



NATIONAL INSTITUTES OF HEALTH

Introduction to Government Ethics

Without integrity nothing works.

Introduction

The Department of Health and Human Services (HHS) is the principal federal agency tasked with protecting the well-being of the citizens of the United States. HHS administers more grant dollars than all other agencies combined, and regulates significant aspects of the American economy. The Department's mission and interaction with government, industry and the non-profit sector require the Department and you to become aware of and avoid conflicts of interest.

When an HHS employee violates the ethics rules his or her conduct calls into question the integrity of the work done, not just by that employee, but by the Department as a whole. You make a difference in the lives of every American. Without integrity, you can't make that difference. Your annual ethics training helps you maintain your integrity.

Topics covered by this booklet include:

- The Fourteen Principles of Ethical Conduct
- Conflicts of Interest
- Impartiality: Appearance Problems
- Misuse of Position
- Political Activities - The Hatch Act
- Leaving Government Service
- Financial Disclosure Reporting

Links are provided throughout this document, and also listed at the end for those reading it in paper version. Address questions to your Institute/Center (IC) ethics official. Names and contact information are available at <http://ethics.od.nih.gov/coord.pdf>.

The Fourteen Principles of Ethical Conduct

The Fourteen Principles of Ethical Conduct, found in [Executive Order 12674](#) (as modified), are the basic tenets of ethical conduct for federal employees in the Department of Health and Human Services, and include the following:

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 nonpublic Government information or allow the improper use of such information to further any private interest.
4. An employee shall not, except pursuant to such reasonable exceptions as are provided by regulation, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.

5. Employees shall put forth honest effort in the performance of their duties.
6. Employees shall make no 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 the ethical standards promulgated pursuant to this order.

Fourteen Principles Conclusion: When a situation is not covered by the remaining ethics rules, employees should base their conduct on these basic principles.

Conflicts of Interest

On July 31, 2009, Mark O'Hair was convicted of obstruction of justice, perjury, making false statements to the United States Air Force in a debarment proceeding, and 29 counts of conflict of interest.

O'Hair was a retired lieutenant colonel and a program manager for contracts awarded through the Battlefield Airman Program. He participated in the award of contracts to Schaller Engineering, Inc. ("Schaller") while simultaneously being a director of Schaller. As program manager, O'Hair approved a \$200,000 invoice for Schaller, \$60,000 of which went into O'Hair's own pocket.

As of August 21, 2009, O'Hair had not been sentenced; however, each conflict of interest charge carries a maximum penalty of five years imprisonment, \$250,000 fine and three years of supervised release.

Source - United States Department of Justice

O'Hair could not legally hold his director position with Schaller and, at the same time, participate in awarding \$200,000 in contract funds to that company. HHS employees have the same restriction.

A criminal law ([18 United States Code \[USC\] section 208](#)) prohibits you from personally and substantially participating, as part of your official duties, in any matter in which you have a financial interest, including the interests of others which are attributed to you. This means, for example, you cannot hold stock in a

pharmaceutical company and simultaneously participate in conducting research that affects that drug company.

You also cannot hold certain positions of trust in an outside organization, whether paid or unpaid, and at the same time, participate in a government matter affecting the financial interests of that organization. For example, you cannot be on the board of directors of a nonprofit and participate in awarding a grant for which that nonprofit has applied.

In addition to your own financial interests, the financial interests of the following persons and entities are treated as your own, for purposes of this rule:

- your spouse,
- your minor child,
- any general partner of a partnership in which you are a limited or general partner,
- any outside organization for which you serve as an officer, director, trustee, general partner, or employee, and
- any person or organization with which you have an arrangement or are negotiating for prospective employment.

How do you know whether or not you have a conflict of interest?

How do you resolve a conflict of interest when you think you may have one?

The easiest answer is - ask your **Deputy Ethics Counselor (DEC) or Ethics Coordinator/Specialist (EC)**. It is always better to ask first. To say “I didn’t know” is not a defense to criminal prosecution under this law. (Contact information is available at <http://ethics.od.nih.gov/coord.pdf>.)

