deliberations that has not been made public.

Examples of nonpublic information commonly found at the PBGC include:

- Participant data protected by the Privacy Act, such as names, home addresses, and social security numbers;
- Confidential financial and actuarial information submitted to the PBGC by plan sponsors and controlled group members;
- Tax returns or return information; and
- Staff recommendations to agency officials about future agency actions.

***Example:** A DISC employee assigned to represent the PBGC on a creditors' committee of a bankrupt plan sponsor learns that the Debtor is likely to award a large supply contract to a company. The employee may not rely on this information to buy stock in the company or advise others (such as family or friends) to do likewise. Apart from the ethics rules, such conduct would violate Federal securities statutes.*

***Example:** One of the PBGC's employees who helps oversee the PBGC's investment advisors wants to mimic trades ordered by one of the advisors. May the employee mimic the trades that she learned about in the course of her official duties?*

No. Trades made by the PBGC investment advisors on behalf of the PBGC are generally not made public. An employee is prohibited from using nonpublic information obtained in the course of performing official duties to engage in a financial transaction to further the employee's own financial interests or the financial interests of another. Trading on information learned in the course of official duties could also be viewed as using public office for private gain (discussed below). Apart from the ethics rules, such conduct may also violate Federal securities statutes.

B. USE OF DUTY TIME

You must use duty time in an honest effort to perform your official duties. Furthermore, you may not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties. Thus, you may not, for example, ask a subordinate to type your child's book report or shop for a present for your spouse.

C. USE OF GOVERNMENT PROPERTY

You have a duty to protect and conserve Government property and may not use it for other than "authorized" purposes. "Authorized purposes" are those purposes for which Government property is authorized by law or regulation or made available to members of the public. PBGC funds can only be used to purchase goods and services for authorized purposes.

Generally, entertainment expenses are not considered to be authorized because they are considered to be a personal, not a governmental expense. Even if the entertainment is for teambuilding and to improve morale, it is simply not an allowable governmental expense. This is one of a number of areas where the government differs from the private sector, like paying for employee food. To protect public confidence in the integrity of the public employees who are accountable for the use of federal funds, these types of expenditures are only appropriate where specifically authorized by Congress. If there is any question about whether an expenditure is for an authorized purpose or not, please contact OGC.

You are not authorized to use PBGC equipment for private business matters.

This rule also applies to existing PBGC property. For example, under PBGC Directive IM 05-4, Use of Information Technology Resources, you may use office equipment and IT resources for official business only. Official business is any activity carried out by you in the performance of job assignments, duties, and responsibilities. You are authorized, *limited* personal use of office, library, and other electronic equipment for during your non-work time (e.g. *during a lunch break or after work*) that involves little or no additional expense for the agency. Personal use is any activity not to accomplish official PBGC business. You are not, however, authorized to use PBGC equipment for private business matters (e.g., dealings with customers or clients associated with an outside business).

Note that even though you are authorized to use the PBGC's computer network and e-mail system for limited personal communications during your non-work time, you do not have any privacy interest in those communications. The PBGC monitors the use of computers at the PBGC. Your communications may also be visible to the government entities and entrusted third parties that are responsible for cyber security on a government-wide basis.

Moreover, the PBGC employs monitoring and blocking software to prevent access to vulgar or obscene sites that would violate the PBGC's policy to provide a workplace free from sexual and other forms of harassment. Employees who access inappropriate sites (e.g., sexual or gambling sites) may be disciplined.

D. USE OF PUBLIC OFFICE FOR PRIVATE GAIN

1. You may not use or permit the use of your official position, title, or authority associated with your public office to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, for yourself or for others, including friends, relatives, and persons with whom you are affiliated with in a non-governmental capacity.

***Example:** You work as an attorney in OCC. Your mother is pursuing a consumer complaint against an auto manufacturer with a pension plan, but she is having trouble getting a response. You offer to call and pursue the claim for her. When you call the auto manufacturer's lawyer to discuss her claim, you mention that you work at the PBGC and that you are assigned to the team monitoring the auto manufacturer's pension plan. By invoking your official position to influence action in favor of your mother, you have violated the prohibition against the use of public office for private gain and may be disciplined for this violation.*

***Example:** You work in BAPD and were asked by a neighbor of your parents to inquire about the status of his benefit appeal, which he filed with the PBGC's Appeals Board. You contact the head of the Appeals Division and inquire about the delay in the issuance of a decision on the appeal, what the decision will be, and asked that it be expedited. Your parents' neighbor sent you a gift card to a restaurant to thank you for your assistance. You have used your office in an attempt to benefit your parents' neighbor, violating the prohibition against using your public office for private gain, and, in acting as the neighbor's agent for purpose of pursuing the appeal, you may have also violated the criminal statute prohibiting you from representing others to the Federal Government. See Chapter IV.B.*

2. You may not use or allow anyone else to use your official position, title, or authority associated with your public office to imply that the PBGC or the Federal Government sanctions or endorses your personal activities, the activities of another, or any product, service, or enterprise.

Example: A PBGC employee cannot use her official title or refer to her Government position in a book jacket endorsement of a novel that she likes or in a newspaper's review of the book.

Exceptions:

- (a) You may sign a letter of recommendation or provide a reference using your official title and use official PBGC letterhead only when:
- You have personal knowledge of the character or abilities of the individual or entity that is the subject of the letter because you have dealt with the individual or entity in the course of your official duties for the PBGC; or
 - You are recommending the individual for Federal employment.

If the letter of recommendation involves a contractor, please check with the PBGC's Contracting Officer before sending the letter of recommendation or reference letter. This will help to ensure that the letter will not affect the Government's business relationship with the contractor.

- (b) The rule prohibiting endorsements does not prohibit you from making simple factual statements that a contractor's work satisfied the PBGC's requirements. However, statements commending a contractor's performance or products would be an improper endorsement.

Example: A contractor asks a PBGC employee for a letter stating that the contractor performed all its work under a particular contract. After consulting with the Procurement Department, the employee provides a statement that the contractor submitted all reports and deliverables to the PBGC. This is not a prohibited endorsement even if it is anticipated that the contractor will share the letter with prospective customers.

Example: You receive a form from a prospective employer regarding a former PBGC employee or contractor asking certain questions regarding his/her work. One of the questions is whether you would hire the employee/contractor again. If you have personal knowledge of the former employee or contractor's abilities, you may make simple factual statements regarding the former employee or contractor, and you may use official PBGC letterhead.

3. You also must remember that you may not take any actions that would affect, or give the appearance of affecting, the financial interests of a friend, relative, or person with whom you are affiliated in a non-governmental capacity. For further discussion of this issue, see Chapter III and IV of this handbook.

VI. *Seeking Employment and Post-Employment Restrictions*

A. SEEKING EMPLOYMENT

The ethics rules prohibit you from participating personally and substantially for the PBGC in any particular matter that will have a direct and predictable effect on the financial interests of a prospective employer with whom you are seeking employment.

You are considered to be seeking employment when you (or your agent):

- Make an unsolicited communication to a person or entity (or the person or entity's agent) regarding possible employment with that person or entity;
- Make a response other than outright rejection to an unsolicited communication by a person or entity (or the person or entity's agent) regarding possible employment with that person or entity; or
- Engage in negotiations for employment with any person (or the person's agent)

Example: A good friend told you about a job opportunity with General Motors' Office of the General Counsel. You send off your resume to General Motors. You are not seeking employment under this rule unless you receive a communication back from General Motors indicating interest in engaging in employment discussions.

As discussed in Chapter III, if it is determined that a particular matter to which you are assigned will have a direct and predictable effect on the financial interests of a prospective employer while you are seeking employment with that employer, you must not participate personally and substantially in that particular matter.

The OGE regulations do not require you to make any particular notification that you are seeking employment or that you are recused from certain matters. Employees comply with any recusal or disqualification obligations under 18 U.S.C. § 208 (see Chapter III) and the OGE regulations simply by avoiding participation in any particular matter in which the prospective employer has a financial interest. However, the regulations add that an employee should notify the person responsible for his or her assignment of the need to recuse from a particular matter. The Procurement Integrity Act and the Federal Acquisition Regulation, however, do impose certain mandatory notification procedures. See Chapter XIII, for additional discussion of these requirements.

B. NEGOTIATING FOR EMPLOYMENT

As discussed in Chapter III, it is a crime, under 18 U.S.C. § 208(a), for you to participate personally and substantially in a particular matter for the PBGC that affects

a prospective employer with whom you are negotiating or have an arrangement for future employment.

You are negotiating for employment when you are engaged in mutual discussions with a prospective employer with a view toward reaching agreement concerning possible employment. The discussion does not have to be about the specific terms and conditions of employment. An interview, for instance, is a “negotiation.”

Example: After you send your resume to General Motors’ Office of the General Counsel, you are interviewed for the position. You are now considered to be negotiating for employment and must recuse or disqualify yourself from all particular matters dealing with General Motors.

The restriction discussed above applies only to your personal and substantial participation in a particular matter that may have an effect on a prospective employer with whom you are seeking or negotiating for employment.

As you may recall, the term “particular matter” refers to matters that involve deliberation, decision or action that is focused upon the interests of specific parties or a discrete and identifiable class of persons. Specific party matters include judicial or other proceedings, applications for benefits, requests for rulings, or contracts.

Particular matters of general applicability include legislation or rulemaking that is narrowly focused on the interests of a discrete and identifiable class of persons, such as matters focusing on a particular industry or geographic sector. Particular matters do not involve consideration or adoption of broad policy options directed to the interests of a large and diverse group of persons.