Many employees complete an annual financial disclosure report, either the public (**SF-278**) or the confidential (**OGE-450**) report. These reports provide your ethics official with a snapshot of your financial holdings and outside affiliations, and allow your DEC or EC to identify and help resolve financial conflicts of interest. Remedies for conflicts of interest include:

1. voluntary or directed divestiture of stock;
2. ceasing participation in outside activities;
3. ceasing your participation in matters at work that create a conflict; and,
4. in rare cases, obtaining through your DEC a waiver that allows you to participate in the government matter despite the conflict of interest.

Review the following four scenarios, determine if there is a conflict of interest, and then choose an appropriate remedy.

Conflicts of Interest Scenario 1 of 4

Question: Barney has been assigned to make recommendations for an HHS program to computerize health records. He owns stock in Complex Computer Corporation (“Complex”), a company that has focused its efforts over the last year exclusively on health information technology. Complex is a likely offeror on HHS health information technology procurements. Does this situation pose a potential conflict of interest for Barney?

- (a) Yes.
- (b) No.

Answer: The correct answer is yes. If Barney participates in this matter, he would be personally involved in government work that would affect his financial interest, because he owns stock in a potential offeror-company. Note: If the value of his holdings does not exceed a minimal value, a regulatory exemption might allow Barney to participate in this matter despite the conflict. Barney can only find out about this possibility by contacting his DEC or EC before he takes any action.

Conflicts of Interest Scenario 2 of 4

Question: How can Barney resolve this conflict and avoid a criminal violation? Choose the best answer.

- A. He could sell all stock held in Complex as quickly as possible.
- B. He could notify his supervisor that he cannot work on matters affecting Complex and call his DEC or EC for assistance.
- C. He could quit his job.
- D. A & B

Answer: The best answer is B. If Barney thinks he has a conflict, he should not work on any matter affecting the financial interests and should immediately contact his DEC or EC. Although Barney could solve the problem by selling his stock immediately, he may do himself a disservice. By contacting his DEC or EC, Barney will be advised if in fact he does have a conflict of interest, and how best to resolve it. If the best resolution is to sell his stock, then he may qualify for a certificate of divestiture, which would allow him to defer any tax consequences.

Conflicts of Interest Scenario 3 of 4

Question: Barney's wife, Betty, works for PBJ Training, a company that provides training courses and materials to the Department. Barney is part of the team that evaluates PBJ's performance under the HHS contract, and Betty could receive a bonus based on a favorable agency assessment. What is Barney's best course of action to resolve this conflict of interest?

- A. Go home and demand that Betty quit her job.
- B. Go to his supervisor and say that he can't participate in the evaluation of the contract for "personal reasons."
- C. Immediately call his DEC or EC and in the meantime, avoid participating in anything related to the evaluation of the contract.
- D. B & C

Answer: The best answer is C. Barney must not work on anything related to the evaluation of the contract, and should talk to his supervisor and his DEC or EC immediately. Barney is not expected to ask his spouse to quit her job. Because Barney is disqualified from working on this matter altogether, it may be possible to give him other work. A waiver of the conflict may also be considered depending on the size of the bonus and other factors. Barney's DEC or EC, in consultation with his supervisor, will decide which is the best resolution.

Conflicts of Interest Scenario 4 of 4

Question: Barney is a general business partner with Fred in a real estate venture that is unrelated to Barney's government work. Unbeknownst to Barney, Fred holds a lot of stock in Complex. Barney sold his own Complex stock and plans to work on the HHS health records project. While playing golf, Fred and Barney discuss the market and Fred recommends that Barney buy Complex stock. Barney does not say anything, and they move on to other topics. Based on Fred's enthusiasm for the stock Barney now suspects, but isn't sure, that Fred owns Complex stock. What is Barney's obligation?

- A. Demand that Fred give him copies of Fred's quarterly brokerage statements.
- B. Avoid any discussion of financial holdings - hear no evil, see no evil.
- C. Make a reasonable effort to verify whether Fred owns Complex stock and if so, avoid working on the health records project.
- D. A and C.

Answer: The best answer is C. In general, Barney may not know about Fred's financial interests, and is not expected to pry into Fred's personal investments in order to identify and avoid any possible conflict of interest. However, if Barney obtains information, whether in conversation or on paper, that leads him to think that his business partner has a financial interest in something Barney might work on for the federal government, then Barney must raise that concern with his **DEC** or **EC** and make appropriate inquiries of Fred.

Conflicts of Interest Conclusion: Whether you file financial disclosure forms or not, your obligation as a federal employee is to avoid participating in any government matter if the disposition of that matter would

affect your financial interest. If you participate in a government matter affecting your financial interests, then you could face criminal prosecution. Always ask your **DEC or EC** if you have a question.

**“Private profit by the public servants
at the expense of the general welfare
is corrupt - period.”**

(Senator Estes Kefauver)

Impartiality: Appearance Problems

The next concept is “impartiality,” as explained in the regulation ([5 Code of Federal Regulations \[CFR\] Subpart E](#)), which prohibits federal employees from participating in specific party matters when someone with whom they have a “covered relationship” is involved in that matter. Impartiality is a core tenet of ethics, and guarantees the public that government action benefits the public, not friends, family or colleagues of federal employees.

If a reasonable person with knowledge of the relevant facts would question your impartiality, you cannot participate in a specific party matter when you have a covered relationship with someone who is a party or represents a party to that matter.

To understand the rule you need to know when you have a “covered relationship.” You have covered relationships with the following people and organizations:

- A relative with whom you have a close personal relationship;
- A person or organization for which you have, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee;
- A person with whom you have or are seeking to have a business, contractual or other financial relationship;
- An organization in which you are active as an official or serving in a similar capacity;
- A person or organization with which your spouse, parent or dependent child is serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee;
- A member of your household; and,
- A former employer from whom you received a special payment in excess of \$10,000 when leaving their employment (this applies for only two years after you leave).

In addition, you cannot work on a specific party matter that is likely to affect the financial interests of a member of your household, regardless of whether the household member is a party or represents a party to a government matter.

Let’s look at an ethics news story and identify the potential impartiality problem.

In 2006, a senior official of the Interior Department resigned after allegations surfaced that he tried to steer a \$2 million contract to a technology firm that had been one of his clients before he joined the federal government.

For the purposes of this discussion, let’s add a fact to the news item above.

Assume that the official had worked for his former client in the year before taking the actions mentioned.

Is there an impartiality problem?

Yes. When the official tried to steer a \$2 million contract to his former client, he participated in a specific party matter (the contract), even though he had a covered relationship (former client within the last year) with a party to that matter. A reasonable person clearly would have questioned his impartiality as a result of this relationship.

Finally, there is a “catch all” provision in the impartiality rule that provides for recusal in cases that don’t fit the terms of the regulation precisely, if it would appear to a reasonable third person that your ability to remain impartial is compromised. For example if your fiancé or significant other, who does not live with you, is a party to or represents a party to a government matter, you may be recused from working on that matter.

Review the facts in the following three scenarios and determine the most appropriate answer.

Impartiality Scenario 1 of 3

Question: Charles, an attorney working for the Office of the General Counsel, is assigned to a case. At a family dinner that night, Charles discovers that his mother is counsel for one of the companies involved in the lawsuit. What should Charles do?

- A. Nothing. Charles knows he can be objective, and has a widely acknowledged reputation for professional integrity.
- B. Go into work the next day and tell his supervisor he can’t take the case “for personal reasons.”
- C. Call his DEC or EC immediately, and ask what the appropriate course of action is.
- D. Both B & C

Answer: The correct answer is D. Charles has an impartiality problem because his mother represents a party to a specific party matter, and any reasonable third person would question his ability to remain impartial.

A is not an option for Charles. The rules dealing with impartiality specifically state that an employee’s reputation for honesty is not a consideration when dealing with a potential impartiality problem. In option B, although Charles’ explanation is inadequate, he does correctly identify and communicate to his supervisor his need to disqualify from participating in a matter where his mother represents a party to that matter. In option C, Charles then contacts his DEC or EC, who would inform him that he cannot participate in this matter. The DEC or EC could consult with Charles’ supervisor to explore the possibility of an authorization, which would allow Charles to work on the matter despite his mother’s involvement. Both B and C are necessary to effectively disqualify oneself.

Impartiality Scenario 2 of 3

Question: Meredith, a medical doctor with expertise in heart disease, came to HHS less than a year ago. One day, Meredith receives a call from her former employer, who requests a meeting to discuss a pending research grant application. Can Meredith have this meeting?

- A. Yes.
- B. No.
- C. Maybe.