Example: Working on a regulation that applies to all plan sponsors of defined benefit plans is not considered a particular matter. Performing a risk assessment of an individual plan sponsor’s pension plan is a particular matter. Working on legislation or regulations relating to airline relief would be considered a particular matter.

NOTE: OGE has determined that multi-employer plans are a discrete and identifiable class, meaning that working on legislation or regulations related to multi-employer plans would be considered a particular matter.

Once you have begun seeking or negotiating for employment with a prospective employer, you should not participate in matters for the PBGC that would have a direct and predictable effect on that employer.

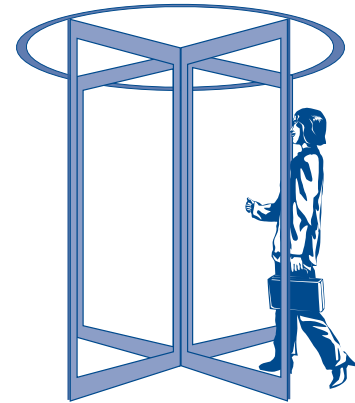
You are deemed to no longer be seeking or negotiating for employment and may resume work on matters affecting that employer when:

- You, or the prospective employer, reject any possibility of employment and all employment discussions cease. Note, however, that a response that merely defers employment discussions sometime into the future is not a rejection; or

- Two months have passed since you (or your agent) sent an unsolicited resume to the prospective employer and you have not received a response.

C. POST-EMPLOYMENT RESTRICTIONS [18 U.S.C. § 207]

After you leave Government service, 18 U.S.C. § 207 prohibits you from performing certain representational activities on behalf of a person or entity, other than the United States, before the PBGC or another Federal department or agency. The rules are intended to prevent a former employee from “switching sides” and using the authority associated with the employee’s former position to influence official action on behalf of another. Such ‘switching of sides’ undermines confidence in the fairness of proceedings and creates the impression that personal influence, gained by Government affiliation, is decisive. Violations of these provisions are criminal and may subject a former employee to imprisonment, fines, and/or civil penalties.



The post-employment restrictions only limit your participation in particular matters involving the same or related specific parties. This is defined as a specific proceeding affecting the legal rights of the parties or an isolatable transaction or related set of transactions between identifiable parties. When a particular matter involving specific parties begins depends on facts. A particular matter may involve specific parties prior to any formal action or filings by the agency or other parties – the key is whether specific parties have been identified in the preliminary stage.

A particular matter involving specific parties may also continue in a different form. In determining whether two particular matters are the same, the PBGC will consider the extent to which the matters involve the same basic facts, related issues, the same or related parties, the time elapsed, and whether any of the same confidential information is relevant to both.

After leaving the PBGC, you may represent others with respect to matters you worked on at the PBGC that were general rulemaking or legislation, the formulation of general policy, standards, or objectives, or other actions of general application. See OGE Informal Advisory Letter 99 x 21. Bar rules may preclude this option for lawyers.

Example: A PBGC employee was substantially involved in the award of a long-term contract to X Company for IT support. Six years after he terminates employment with the PBGC, the contract is still in effect, but much of the hardware and personnel have changed. The PBGC proposes to award a “follow-on” contract, involving the same objective, after competitive bidding. The employee may represent Y Company in its proposal for the follow-on contract, since Y Company’s proposed contract is a different matter from the contract with X Company.

He may also represent X Company in its efforts to continue as contractor, if the PBGC determines on the basis of the facts referred to above, that the new contract is significantly different in its particulars from the old. The former PBGC employee should

first consult with the PBGC and request a written determination before undertaking any representation on the matter.

Furthermore, these post-employment restrictions only apply to communications or appearances made on behalf of another with the intent to influence the PBGC or another Federal department or agency to take official action.

- Intent to influence will be inferred if a communication or appearance is made for the purpose of seeking a discretionary Government action or ruling, or a decision that involves an appreciable element of dispute.
- No intent to influence will be inferred in the case of a purely social contact, a request for publicly available documents, signing and filing a tax return on behalf of another, a request for purely factual information, or where the former employee supplies such information to the Federal government at the invitation of the Government.

The post-employment rules do not prohibit you from “quarterbacking” by providing behind-the-scenes assistance to others with respect to particular matters involving specific parties that are pending before the PBGC or another Federal department or agency. Nevertheless, the Rules of Professional Conduct may bar attorneys from certain behind-the-scenes assistance that is permitted under 18 U.S.C. § 207. Other professionals may have similar rules.

Example: Under the quarterbacking exceptions, after you leave the PBGC, you may draft a letter for someone else’s signature urging the PBGC to take a specific action in a particular matter in which you participated personally and substantially on behalf of the PBGC as an employee. You may also provide talking points summarizing issues to cover for someone else to use in a meeting with Department of Labor officials involving a particular matter involving specific parties that was under your official responsibility as a PBGC employee.

Finally, except as limited by the one-year ban described below, you may represent others before the PBGC or another Federal department or agency, provided your communications or appearances do not relate to particular matters involving specific parties:

- In which you participated personally and substantially as a PBGC employee; or
- That were pending under your official responsibility in the one-year period prior to leaving the PBGC. (The two-year restriction under 18 U.S.C. § 207(a)(2) would apply.)

1. RESTRICTIONS APPLYING TO ALL FORMER EMPLOYEES.

- a. You are subject to a *lifetime* ban from knowingly making, with the intent to influence, any communication or appearance before any officer or employee of the United States on behalf of another (except the United States) in a particular matter involving specific parties in which you were *personally and substantially* involved for the PBGC. [18 U.S.C. § 207(a)(1)].

Personal and substantial participation means to participate directly and that your involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. However, it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. Your “direct and active supervision” of a subordinate working on a particular matter will be considered personal and substantial participation by you in the same matter. Personal and substantial participation may also occur when you participate through decision, approval, disapproval, recommendation, investigation, or the rendering of advice in a particular matter.

- b. You are subject to a two-year ban from knowingly making, with intent to influence, any communication or appearance before any officer or employee of the United States on behalf of another (except the United States) in a particular matter involving specific parties that was pending under your *official responsibility* during the last year of your Government service. [18 U.S.C. § 207(a)(2)].

Official responsibility means the direct administrative or operating authority, whether intermediate or final, either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action. [18 U.S.C. § 202 (b)]. The two-year ban applies to any matters handled by a subordinate in your chain of command without your direct and active input. If you were directly involved, the lifetime ban (discussed above) would apply.

2. RESTRICTIONS APPLYING TO SENIOR EMPLOYEES. A “senior” PBGC employee is subject to a one-year ban on making, with the intent to influence, any communication to or appearance before the PBGC on behalf of someone other than the United States. [18 U.S.C. § 207(c)].

A “senior” employee is any PBGC employee who is paid at a rate of basic pay, exclusive of any locality adjustment, that is equal to or greater than 86.5 percent of the rate of basic pay for Level II of the Executive Schedule. [18 U.S.C. § 207(c)(2)(A)(i)]. The basic rate of pay for Level II of the Executive Schedule is updated annually. You can find updated rates at www.opm.gov. As of January 1, 2011, anyone whose basic rate of pay (excluding locality adjustments) is greater than \$155,440.50 is a Senior Level employee.

- This one-year ban applies from the date you leave a senior position.
- During the one-year period after leaving a senior PBGC position, you may represent another person before Federal departments or agencies, other than the PBGC, if your communications

or appearances do not relate to particular matters involving specific parties:

- In which you participated personally and substantially as a PBGC employee; or
- That were pending under your official responsibility in the one-year period prior to leaving the PBGC.

EXCEPTION – A former senior PBGC employee may make communications or appearances with intent to influence the PBGC during the one-year “cooling off” period, if the representations are made in carrying out official duties as an employee of:

- An agency or instrumentality of a state or local government;
 - An accredited, degree-granting institution of higher learning; or
 - An approved hospital or medical research organization.
- [18 U.S.C. § 207(c)].

A senior PBGC employee is also subject to a one-year ban on representing, advising or assisting a foreign entity seeking to influence a PBGC employee, an employee of another Federal department or agency, or a member of Congress. [18 U.S.C. § 207(f)].

- A foreign entity means a foreign government or a foreign political party. You may represent, advise, or assist a foreign-based business (provided it is not government-owned or controlled), or a foreign individual seeking to influence the PBGC, another Federal department or agency, or a member of Congress in the one-year period after you leave a senior position.
- This broad restriction precludes even behind-the-scenes, or quarterbacking, assistance to a foreign entity.

D. ADDITIONAL RESTRICTIONS

1. **PROCUREMENT-RELATED COMPENSATION BAN.** If you are personally involved in a decision to award a contract to a PBGC contractor with an estimated value in excess of \$10 million (including all option years), you are prohibited from accepting compensation from that contractor for one year after the date of the award, or the date of your last participation in the selection process. You may, however, accept compensation from a division or affiliate of the contractor that does not produce the same kinds of products or services covered by the contract. For further information on special ethics rules arising from the Procurement Integrity Act, See Chapter XIII.
2. **RESTRICTION ON SHARING FEES.** As discussed in Chapter IV, under 18 U.S.C. § 203, you may not share in the fees earned by someone else, such as a business partner, for representational services provided on behalf of another in a proceeding or other particular matter in which the United States is a party or has a direct and substantial interest, if the services occurred while you were a

PBGC employee. Thus, if you join a law or consulting firm, you may not share in any fees attributable to the firm's representation of clients in matters involving the United States prior to your termination from Federal employment. See OGE Informal Advisory Opinion 99 x 24.