Answer: The correct answer is No. Meredith started with HHS less than a year ago, and has a covered relationship with any person or organization for which she worked within the last year. The grant application is a specific party matter, and Meredith’s former employer is a party to that grant application. A reasonable person with knowledge of these facts would question Meredith’s ability to remain impartial. Therefore Meredith should not participate in the matter.

Impartiality Scenario 3 of 3

Question: Henry, a contract specialist, is assigned to review incoming offers. He notices that his roommate would receive a subcontract if one of the companies is awarded the contract. Can Henry continue with this assignment?

- A. Yes.
- B. No.
- C. Maybe.

Answer: The correct answer is No, for two reasons. First, Henry has a “covered relationship” with his roommate, who is a party to a specific party matter. Even if Henry believes he can be fair, the impartiality rule is really about what a reasonable third party would think about Henry’s impartiality in reviewing this contract. Second, this matter involves the financial interests of a member of Henry’s household.

Impartiality Conclusion: In each scenario there was an “impartiality” problem that needed to be addressed. This means that a reasonable third person with knowledge of all the facts would question the federal employee’s ability to remain impartial because of their relationship to a party involved in a government matter. When an impartiality problem occurs it is up to the federal employee to raise the issue with his/her supervisor and DEC or EC. (See <http://ethics.od.nih.gov/coord.pdf>)

**“Public sentiment is everything.
With public sentiment nothing can fail;
without it nothing can succeed.”**

(Abraham Lincoln)

Misuse of Position

Misuse of Position is explained in the regulation at [5 CFR 2635 Subpart G](#) which says that you cannot use your federal office, title or authority for any of the following purposes:

1. For your own private gain, or for the private gain of friends, relatives or persons with whom you are affiliated;
2. To endorse any product, service, or enterprise;
3. To coerce or induce someone, including a subordinate, to provide any benefit, financial or otherwise, for yourself, anyone you know or any group with which you are affiliated;
4. To imply that the Department sanctions or endorses your personal activities or those of another;
5. To disclose nonpublic information or use nonpublic information for your own private gain or anyone else’s;
6. To use federal time or property for unauthorized purposes, such as excessive personal use of computers, photocopiers, telephones, and fax machines;
7. To encourage or direct a subordinate to use government time or resources to perform anything other than his or her official duties, such as picking up your laundry.

As a federal employee, you represent the federal government, and you cannot use your federal position to endorse any product, service or enterprise. For example, if you attend a conference and participate in a panel as part of your official duties, you cannot include in your presentation a statement of your personal opinion that “the best antihistamine is NoSneeze.”

Watch the YouTube video at the link below. This public service announcement developed by HHS uses well-known animation characters from Shrek to promote physical activity for kids. Do you think there is an endorsement problem?

<http://www.youtube.com/watch?v=AMJ6b38xbXg>

Even though the video was developed by HHS, the public service announcement does not involve a personal endorsement by an HHS employee. The Secretary has the authority, by statute, to promote the health and well being of the American public using various media, including the use of ad campaigns.

Although the ad does feature well-known cartoon figures and could potentially benefit the company which developed the characters, the Department is promoting physical activity to improve the health of children, not a product, service or enterprise. Furthermore, to limit the appearance of an endorsement, the Department made sure that the ad would not be shown around the release of any Shrek movie.

Using the standards detailed above, regarding misuse of position, review the four scenarios and determine which of the prohibitions numbered 1 through 7 are violated.

Misuse of Position Scenario 1 of 4

Question: The personal friend of a federal employee asks for a letter of recommendation, even though they have never worked together. The federal employee has his secretary type the requested letter of recommendation using his official title and Departmental letterhead, and mails it in a Departmental envelope with the postage paid for by the federal government. Which prohibitions did he violate?

Answer: The correct answer is 1, 3, 4, 6, 7. Letters of recommendation using the employee's official title, federal letterhead and postage can only be provided in two circumstances: (1) if you dealt with that person in the course of federal employment, or (2) if you are recommending the person for a federal position, regardless of how you know them. Because neither of these scenarios is involved, the letter of recommendation is a personal activity, which should not have been produced using federal resources.

Misuse of Position Scenario 2 of 4

Question: A member of a scientific advisory committee delivers a speech at a conference in her personal capacity. She presents on a topic which is currently the subject of much controversy in her field of expertise. In the course of the presentation she repeatedly refers to her membership on the advisory committee, even though her presentation is not made on behalf of the committee or the Department. Which prohibitions did she violate?