E. RELATIONSHIP WITH FORMER PRIVATE EMPLOYER

Ethics questions can arise not only when a Government employee moves to the private sector, but also when a private sector employee moves to the Government.

Are there criminal conflict of interest restrictions that specifically affect personnel coming into Government after working for a private sector employer?

Yes. Although individuals are subject to a number of criminal conflict of interest laws after they leave a company and go to work for the Government, issues are most likely to arise under 18 U.S.C. § 208 and, possibly, 18 U.S.C. § 209.

Former employees of private sector companies may have continuing financial interests in their former employer. These could include stock, stock options, different types of pensions and deferred compensation arrangements, or other miscellaneous benefits. Depending on the circumstances, any of these interests could give the former employee a continuing financial interest in their former employer, including, but not limited to, contracts and other particular matters that affect a PBGC contractor. As discussed in Chapter III, a PBGC employee must recuse him/ herself from any particular matter in which he or she has a financial interest, absent a waiver or applicable regulatory exemption. Therefore, any continuing interest in a former employer must be examined to determine whether it requires the individual to be recused from particular matters affecting the former employer. In some cases, it may be necessary for the PBGC employee to divest the conflicting interest.

***Example:** An individual worked for many years for a computer company. She has over \$100,000 in the company's stock. The individual joins the IT office at a federal agency that does substantial business with the company. Absent a waiver, she may not participate in any contracts or particular matter involving the company, her former employer. If the agency does not believe a waiver would be appropriate, and recusal would prevent the employee from performing critical duties, the agency may require the employee to divest the stock.*

***Example:** An employee in DISC who owns \$20,000 of stock in their former employer is asked to analyze the health of the company and the company's pension plan to determine whether the PBGC needs to take action. May the PBGC employee work on this assignment? He or she may not work on the matter without a waiver or selling the stock. In addition to a conflict of interest, the employee may also receive non-public information in the course of the*

analysis, which could raise issues if the employee subsequently buys more of or sells the stock. See Misuse of Position – Chapter V.

Occasionally, issues also may arise under 18 U.S.C. § 209 if payments or other benefits are given to a PBGC employee by a former employer who is a Government contractor. Section 209 prohibits PBGC employees from receiving any supplementation of their Federal salary as compensation for their services to the Government. Section 209 may apply if a former employer makes a payment to a Government employee and there is an indication that the payment is intended to compensate the employee for doing his Government job, rather than to compensate the person for past services to the former employer or for some other reason unrelated to Government service. Note that section 209, generally, does not apply to a payment made before the individual actually starts as a Government employee; in such cases, however, the employee may be subject to recusal obligations described in the question below.

If a PBGC employee has divested all interests in a former private sector employer, is that sufficient to comply with all ethical obligations?

Not necessarily. There are two provisions in the OGE standards of conduct that may require an employee to recuse, for a certain period of time, from working on contracts and certain other matters involving a former employer.

Under 5 C.F.R. § 2635.502, an employee must recuse, for *one year* after leaving a former employer, from any contract or other particular matter in which the former employer is a party (or represents a party). This recusal obligation may be lifted only by an authorization from the PBGC Designated Agency Ethics Official or Alternate Agency Ethics Official.

***Example:** An agency, which is responsible for certain emergency management operations, has a contract with a company to provide a range of support services in a particular location. An individual, who had been working as an employee of the contractor, now has been hired directly by the agency. For one year after leaving the contractor, the employee should recuse himself from any matter involving the contractor.*

Under 5 C.F.R. § 2635.503, for *two years* after receiving an “extraordinary payment” from a former employer, a PBGC employee may not participate in a particular matter in which the former employer is a party (or represents a party). An extraordinary payment means a payment: (1) in excess of \$10,000; (2) determined after the former employer knew that the individual was being considered for a Government position; and (3) not pursuant to the former employer’s established compensation program. In some circumstances, either the PBGC Designated Agency Ethics Official or Alternate Agency Ethics Official could authorize the PBGC employee to work on matters involving their former employer.

***Example:** The employee in the previous example was given a \$15,000 severance payment after the company learned that he was being considered for*

a position with the agency. According to the company, the severance payment was intended to honor the individual for his hard work and contribution to the mission of the company. This individual was the first person ever awarded such a payment by the company, and the company had no written policy or contract establishing the benefit. Because this was the first time such a payment was made by the company, it is considered to be an extraordinary payment, and the employee would be disqualified for two years from working on any matter involving the company, absent a waiver.

Can there be impartiality concerns even where it has been more than one year since a PBGC employee terminated from a former employer?

Possibly. As noted above, if the PBGC employee received an extraordinary payment from a contractor, impartiality concerns are raised for two years under the recusal requirements of 5 C.F.R. § 2635.503. Even if the employee did not receive an extraordinary payment and more than a year has transpired since the employee left the contractor, there still may be impartiality concerns if the employee is assigned to participate in contracts involving the former employer. Section 2635.502(a)(2) provides a “catch-all” mechanism for employees and agencies to address impartiality concerns arising in circumstances that are not specifically covered in the rule.

Example: *The director of a university laboratory, responsible for the lab’s contract with an agency to perform research on a new communications technology for an agency system, was subsequently hired by the agency. Two years later, the lab made a claim for payment, which the agency is considering denying on the ground that the lab has not completely performed certain required work as part of the contract. The agency’s program manager would like to use the employee (the former lab director) to review the adequacy of the lab’s work, in light of her significant expertise with the technology. Given the employee’s past level of involvement with this same contract on behalf of the contractor, as well as the sensitivity of the performance dispute, it would be reasonable for the agency and the employee to conclude that the employee should not participate in this decision. Conversely, the same concerns would arise if a former Government employee went to work for a university laboratory to work on a project he/she was involved with at her former agency. It is, however, within the agency’s discretion to make this determination, which will require a balancing of the agency’s needs against the appearance concerns. You should contact an ethics counselor with questions.*

VII. Fundraising

Fundraising is the raising of funds for a nonprofit organization (other than a political organization) through:

- Solicitation of funds or sale of items; or
- Participation in an event by a PBGC employee where any portion of the cost of attendance or participation may be taken as a charitable tax deduction by a person incurring the cost.

The annual Combined Federal Campaign (CFC) is the only authorized solicitation of PBGC employees in the Federal workplace on behalf of charitable organizations. Unless otherwise authorized by the PBGC, no other solicitations on behalf of charitable organizations may be conducted in the PBGC workplace.

You may, with the restrictions discussed below, engage in fundraising in the workplace for the Thomson School and for PBGC employee organizations, such as Federally Employed Women (FEW), Blacks in Government (BIG), and the PBGC Recreation Association

You may engage in fundraising activities in a personal capacity provided you do not refer to your PBGC official title, position, or any authority associated with the public office while doing so (see Chapter V). Specifically, you may not personally solicit:

- On the PBGC premises or in a Federal workplace; or
- A PBGC subordinate or any person or entity who is considered a prohibited source under the gift rules, including contractor employees. (See Chapter II for a definition of prohibited source.)

“Personally solicit” means that you request or otherwise encourage donations, or other support, either through person-to-person contact or through the use of your name or identity in correspondence or by permitting its use by others.

Example: A non-supervisory PBGC employee is planning to participate in a walk to raise funds and awareness for cancer research. The employee would like to post a notice on her door about the walk and, if anyone approaches her, accept voluntary donations. May she do so? Yes, she may. Since the posting does not constitute “person-to-person contact” and does not use the employee’s name in correspondence, it is not considered a personal solicitation and is permitted.

NOTE: Supervisory employees should NOT post similar types of notices on their door, as such a posting may appear inherently coercive to those who report to you.

For additional information regarding fundraising for political candidates and/or parties, please see Chapter IX discussions on the Hatch Act.

A. ADDITIONAL GUIDANCE ON THE CFC

An important issue to be aware of during the CFC campaign is the prohibition against activity that forces or appears to force individuals to make contributions. True voluntary giving is fundamental to CFC fundraising activities. The CFC regulations allow employees to solicit only during duty hours using methods that permit true voluntary giving and allow the individual the option of disclosing any gift or keeping it confidential.. Employees must have a free choice to decide whether to participate in the campaign, and employees may not be penalized if they elect not to do so.

Example: An employee wants to hold a “Mix and Mingle” event that would serve lite lunch fare and require a CFC pledge form as a “cover charge.” In order to assure that the Mix and Mingle is open to all individuals without addressing whether or not they have participated in the CFC and guarantee that all attendees retain the option of disclosing whether or not they have donated to the CFC, the employee may not require a CFC pledge form as a cover charge, or inquire whether employees have turned in a form, for entry into the “Mix and Mingle”. The employee may, however, charge a fee to eat and drink the refreshments provided. Alternatively, the employee may provide the food and drink for free and discuss the CFC, encouraging employees to participate.

Employees may not personally solicit funds or other support from a subordinate or a prohibited source. As noted in Chapter II, an example of a prohibited source is a PBGC contractor or an employee of a PBGC contractor. Consequently, mass e-mails sent to the PBGC employees seeking contributions should not be sent to contractor employees. Contractor employees who wish to contribute to the CFC may do so on a voluntary basis, but may not be solicited.

The CFC regulations prohibit solicitation of employees by their supervisor or by any individual in their supervisory chain of command. The regulations define the term “solicit” broadly to include to request or otherwise encourage donations or other support either through person-to-person contact or through the use of one’s name or identity in correspondence or by permitting its use by others. Next, supervisors may not make inquiries into whether chose to donate money or the amount of donation. Third, contributor lists cannot be used for purposes other than the routine collection and forwarding of contributions and allotments. Finally, the results of the solicitation in a supervisor’s unit or organization cannot be used as a factor in the supervisor’s performance appraisal.

The PBGC’s CFC campaign often includes a charity auction where various items are auctioned off with the proceeds to be applied to the CFC campaign. You may not solicit CFC auction items from contractors, as contractors may feel forced to contribute. As previously noted, this would be a solicitation from a prohibited source, which would be in violation of the ethics regulations.

You may, with the permission of the PBGC Designated Agency Ethics Official or Alternate Agency Ethics Official, solicit from non-PBGC sources, such as local businesses, CFC auction items with a fair market value of \$50 or less

Example: The PBGC holds a bake sale and media sale to raise funds for the CFC. Since the baked goods and books, CDs, and DVDs are donated by PBGC employees, this event falls within the scope of permissible fundraising.

B. FUNDRAISING ON BEHALF OF THOMSON ELEMENTARY

In the past, the PBGC has held a golf tournament to raise funds on behalf of the Thomson Elementary School and held coat/toy drives for the Thomson School students. While these are permissible activities, others may not be. Accordingly, before engaging in a fundraising activity for the Thomson Elementary please contact a PBGC ethics counselor with respect to the planned activity.

C. FUNDRAISING ON BEHALF OF PBGC EMPLOYEE ORGANIZATIONS

The PBGC recognized employee organizations, such as Federally Employed Women (FEW), Blacks in Government (BIG), and the PBGC Recreation Association, may conduct fundraising activities only if:

- The activities are conducted among the members of the organization, and
- The fundraising benefits a welfare fund for the members of the organization.

Solicitation of non-employee members or non-members is prohibited. Please contact a PBGC ethics counselor before engaging in a fundraising activity.

D. FUNDRAISING AND SOCIAL MEDIA

Social media, such as Facebook or Twitter, can facilitate fundraising efforts. There are, however, certain things you should be aware of, including using your personal social media page while you are not on duty.

- Supervisors may not solicit their subordinates;
- You may not use your official PBGC title, position, or any authority associated with the public office to further your fundraising effort. (Your work profile information should not be visible when you personally fundraise);
- You may not solicit any entity that is a prohibited source for the PBGC; and
- You may never solicit, accept, or receive partisan political contributions (see Chapter IX for further discussion on the Hatch Act).

Example: You have a personal Facebook page where the PBGC is identified as your employer on your profile page. Can you post a link to a fundraising event for a homeless shelter on your profile?

No, unless your work profile information is not visible if someone views the fundraising post. If your work profile information is visible from the fundraising post, it is the same as fundraising in your personal capacity and signing a fundraising letter “Jane Doe, PBGC Title,” which is prohibited under the ethics regulations.

E. FUNDRAISING FOR EMERGENCIES AND DISASTERS

As stated earlier, the CFC is the only authorized solicitation of PBGC employees in the Federal workplace on behalf of charitable organizations. Under an exception to this regulation, the Office of Personnel Management (OPM) may grant permission for special solicitations of PBGC employees, outside of the CFC, in support of victims in cases of emergencies and disasters, such as hurricanes, tornados, floods, or earthquakes. There must be, however, a government-wide authorization by OPM before any fundraising may occur in the Federal workplace.

VIII. Invitations to Speak at or Attend Meetings or Conferences That Relate To Official Duties

You must obtain approval from your supervisor, the Communications and Public Affairs Department (CPAD), and the concurrence of the Office of the General Counsel (OGC) before accepting an invitation to attend a conference in an official capacity or to participate as a speaker or panelist at a meeting, conference, or similar event. See PBGC Directive IM 10-4. You may be authorized to participate in an official capacity as an uncompensated speaker, instructor, panelist, or attendee at a meeting, conference, or similar event when your participation is in the PBGC's interest, and the event is an appropriate forum for the exchange of information relevant to PBGC programs and operations.

A. "CLIENT-CENTERED" EVENTS

A request for a PBGC employee to participate (either as a speaker, panel member, or attendee) at an event sponsored by a commercial entity at which attendance is limited to the clients, or prospective clients, of the sponsor (a "client-centered event") raises ethical concerns and will be carefully scrutinized. Official participation in such events may create an appearance that the sponsor of the event has special access to a Government official, which it is using to retain and attract clients for its own private gain. Also, PBGC participation may raise the appearance that the PBGC and the Federal government sanction or endorse the sponsor's products or services.

You may be authorized to participate in a client-centered event only when CPAD, with the concurrence of OGC, makes a written determination that your participation in the event will serve a significant agency interest that outweighs appearance of impropriety and misuse of position concerns. Factors that may be considered include, but are not limited to, whether:

- The event provides a timely opportunity for a PBGC employee to present important information about PBGC programs and operations (for example, the event coincides with the inception of a new policy, program, initiative, law or regulation).
- The expected audience includes a large or well-represented segment of PBGC stakeholders.
- The information to be presented may be communicated in a timely manner at a more open forum or by some other means.
- The PBGC employee (or another PBGC employee of similar rank) may accept opportunities to appear at events sponsored by other groups or entities with interests similar to that of the sponsor.

B. PROCEDURES FOR APPROVAL OF INVITATIONS

CPAD is responsible for reviewing and processing any invitation for you to participate as a speaker or panelist to discuss PBGC programs or operations

at a meeting, conference, or similar event, or any invitation for you to attend such an event in an official capacity. If you receive an invitation to participate as a speaker or panelist to discuss PBGC programs or operations at a meeting, conference, or similar event, or receive an invitation to attend such an event in an official capacity, you must complete and submit, within 5 days of receipt of the invitation, PBGC Form 605, Authorization to Accept an Invitation to Speak at or Attend a Meeting, Conference, or Similar Function in an Official Capacity, to CPAD,. The PBGC Form 605 must be signed by your supervisor before it is submitted to CPAD.



Prior approval to participate (either as a speaker, panel member, or attendee) is not required when:

Avoid the Ethics Spotlight

- A PBGC employee attends an event in a private capacity while on leave from the PBGC. (A PBGC employee who elects to participate in an event in a private capacity must be cognizant of the prohibition under the ethics rules on accepting compensation for teaching, speaking, or writing that relates to the employee's official duties. More information on these restrictions is provided in section C of this Chapter.);
- A meeting is scheduled in the ordinary course of business to discuss a particular matter pending at the PBGC. For example, a public meeting arranged by the PBGC to provide information or answer questions for participants in a pension plan that was recently trusted by the PBGC would not require advance approval from CPAD and OGC. Similarly, a meeting between OCC and DISC employees and representatives of a debtor would not require prior approval;
- A PBGC employee attends training authorized by the PBGC for professional development; or
- A meeting is sponsored solely by a government entity and attendance is limited to government employees.

When authorized in advance by CPAD and OGC, the PBGC may accept payment or reimbursement from a non-Federal source for travel and related expenses incurred for an employee's attendance at a meeting, conference, or similar event held outside the Washington, D.C. area. Absent such approval, an offer from a non-Federal source to pay or reimburse the PBGC for any travel or related expenses must be declined.

Example: *A PBGC attorney serves as a fellow for the American Bar Association's Section of Labor and Employment Law. The Bar Association invites the attorney to attend their annual meeting and offers to pay his airfare, conference fees, and hotel. The attorney must complete and submit PBGC Form 605, Authorization to Accept an Invitation to Speak at or Attend a Meeting, Conference, or Similar Function in an Official Capacity to CPAD within 5 days of receipt of the invitation. CPAD and OGC will then determine whether the attorney's participation in the event will serve a significant agency interest that outweighs any appearance of impropriety and misuse of position concerns. The attorney must receive approval from CAPD and OGC before accepting the invitation.*

C. TEACHING, SPEAKING, OR WRITING THAT RELATES TO OFFICIAL DUTIES

You may not receive compensation from any source other than the Federal Government for teaching, speaking, or writing that relates to your official duties. For most employees, teaching, speaking, or writing relates to official duties if:

- The activity is undertaken as part of your official duties;
- The invitation to teach, speak, or write was extended primarily because of your official position at the PBGC rather than your expertise on the subject matter;
- The invitation or the offer of compensation was extended by a person whose interests may be affected substantially by your performance of your official duties; or
- The subject of the activity deals in significant part with PBGC programs, operations, or policies, or with a matter currently or recently assigned to you

Regardless of whether the activity is otherwise permissible, nonpublic information may not be disclosed. See Chapter IV above.

Exception: You may accept compensation for teaching courses involving multiple presentations as part of the regularly established curriculum at a college, high school, or elementary school, even if the courses relate to your official duties. Various requirements must be met, however, before this exception is applicable. Therefore, you should contact a PBGC ethics counselor before undertaking teaching, speaking or writing for compensation.

Example: The head of the Actuarial Services Division has been asked to teach an actuarial sciences course at Georgetown University. She may accept compensation for the teaching engagement since the course is part of a regularly scheduled curriculum at an accredited college.

When teaching, speaking, or writing in a personal capacity, you may only use your official title or position for identification as one of several biographical details. Your official title or position should not be given any more prominence than the other biographical details. You must include a prominent disclaimer notifying the audience that the views expressed are your own and do not necessarily reflect the views of the PBGC or other Federal departments or agencies.

Example: An attorney in OCC has been asked to teach a class on bankruptcy law at an area law school. On its website, the school states “X is an attorney in the Office of Chief Counsel at the Pension Benefit Guaranty Corporation.” This is impermissible since the employee’s official title is the only biographical information provided.