Answer: The correction answer is number 4. An advisory committee member is a federal employee, and like every other federal employee, may not invoke the name of the Department of Health and Human Services or use her title or position with the federal government to imply that the federal government sanctions or endorses her personal activities and viewpoints. If you are not assigned to present on behalf of the federal government, you should not be using your official title or position to lend additional credibility to what you say.

Misuse of Position Scenario 3 of 4

Question: A grant specialist spends much of his free time volunteering for a non-profit organization that receives funds from the Department. In the course of his work, he learns about new policies for grant applications. Before this information is released to the public, he advises the non-profit on how to make their next grant application more compelling. Which prohibitions did he violate?

Answer: The correct answer is 1 and 5. Nonpublic information is information you gain by reason of your federal employment that you know, or should know, has not been released to the general public. You may not use nonpublic information to further your own private interest or that of another.

Misuse of Position Scenario 4 of 4

Question: A federal employee has an outside business providing licensed plumbing services. During his 8:30 - 5 schedule for the federal government he returns 5 phone calls of prospective clients, researches about green plumbing materials, places an online order for bathroom fixtures and makes 20 copies of a flyer he wants to use for his personal business. Which prohibitions did he violate?

Answer: The correct answer is 6. Although minimal, infrequent use of government property may be permitted for personal purposes, this employee has exceeded any minimal standard. Furthermore, there are some activities which are never permitted, including using HHS IT resources for commercial or political purposes, outside fund-raising, gambling, or viewing sexually oriented materials.

Misuse of Position Conclusion: Whether you are using your federal title, computer, time, or the influence you have as a result of your federal employment, you must do so on behalf of the people who pay our salaries - the American people. Whenever in doubt, ask your DEC or EC:

<http://ethics.od.nih.gov/coord.pdf>

**“There is no pillow so soft
as a clear conscience.”**

(French Proverb)

Political Activities - The Hatch Act

The [Hatch Act and political activities](#) are governed by statutes and regulations managed by the US Office of Special Counsel. The Hatch Act restricts the ability of all HHS employees, both full- and part-time, to engage in partisan political activities. Partisan political activities involve the major political parties, including Democratic, Republican, Green, and Libertarian.

For purposes of the Hatch Act, there are two main categories of HHS employees: LESS RESTRICTED and MORE RESTRICTED. The majority of HHS employees are LESS RESTRICTED. This means that on their own time, while away from the office, and without indication of their government employment, they can be politically active in partisan campaigns.

Career Senior Executive Service employees, Administrative Law Judges, and Public Health Service Commissioned Corps officers are among those employees who are MORE RESTRICTED. These employees are prohibited from engaging in partisan political management or campaigns even on their own time and away from work.

There are FOUR things you can never do, whether you are less restricted or more restricted:

1. DO NOT ask for, accept, receive, or be the host of, or the point of contact for any political contribution or fund-raising event.
2. DO NOT use your official authority, official title or appropriated funds to interfere with or affect the result of an election.
3. DO NOT run for political office in a partisan election (except as an independent candidate in specified communities mainly in Maryland and Virginia).
4. DO NOT knowingly solicit or discourage the political activity of any person who has business before HHS.

Additionally almost all employees, even those who are less restricted and whose political activity occurs outside work, after duty hours, or on leave, must:

- NOT wear partisan political buttons on duty;
- NOT engage in political activity while on duty, in any government office, while wearing an official uniform or insignia, or use their government email or computer to conduct political activity (including on your lunch break);
- NOT use their official title in connection with any partisan political activity; AND
- NOT seek support of their candidate through an address to an audience that is composed primarily of individuals that do business with their agency.

More restricted employees (Career SES, ALJ, and Commissioned Corps Officers) are prohibited from engaging in partisan political management or campaigning, even on their own time and away from work. This includes making campaign speeches, distributing literature, organizing rallies and serving as a party delegate. Review the following scenarios and determine the best answer.

Political Activities Scenario 1 of 3

Question: Polly Madison is a mid-level HHS employee who is an avid supporter of Don Marshall, a candidate in a U.S. senatorial contest. She returns to work following the Labor Day holiday with a bumper sticker on her car supporting Mr. Marshall and a campaign button on her jacket. Can she have the bumper sticker on her car?