Example: The same facts as above, except that the web site now states that “X graduated summa cum laude from Princeton University and magna cum laude from the University of Michigan Law School. She worked as an attorney at Weil, Gotshal

& Manges LLP from 1995-2000 specializing in bankruptcy and currently works as an attorney in the Office of Chief Counsel at the Pension Benefit Guaranty Corporation.” This is permissible since the mention of the employee’s official position is one element of a full biographical sketch.

IX. *Political Activity and the Hatch Act*

The political activity of PBGC employees is a personal activity. The Hatch Act (“the Act”), 5 U.S.C. §§ 7321-7326, prohibits you from engaging in political activity while you are on duty, in a Government building, wearing a uniform or official insignia, or in a government vehicle. Political activity is an activity directed toward the success or failure of a political party, candidate for partisan political office or partisan political group.

The Act limits some of the activities of federal employees in connection with political campaigns.

Note that a different set of rules govern the activity of employees appointed by the President with the advice and consent of the Senate. For more information, such PBGC employees should contact a PBGC ethics counselor.

The Office of Special Counsel (OSC), the Federal agency responsible for investigating and prosecuting violations of the Act, has published some general guidance on permissible and prohibited political activity under the Act. See www.osc.gov/hatchact.htm.

A. UNDER THE HATCH ACT, YOU ARE PERMITTED TO:

- Be candidates for public office in nonpartisan elections in designated localities (the permitted jurisdictions are located at www.osc.gov/ha_fed.htm and include most in the D.C. metropolitan area).
- Register and vote as they choose.
- Assist in voter registration drives.
- Join and be an active member of political clubs or parties.
- Hold office in political clubs and parties.
- Campaign for or against referendum questions, constitutional amendments, or municipal ordinances.
- Express opinions about candidates and issues (If the expression is directed at the success or failure of a political party, candidate, or partisan political group, the expression is prohibited as stated above. Note that OSC has brought actions against Government employees who have used Government e-mail for such a purpose).
- Make campaign speeches for candidates in partisan elections.
- Contribute money to political campaigns, parties, or organizations.
- Attend political fundraising functions.
- Attend and be active at political rallies and meetings.
- Volunteer to work on a campaign for a candidate for office in a partisan election.

B. UNDER THE HATCH ACT, YOU MAY NOT:

- Engage in political activity while on duty.
- Engage in political activity in any Government office.
- Engage in political activity while using a Government vehicle.
- Use their official authority or influence to interfere with or affect the result of an election.
- Be candidates for public office in elections involving political parties.
- Wear or display partisan political buttons, T-shirts, signs, or other items while on duty, in a Government building, wearing official insignia, or in a Government vehicle.
- Use *any* email account or social media to distribute, send, or forward content that advocates for or against a partisan political party, candidate, or group while on duty, in a Government office, wearing official insignia, or in a Government vehicle.
- Solicit, accept, or receive contributions for a partisan political party, candidate, office, or group while on or *off* duty (except when both individuals are members of the same union, the solicitation is for a contribution to a political action committee sponsored by that union, and the individual making the solicitation does not supervise the other).
- Knowingly solicit or discourage the political activity of any person who has business before the agency.

C. FREQUENTLY ASKED QUESTIONS ABOUT THE HATCH ACT

Question: Can I make a contribution to the campaign of a partisan candidate, or to a political party or organization?

Yes. A PBGC employee may contribute to the campaign of a partisan candidate, or to a political party or organization.

Question: If I have a political bumper sticker on my personal car, am I allowed to park the car in a Government lot or garage, or in a private lot/garage if the Government subsidizes my parking fees?

Yes. An employee may park his or her privately owned vehicle with a political bumper sticker in a Government lot or garage. An employee may also park the car with a bumper sticker in a private lot or garage for which the employee receives a subsidy from his or her agency.

Question: Can I help organize a political fundraiser?

Yes. An employee may organize a fundraiser, including supplying names for the invitation list, so long as he or she does not personally solicit, accept, or receive contributions.

Question: Can my name appear on invitations to a political fundraiser as a sponsor or point of contact?

No. An employee's name may not be shown on an invitation to such a fundraiser as a sponsor or point of contact.

Question: Can I speak at a political fundraiser?

Yes. An employee may give a speech or keynote address at a political fundraiser, so long as he or she is not on duty and does not solicit, accept, or receive political contributions.

Question: If I am going to speak at a political fundraiser, what information about me can be printed on the invitations?

An employee's name may be shown as a guest speaker. The reference, however, should not in any way suggest that the employee solicits or encourages contributions. Invitations to the fundraiser may not include the employee's official PBGC title although an employee who is ordinarily addressed with a general term of address such as "The Honorable" may use, or permit the use of, that term of address on the invitation.

Question: Can I attend a state or national party convention? If so, in what capacity?

Yes. An employee may serve as a delegate, alternate, or proxy to a state or national party convention.

Question: If I run as a candidate for public office in a nonpartisan election, does the Hatch Act allow me to ask for and accept political contributions?

Yes. An employee who is a candidate for public office in a nonpartisan election is not barred by the Hatch Act from soliciting, accepting, or receiving political contributions for his or her own campaign.

Question: May I distribute brochures for a political party to people arriving at a polling place on Election Day?

Yes. An employee may stand outside a polling place on Election Day and hand out brochures on behalf of a partisan political candidate or political party.

Question: Did I violate the Hatch Act if I received a partisan political e-mail in my Government e-mail account while I was on duty?

No. Simply receiving a partisan political e-mail while on duty, without more, does not constitute prohibited political activity. You may not, however, send or forward the e-mail to others.

Question: Can I send or forward the partisan political e-mail from my work e-mail address to my personal non-Government e-mail while I am at work?

Yes. You may send that email to your personal non-Government e-mail address while at work. Simply sending such an e-mail, without more, does not constitute prohibited political activity. You would, however, violate the Hatch Act if you sent the e-mail to your personal non-Government e-mail address and then used that personal e-mail to send the political e-mail to other people while you were on duty or at work.

Question: My official title is on my Facebook profile page. Can I you fill in the field provided for “political views”?

Yes. Per OSC, simply identifying the political party that you support in your Facebook profile, without more, does not constitute political activity since it is not directed at the success or failure of a political party or candidate.

Question: If my Facebook profile page identifies me as a PBGC employee, can I post a link to a Web page where my friends can contribute money to a partisan political party, group, or a candidate?

No. Posting a direct link for contributions is considered soliciting political contributions and would violate the Hatch Act. As a Federal employee, you may **never** solicit, accept, or receive political contributions **at any time, on or off duty**. You may, however, post a link to the home page of a political party, partisan candidate, or partisan political group. The link, however, should not lead directly to a page asking for contributions to a party, group, or candidate. Posting links to the websites of political parties, partisan political groups, or partisan candidates is like circulating political literature, which you may not do while on duty (even at home), at *any* time in an office where Federal business is conducted, or using PBGC equipment.

Question: Can I express support for or opposition to partisan political candidates or parties on a blog?

Yes, because you are not prohibited from expression your opinions, but you must express those views on a personal blog while off duty and not on the PBGC premises or in another Government building. You may not, however, blog using Government equipment or while on duty (including while flexi-placing from home or on official travel away from your duty station) or in a building where PBGC business is conducted. Also, you may not use your official PBGC position, title or authority of your public office to bolster partisan opinion on your blog. This would be considered using your official authority or influence to affect the result of an election.

Question: Can I “friend” a candidate on Facebook?

Yes. You may become a “friend” or “fan” of the Facebook page of a political party, partisan political group, or partisan candidate, with some by-now familiar restrictions: **not** during duty hours; **not** in the workplace; and **not** using Government equipment. Suggesting that others “like,” “friend,” or become a “fan” of the party, group, or candidate, accepting an invitation to a partisan political event, or forwarding the invitation to others would be restricted while on duty, in the workplace, and using Government equipment.

X. Outside Earned Income Limitations Applicable to Non-Career Employees and Presidential Appointees

The Ethics in Government Act of 1978, as amended, places certain restrictions on outside compensation for senior, non-career employees. The PBGC's Director, as a Presidential appointee, is prohibited from receiving any outside earned income. See Executive Order 12731, *Principles of Ethical Conduct for Government Officers and Employees* (October 17, 1990). For other non-career Federal employees, outside earned income may not exceed, in any calendar year, 15 percent of the annual rate of basic pay for Level II of the Executive Schedule in effect on January 1 of the applicable calendar year. Non-career employees are also prohibited from receiving compensation for practicing a profession that involves a fiduciary relationship such as law, medicine, or accounting, or for serving as an officer or member of the board of any association, corporation, or other entity. To receive compensation for teaching, you must obtain approval from the PBGC Designated Agency Ethics Official or Alternate Agency Ethics Official.

Example: *In 2011, a non-career employee may not receive outside earned income (e.g., salary, wages, professional fees) in excess of \$26,955 (15 percent of the annual rate of basic pay for Level II of the Executive Schedule which is \$179,700 for 2011).*

Example: *A non-career PBGC employee teaches a class at Georgetown University and earns \$12,500 a year. She also has several investments that pay dividends totaling \$20,000 a year. May she continue to teach for the salary?*

Yes. The salary does not exceed the outside earned income limitation. The dividends do not count towards the outside earned income limitations because it is not earned from outside employment.

XI. Travel and Ethics

The Ethics Standards govern when an employee may accept reimbursement for travel and related expenses from a non-Federal source. As noted in Chapter VIII, when authorized in advance, the PBGC, not the employee, may accept payment or reimbursement from a non-Federal source for travel and related expenses incurred for an employee's attendance at a meeting, conference, or similar event held outside the Washington, D.C. area. Absent such approval, an offer from a non-Federal source to pay or reimburse the PBGC for any travel or related expenses must be declined.

When the PBGC is paying for travel, such travel is governed by the Federal Travel Regulation (FTR) issued by the Government Services Administration (GSA). These regulations may be found at: Federal Travel Regulation (FTR) (www.gsa.gov/federaltravelregulation). Below are some highlights from the FTR.

...the PBGC, not the employee, may accept payment or reimbursement from a non-Federal source for travel and related expenses incurred for an employee's attendance at a meeting...

A. PRUDENT PERSON RULE

If you travel on official business, you must exercise the same care in incurring expenses that a prudent person would exercise if traveling on personal business. Excess costs, unauthorized circuitous routes, luxury accommodations, and services unnecessary or unjustified in the performance of official business are not acceptable. You are personally responsible for excess costs and any additional expenses incurred for personal preference or convenience.

B. TRAVEL PLAN

Before beginning official travel, you need official permission in the form of a travel plan. PBGC's detailed travel plan procedures may be found at **[intranet/travel/default.cfm](#)**. A travel plan should provide the expected dates, routes, and modes of transportation for the trip. Your travel plan usually provides authorized dollar amounts for transportation, lodging, and meals and incidental expenses (M&IE). If you need to exceed these authorized dollar amounts (e.g., the cost of the available hotel rooms exceeds the per diem allowance), you must obtain prior supervisory approval.

If upon arrival at your travel destination, you determine that certain business cannot be conducted without taking actions that normally require prior approval (e.g., renting a car), you must contact the person who approved your travel to secure approval to take the action. If you discover the action is needed after hours, you must call the emergency travel number (202-437-1227).

C. LODGING, MEALS AND INCIDENTAL EXPENSES

When official travel requires you to stay overnight, you will generally be reimbursed for the actual cost of your lodging up to an amount authorized for the area you are visiting plus a set amount to cover the cost of your meals and incidental expenses. This is called the “lodgings-plus” per diem method. The FTR explains that an employee’s right to per diem allowance occurs when the employee: (1) performs official travel away from his/her official duty station, or other areas defined by the agency; (2) incurs per diem expenses while performing official travel; and (3) is in a travel status for more than 12 hours.

The GSA has prescribed maximum per diem rates within the 48 contiguous United States (CONUS) by location. See [Per Diem Rates](#); (PBGC’s Intranet also has a link to this site at [intranet/travel/default.cfm](#).) Per diem rates for areas outside CONUS are also listed at GSA’s Travel Management site. See [Per Diem Rates Query](#) (rates in non-contiguous U.S. locations, such as Puerto Rico or Hawaii) [aoprals.state.gov/content.asp?content_id=184&menu_id=78](#) (rates in foreign locations).

When the per diem rate for an area will not cover your actual expenses, you may qualify for actual expense reimbursement.

When the per diem rate for an area will not cover your actual expenses, you may qualify for actual expense reimbursement. The maximum amount that you may be reimbursed under the actual expense method is limited to 300 percent of the applicable maximum per diem rate. You must have advance authorization from your supervisor to use the actual expense method. Otherwise, you may not be reimbursed for the costs in excess of the per diem rate.

The FTR excludes the cost of local and state taxes from the lodging portion of the per diem rate in certain locations. Therefore, if you are authorized to spend up to the maximum per diem rate on a hotel room you can do so without regard to the cost of applicable taxes.

When an individual traveler pays for his or her lodging, a few state and local jurisdictions will exempt the Federal employee on official travel from various local taxes. The current list of jurisdictions as well as the procedure required to obtain the tax exemption can be found at [State Tax Exempt Forms Library](#). If direct billing is arranged by the PBGC with the lodging establishment and payment is made by the PBGC, in lieu of you paying for the lodging, the PBGC is exempt from the state and local taxes.

If the state or local jurisdiction does not provide a tax exemption, you should separate the hotel tax from the room charges and enter the hotel tax as a separate expense in PBGC’s travel management system, to report those expenses on your expense report and claim reimbursement of lodging taxes.

D. REDUCED PER DIEM

If you travel to a conference or other activity for which the registration fee includes meals, then your M&IE will be reduced by the amount that meals provided would cost. A GSA schedule is used to determine the reduction. You do not have to reduce M&IE for light refreshments or for complimentary meals furnished to you by airlines or hotels (such as continental breakfasts). In some circumstances, it may be advantageous to the PBGC to contract directly with a hotel or other facility to provide meals for a group of PBGC employees traveling on official business. When that occurs, you are required to reduce M&IE for the PBGC-provided meals.

Example: An employee from DISC is attending a conference in New York. The price of the conference includes lunch. The employee's M&IE will be reduced by the amount normally allowed for lunch in New York.

E. KEEPING RECEIPTS

Receipts for lodging (regardless of the cost) and other authorized travel expenses over \$75 must be faxed into PBGC's travel management system and reviewed electronically by the person who approves your expense report. Each PBGC department or office has at least one "Travel Coordinator" who, in addition to providing assistance to travelers, retains the receipts, and prepares, electronically signs, and submits the expense report to the approving official within five (5) working days after the traveler submits the receipts. The expense report must be approved by the appropriate departmental or office authority. The Travel Coordinator must notify the employee of any error in the expense report within seven (7) calendar days after the receipt of the expense report and must provide the reasons why the voucher is not proper.

F. USE OF GOVERNMENT CREDIT CARD

A government-issued credit card may be used only in connection with official travel. Thus, it may be used to pay for actual expenses associated with the travel or to obtain a cash advance from automated teller machines (ATMs). All PBGC employees who travel on official Government business five (5) or more times per fiscal year are required to apply for and use the government-issued credit card. Official travel, travel-related expenses, and allowable business-related expenses charged to your government-issued credit card will be reimbursed by the PBGC under the normal expense reimbursement procedures.

Government issued charge cards may not be used for personal use. YOU ARE PERSONALLY RESPONSIBLE FOR MAKING ALL PAYMENTS TO THE GOVERNMENT CHARGE CARD ISSUER. You may be disciplined for failing to make required payments or for charging personal expenses on the card.

Example: A PBGC employee is on official travel to Seattle and uses his government-issued charge card to pay for his hotel room. The charges for the hotel are permissible since they were actual expenses incurred on official travel.

Example: After the PBGC employee has arrived back in Washington, DC, he is at the Home Depot and realizes he forgot his personal credit card. He uses his government-issued charge card figuring he will pay that bill just as he would have paid his personal credit card bill. The charges at the Home Depot are impermissible since they are not related to official travel, travel-related expenses, or allowable business-related expenses. The employee is subject to discipline for charging personal expenses not related to official travel.

G. CIRCUITOUS TRAVEL & EARLY TRAVEL

With your supervisor's approval, you may leave early for, or remain after completion of, an out-of-town assignment. You may also travel to your destination indirectly. For example, on the way to Miami, you may stop in Orlando, but bear in mind that the PBGC will only pay what it would have cost if you had taken a direct route. Thus, you must be on approved leave during extra travel days, and you will not receive lodging or M&IE for those days. (You may request, however, the government rate for hotel rooms and rental cars while on the personal portion of your trip so long as you disclose that you are on personal travel, if asked. The hotel or rental car vendor will advise you as to whether it offers such a discount and what documentation it requires, for example, a valid government identification card. Indeed, you may seek such discounts on personal trips even if not in conjunction with official travel. Once again, if asked, you must disclose that you are on personal, not government, business.)

For a more comprehensive discussion of combined travel, see section 8.z. of PBGC's Travel Directive at http://intranet/DirPolDel/Directives/GA_10_5.pdf.

H. METHOD OF TRANSPORTATION

When you travel on official business, your travel plan will state the method of transportation that will result in the greatest advantage to the PBGC. Under the FTR, Federal employees generally must fly coach or economy class on an air carrier that is under contract with the GSA to transport Federal employees or use coach-class travel accommodations for train travel (except for travel on Amtrak). You may not pick your favorite airline or fly first class at the Government's expense.

You may be authorized to rent a car when travel on a plane, train, or bus is not advantageous to the Government, and you need a car to get to your temporary duty location. If you do rent a car, decline all insurance coverage offered by the rental car agency; the Government is a self-insurer.

Use of your own car (your car is called a POV—Privately Owned Vehicle) may be approved for official travel when your supervisor concludes its use is advantageous to

the PBGC. If you choose to use a method of transportation other than that authorized (usually your own car in lieu of plane, train, or bus), any additional costs incurred are your responsibility.

I. FIRST CLASS, BUSINESS CLASS, AND OTHER PREMIUM TRAVEL

As noted above, generally, you must fly coach or economy class or travel in coach-class accommodations when traveling by train. There are exceptions for disabled persons and for persons with special needs. There are also exceptions for persons who have to travel on short notice when no coach or economy seats are available. If you choose a more expensive seat without proper authorization, you will be liable for the excess cost.

When traveling by train, there is an exception permitting you to travel on AMTRAK Acela train service without any special agency approval. Finally, you may upgrade your seats at your own personal expense or by using accumulated frequent flyer points.

J. FREQUENT FLYER MILES

Generally, gifts, gratuities, and benefits received from private sources incident to the performance of official business belong to the Government. However, promotional material such as bonus flights, “friends fly free” tickets, reduced-fare coupons, frequent flyer miles, merchandise, gifts, and credits toward future free or reduced-cost services or goods may be retained for personal use if such items are obtained under the same conditions as those offered to the general public and at no additional cost to the Government.

Example: You are traveling on official business from Washington, D.C. to Boston, MA on U.S. Airways, the carrier with the lowest priced ticket. You have a Dividend Miles account with U.S. Airways and will earn 500 miles on the trip. Since all other Dividend Miles members on the flights will earn the same number of miles and there was no additional cost for the Government, you may retain the frequent flier miles earned on the trip and the miles may be used for future business or personal travel.

K. FLIGHT BUMPING

Airlines are required to ask for volunteers to give up their reserved seats before the airline denies boarding to any passenger with a confirmed reservation. Airlines are free to determine the amount to be paid to the volunteer. If you voluntarily give up your seats, you may retain these payments. However, you may not voluntarily give up your seat if it will interfere with the performance of your official duties. If you voluntarily give up your reserved seat and, as a result, you incur additional travel expenses beyond those which you would have normally incurred, these additional expenses must be offset against the payment you received. If volunteering delays

your travel during official duty hours, you are not entitled to compensatory or overtime pay.

Airlines are required to pay damages in certain situations if they fail to provide confirmed reserved space. When payment of damages results from travel on official business, these penalty payments are due the Government. If you are denied confirmed reserved space, ensure that the carrier shows the "Pension Benefit Guaranty Corporation" as payee on the compensation check and forward it to the Payroll and Travel Office.

L. STAYING WITH FAMILY OR FRIENDS

When you stay with friends, relatives, or at another private residence, no lodging allowance will be paid unless your host is required to incur additional expenses to accommodate you. In such instances, you must substantiate the additional expenses on the expense report, and they must be deemed to be reasonable by the approving officer and by the voucher auditor. Neither costs based on room rates for comparable lodging in the area nor flat "token" amounts can be considered a reasonable basis for reimbursement of lodging costs. You will be allowed the full allowance for M&IE for the locality unless a reduced per diem is specifically set forth on your travel plan.

If you decide to stay with family or friends while on official travel, and you save the PBGC money in the process, you may be eligible for a travel gainsharing award. For more details, see section 8.kk of PBGC Travel Policy, Directive Number GA 10-5, at http://intranet/DirPolDel/Directives/GA_10_5.pdf. However, please note that while on travel, if you stay with family or friends, you will be required to reduce your M&IE per diem for any free meals you received from family or friends.

M. COMPENSATORY TIME OFF FOR TRAVEL

Subject to certain conditions, the PBGC must credit you with compensatory time off for travel if (1) you are required to travel away from your official duty station; **and** (2) the travel time is outside your regular working hours. Time spent traveling between your official duty station and a temporary duty station, or two temporary duty stations, and the usual waiting time that precedes or interrupts such travel is creditable time. You will not, however, be credited compensatory time for the following time in travel:

- Bona fide meal periods during actual travel or waiting time. Under OPM rules, if an employee spends an uninterrupted period of time (i.e., 45 minutes) eating a meal while waiting for a flight, the employee is not treated as being in travel status during that period of time and cannot receive compensatory time. See *OPM's Questions and Answers on Compensatory Time Off for Travel*, Q8, at [Compensatory Time Off for Travel - CPM 2005-03 Attachment 1](#);
- Extended (i.e., unusual) waiting time between actual periods of travel. Usual waiting time includes the designated pre-departure time (i.e., 1 to 2 hours before the scheduled departure), as well as time spent waiting for a connecting

flight, less any bona fide meal periods. An “extended” waiting period is defined as “an unusually long wait prior to [the traveler’s] initial departure or between actual periods of travel during which the employee is free to rest, sleep, or otherwise use the time for his or her own purposes.” See OPM’s *Questions and Answers on Compensatory Time Off for Travel*, Q7, at Compensatory Time Off for Travel - CPM 2005-03 Attachment 1.

Example: If an employee has a 1.5 hour layover outside of his/her regular working hours, the employee will receive compensatory time for the layover and the time spent traveling outside regular work hours. On the other hand, if an employee’s flight is canceled and he/she has time to sightsee, return to his/her hotel, etc., the employee will not receive compensatory time off for the time the employee is free to “use the time for his or her own purposes.”

- If traveling to the temporary work station directly from your home, you will not receive credit for the time you would have spent commuting to work.

XII. Financial Disclosure Reports (OGE Form 450 & OGE Form 278)

High-level officials in the executive branch are required to report certain financial interests to guarantee the efficient and honest operation of the Government. In addition, other Government executive branch employees, whose Government duties involve significant discretion in certain sensitive areas, report their financial interests and certain outside business activities to their agency, in order to avoid any possible conflicts of interest.

The Office of Government Ethics' reasons for requiring employees to file financial disclosure reports include:

1. helping employees avoid conflicts between their official duties and their private financial interests or affiliations;
2. increasing public confidence in the Government; and
3. protecting the integrity and reputation of agency programs and operations.

Senior Level and Schedule C employees file a Public Financial Disclosure Report, OGE Form 278, which is publicly available and must be filed on an annual basis no later than May 15 of the calendar year. A sample OGE Form 278 can be found on OGE's website at www.usoge.gov/forms/oge278/oge278_automated.pdf. The PBGC now uses an on-line system, FDOOnline, for the 278 reporting process. Annually, you will receive an email invitation with a unique link to your report.

Other employees, including GS-15's, most employees in the Procurement Department and the Office of the Inspector General, and those employees who "participate personally and substantially in taking Government action affecting non-Federal entities," file a Confidential Financial Disclosure Report, OGE Form 450, on an annual basis no later than February 15 of the calendar year. A sample OGE Form 450 can be found on OGE's website at www.usoge.gov/forms/oge450_pdf/oge450_automated.pdf. The PBGC now uses an on-line system, FDOOnline, for the 450 reporting process. Annually, you will receive an email invitation with a unique link to your report.

Generally, Public Filers and Confidential Filers are required to report the following items: (1) interests in property (assets); (2) income; (3) purchases, sales and exchanges; (4) gifts and reimbursements; (5) liabilities; (6) agreements and arrangements; and (7) outside positions.

The PBGC ethics counselors are available to answer questions regarding the filing of OGE Forms 278 and 450.

XIII. Procurement Integrity Act

The following guidance on the Procurement Integrity Act was issued by the Office of Government Ethics in July 2007.

Introduction

As a Federal employee involved in the procurement and acquisition process, you play an important role in preserving the integrity of Government contracting and assuring fair treatment of bidders, offerors, and contractors. A violation of ethics rules can cause a bid protest or undermine the public's confidence in Government. Improper conduct can also result in an administrative, civil or even criminal penalty.

This brochure provides general information only. It will help you recognize some of the most common ethics and procurement integrity issues that can come up during the contracting process. Where there are examples, please note that they just illustrate a few common scenarios. You might encounter other issues or different situations.

If you have a specific issue, have questions, or need additional help, contact an ethics official at your agency *before* taking any action. For information on how to contact your Designated Agency Ethics Official (DAEO), consult the DAEO list on the Office of Government Ethics website at www.usoge.gov.

1 Conflicts of Interest

Ethics laws prohibit Government employees from having financial conflicts of interest. By keeping in mind a few basic concepts, you can help ensure that contracts are awarded and administered free from improper influence or even the appearance of impropriety.

Financial Conflicts

A criminal law prohibits you from working on a Government matter (such as a contract) that would affect your financial interests. This prohibition also covers the financial interests of certain other persons such as:

- your spouse;
- minor child;
- general partner;
- an organization in which you serve as an employee, officer, director, trustee, or general partner; and
- a person with whom you are seeking or have an arrangement for future employment.

A Few Examples of Financial Conflicts of Interest

You would have a financial interest in a contract or other matter that affects the contractor in situations such as these:

- *You own stock in a company that is bidding on a contract (or that is likely to be a subcontractor).*
- *You have a pension with, or deferred compensation from, your former employer, a contractor that is participating in a procurement with your agency.*
- *You moonlight for a company that gets a contract with your agency.*
- *Your spouse works for a contractor and her salary would be affected if her company is awarded (or loses) a contract with your agency.*

If you think you have a financial conflict, contact your agency ethics official right

away. He will help you determine whether you will have to stop working on the Government matter, or whether another remedy would resolve the conflict.

Impartiality Issues

Even though you may not have a financial interest that can be affected by a procurement activity or contract, circumstances might arise that could call your impartiality into question. Some examples of when your impartiality could be questioned include the following:

- Your duties require you to work on a procurement involving your former employer or clients, your spouse's employer or clients, close relatives, or others with whom you have some kind of business relationship.
- You are assigned to a contract involving a person you are dating.
- You are required to evaluate bids, one of which was submitted by a friend.

If you encounter any situation where you think your impartiality would reasonably be questioned, you should stop working on that matter, and contact your supervisor and agency ethics official for further advice.

2 Gifts From Contractors

As a Government employee, you must not solicit or accept gifts from contractors and their employees. A gift is anything that has monetary value, such as food, travel, entertainment, discounts, and loans.

Even though you might work closely with contractor employees on a daily basis, remember that both agency

A gift is anything that has monetary value, such as food travel, entertainment, discounts, and loans.

contractors and their employees are considered "prohibited sources" of gifts to you.

You also must not accept a gift given by an organization or individual who is seeking business with your agency. Thus, the safest course of action is to remember this rule: Do not solicit anything, or accept a gift, from a contractor, prospective contractor, or contractor employee, unless clearly permitted by an exception in the ethics rules or you have received advice from your agency ethics official.

Items You Can Accept

Examples of items that you generally may accept—even from a contractor—include:

- Modest food and refreshments, such as coffee and donuts that are not offered as part of a meal;
- Gifts valued at \$20 or less per "source" per occasion, although the total value of such gifts must not exceed \$50 in a calendar year from a single source (Note: a contractor and its employees are considered the same "source." For example, you could not accept five \$15 lunches from five employees who work for the same contractor.);
- Gifts based on a personal relationship (This means gifts from family members or friends with whom it is clear you have a true friendship—not a friendly

relationship with a contractor that was formed on the job.);

- Meals, lodging, transportation, or other benefits that are from your spouse's employer, provided that the gift was not given or enhanced because of your Government job;
- Gifts or discounts available to the general public, to all Government employees, or to all military personnel;
- Free attendance at a conference or similar "widely attended gathering" (as long as your agency determines that your attendance is in the agency's best interest and certain other conditions are met); and
- Anything paid for by the Government or secured by the Government under a contract.

Your agency ethics official can help you determine whether you can accept a particular gift.

Some Words of Caution

Of course, you should not accept anything of value from a bidder or contractor if you think that the integrity of the procurement process could be questioned. Also, be careful not to accept gifts so frequently that a reasonable person would think you are using your public office for private gain. Finally, remember that you may never accept cash or solicit a gift from a contractor or contractor employee.

Gifts to Contractors

You should be mindful that contractors usually have their own rules and policies

about gift-giving, especially when dealing with the Government. You do not want to embarrass a contractor employee, or cause him to violate his company's rules.

3 Procurement and Other Nonpublic Information

As a Government employee, you might have access to procurement and other nonpublic information that could affect a contract bid or the award process. Improper disclosure of such protected information could violate numerous laws, as well as ethics rules. It also could subject you to administrative actions, as well as civil or criminal penalties.

Procurement Information

You may not knowingly obtain or disclose contractor bid or proposal information or source selection information before the award of the contract, other than as permitted by law.

Contractor bid or proposal information

This proprietary information must be secured to prevent disclosure. It includes certain nonpublic information submitted in connection with a bid or proposal, such as:

- *Cost or pricing data, including indirect costs and direct labor rates;*
- *Information about manufacturing processes, operations and techniques when marked "proprietary" in accordance with law or regulation;*
- *Information marked as "contractor bid or proposal information"; and*
- *Any other information related to a*

specific procurement that a company making a bid deems proprietary.

Source selection information

This is information not previously available to the public that is prepared for use by an agency in evaluating a bid or proposal. Such information includes:

- *Bid prices for sealed bids or lists or prices;*
- *Proposed costs or prices;*
- *Source selection plans;*
- *Technical evaluation plans;*
- *Technical, cost or price evaluations of competing proposals;*
- *Competitive range determinations;*
- *Rankings of bids, proposals or competitors;*
- *Reports, evaluations and recommendations of source selection panels, boards or advisory councils; and*
- *Any other information marked as "source selection information."*

Other Nonpublic Information

In addition to the rules on disclosure of specific procurement information, ethics rules prohibit you from disclosing any nonpublic information to further your private interests, or those of another person, such as a contractor or contractor employee. Nonpublic information includes information about a contract or procurement that you gain through your job and that you reasonably should know has not been made available to the public. An example of nonpublic information

would be an agency's internal decision to terminate a particular contract.

If you have any doubt about whether information is protected information, or whether you are permitted to disclose such information, you should get advice from your agency ethics official before disclosing or otherwise using the information.

4 Restrictions on Employment Discussions

During the course of your Government service, you might decide to seek employment in the private sector or even with a contractor who does business with your agency. There are several restrictions that apply to your Government work when you seek future employment or have employment discussions with contractors.

Seeking Employment: General Rules

All Government employees are subject to the rules on seeking employment. These rules are quite broad and apply well before you and a potential employer actually negotiate specific terms and conditions of employment.

You may not work on Government matters that would affect the financial interests of a contractor with which you are seeking employment. This rule generally applies even if you make an unsolicited contact about possible employment. It also applies if you do not reject a contractor's unsolicited overture about possible employment.

Once you have reached an agreement for future employment with a contractor, you still may not work on any Government matters that would affect the financial interests of the contractor. And remember, in any case where you have an obligation to recuse yourself from working on an assignment, you should notify your supervisor as soon as possible about your need to recuse.

Seeking Employment with a Bidder or Offeror

As a Federal employee involved in the procurement process, you might be subject to additional rules under the Procurement Integrity Act when you have employment discussions with bidders or offerors. These rules apply only if you are performing certain functions involving:

- the specification or statement of work;
- the solicitation;
- the evaluation of bids or proposals, or selecting a source;
- the negotiation of price or terms and conditions of the contract; or
- the review or approval of the award of a contract.

If you are performing one of these functions in a competitive procurement for a contract in excess of \$100,000, and you contact or are contacted by a bidder or offeror in that procurement about possible non-Federal employment, you must:

- promptly report the contact in writing to your supervisor and your agency ethics official; and

- either
 - reject the possibility of non-Federal employment; or
 - consult with your supervisor and do not work on that procurement until the agency has authorized you to do so.

Note: you must also submit a written disqualification notice to the contracting officer, the source selection authority, and your supervisor.

5 Working for a Contractor After Government

Depending on your Government position and what your role was in a procurement, you might be subject to certain restrictions when you leave Government service.

Accepting Compensation from a Contractor

You might be banned from accepting compensation from a contractor for one year after you served in a covered procurement-related position or made a procurement-related decision for your agency. The ban, which is part of the Procurement Integrity Act, prohibits you from accepting compensation as an employee, officer, director, or consultant of the contractor.

Who is Covered by the One-Year Ban?

The one-year ban applies if you: Served in any of the following positions on a contract over \$10 million:

- Procuring contracting officer;
- Source selection authority;
- Member of a source selection evaluation board;
- Chief of a financial or technical evaluation team;
- Program manager;
- Deputy program manager; or
- Administrative contracting officer;

or

Personally made any of the following decisions on behalf of your agency to:

- Award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order over \$10 million;
- Establish overhead or other rates for a contractor on a contract or contracts valued over \$10 million;
- Approve a contract payment or payments over \$10 million; or
- Pay or settle a claim over \$10 million.

Exception

This restriction does not prohibit you from working for another division or affiliate of the contractor, as long as it does not produce the same or similar products or services as the division or affiliate responsible for the contract in which you were involved.

General Post-Employment Restrictions

You should also keep in mind that there are criminal post-employment restrictions that apply to all Federal employees regardless of whether they work for a contractor after Government service. You may be covered by one or more of these restrictions even if you did not perform any of the functions or serve in any of the roles designated by the Procurement Integrity Act (see above). The most common restrictions are explained below.

Common Restrictions

You are permanently barred from representing another person before the Government on the same matter (such as a contract) on which you worked as a Government employee. Representing means making a communication or appearance with intent to influence the Government, and includes signing a letter, attending a meeting, making a presentation, and making a telephone call.

If you had official responsibility for a matter (such as the award of a contract) during your last year of Government service, you are barred for two years from representing another person before the Government concerning that same matter. To be covered by this restriction, you need not have worked on the contract, so long as it was under your supervision.

If you are a “senior employee,” you are subject to a third restriction. This ban

prohibits you from representing other persons before the Government on any matters before your agency for one year after leaving Government service. You need not have worked on the matter, nor had official responsibility for the matter. Your agency ethics official can tell you whether you are considered a “senior employee.”

These restrictions are quite broad. They can include communications, appearances or other representations that you might make on behalf of a company while performing work under a Government contract—not just major communications about the award or modification of a contract. However, they generally do not include behind-the-scenes work that does not involve communication back to the Government.

When in Doubt, Get Help

There are other restrictions, as well as exceptions, that govern this complex area of the law. Moreover, the consequences of violating these restrictions can be severe. You should consult with your agency ethics official before seeking employment with a contractor to determine whether a post-employment restriction might apply to your situation.

6 Miscellaneous Fundraising

You may not solicit a contractor or its employees for a charitable donation because they are “prohibited sources” of gifts under the Federal ethics rules. This is true even if, for example, you are fundraising on your own time and outside

of the workplace, and you are quite friendly with the contractor employee.

Letters of Recommendation

You generally may provide a letter of recommendation for a contractor employee, on official agency letterhead, in response to a request for an employment recommendation or character reference. The letter of recommendation must be based on your personal knowledge of the ability or character of the contractor employee with whom you have dealt during the course of your Federal employment or whom you are recommending for Federal employment.

Outside Employment with a Contractor

If you would like to “moonlight” for an agency contractor, you should consult with your agency ethics official before taking *any* action pursuing such outside employment. Depending on the facts, you could trigger restrictions related to the following issues: seeking or negotiating for employment, procurement integrity, conflicting financial interests, impartiality concerns, and agency-specific rules and procedures.

Conclusion

We hope this brochure has helped you identify some of the ethics and procurement issues that can come up in the procurement and acquisition process. For more information on these issues, contact your agency ethics official.

About OGE

The Office of Government Ethics (OGE) is the agency that exercises leadership in the executive branch to prevent conflicts of interest on the part of Government employees, and to resolve those conflicts of interest that do occur. In partnership with executive branch agencies and departments, OGE fosters high ethical standards for employees and strengthens the public's confidence that the Government's business is conducted with impartiality and integrity.

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CONCLUSION

This Ethics Handbook is intended to assist employees to answer basic ethics questions. For further assistance, please contact a PBGC ethics official listed on the back cover of this handbook.

Remember, there are no dumb ethics questions. The OGE rules provide that disciplinary action will not be taken against an employee who has engaged in conduct in good faith reliance upon the advice of an agency ethics official, provided that the employee, in seeking such advice, has made full disclosure of all relevant circumstances.

A searchable online version of this Ethics Handbook is available at <http://intranet/ethics/EthicsHandbook.pdf>.

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