- A. Yes.
- B. No.

Answer: The correct answer is YES. The Office of Special Counsel, the federal agency that enforces the Hatch Act, permits employees to have a political bumper sticker on their car, even if they park in a government lot.

Political Activities Scenario 2 of 3

Question: Can she wear the campaign button?

- A. Yes.
- B. No.

Answer: The correct answer is NO. Employees cannot wear partisan campaign buttons in the office.

Political Activities Scenario 3 of 3

Question: During Polly's lunch break, at her desk, she does the following activities:

- (1) edits a campaign speech for someone else;
- (2) sends a group email to personal friends, using her government email address and government computer, reminding them to vote;
- (3) makes an online contribution to Don Marshall's campaign; and
- (4) has a political discussion with a co-worker, where she does not ask the co-worker to contribute time or money, but they just talk about the upcoming election.

Which of these activities is allowed?

- A. All.
- B. None.
- C. 2 & 4
- D. 1, 3 & 4

Answer: The correct answer is C. Polly cannot conduct partisan political activities in the work place. This means that she cannot use her government computer to edit a speech or to make a political contribution, even on her lunch break. So why is the email okay? Because it is a brief personal use of the computer and is not "partisan." It is not directed at the success of one candidate or another, but simply urges others to vote without regard to party affiliation. Finally, why can she have the political discussion with a co-worker? She isn't asking her co-worker to vote for or contribute money towards any party or candidate. They are merely talking about current events, like they would talk about the weather.

Political Activities Conclusion: You cannot use your federal position to further the interests of a political party or candidate. If you violate the Hatch Act, the Office of Special Counsel will investigate and you can be suspended or lose your job.

**“The basis of effective government
is public confidence.”**

(John F. Kennedy)

Leaving Government Service: Seeking Employment and Post Employment Activities

Sept. 3, 2002: Heather, the Boeing-employed daughter of Darlene Druyun, a federal employee, sent an encrypted email to Boeing executive Michael Sears encouraging him to recruit her mom for employment. Sears responded, “I met with your mom last week. She informed me of her plans (to retire) and I suggested we chat. She said she needed to wait until she got some of our work completed before she should chat with me.” Heather replied, “Oh! I think she is referring to the tanker deal - might be too much of a conflict right now. She hopes to have the tanker deal made or scrapped by early December.”

Sept. 5, 2002: Heather sent another encrypted email to Sears saying, “It is the tanker lease that prevents her from talking to you right away. She said to contact her on October 1. Let me tell you what she is looking for ...”

Sept. 23, 2002: Health emailed Sears saying, “...(Druyun) is VERY VERY excited. She still wants a COO position like IDS ... she would like to hear from you next week after the 1st.”

Oct. 5, 2002: Sears called Druyun to schedule a meeting to discuss employment.

April 20, 2004: Druyun, age 57, pled guilty to conspiring to violate 18 U.S.C. 208 by negotiating employment with Boeing while she was employed by the Air Force and participating in lease negotiations for 100 Boeing KC 767A tanker aircraft.

Druyun was sentenced to a \$5,000 fine, 150 hours of community service, nine months of jail time, and seven months of home confinement.

- Taken from the Statement of Facts, United States v. Druyun, April 20, 2004

In addition to procurement violations*, Darlene Druyun violated a criminal law that requires employees to recuse themselves from matters affecting potential employers with which the federal employee is negotiating for employment.

* Employees with procurement responsibilities, see the Appendix, page 19.

Under the governing regulation [5 CFR 2635 Subpart F, entitled Seeking Other Employment](#), federal employees cannot participate in any government matter that can affect the financial interests of a potential employer, or their own interest in getting the job. This recusal obligation begins as soon as any of the following things happen:

1. a potential employer makes an unsolicited communication to you regarding employment and you say anything other than “no thanks;”
2. you, personally or through a third party, make any kind of communication to a potential employer by phone, letter, fax, email, resume, or application, regarding employment;
3. a headhunter tells you about a potential employer and you say anything other than “no thanks;” and
4. your failure to disqualify yourself becomes a criminal matter (under 18 USC § 208) when you have begun negotiating with a potential employer with the intention of reaching a mutually satisfactory arrangement regarding employment.

Depending on where you are in your job search, the repercussions could be administrative or criminal. In Druyun's case, they were criminal, and she was sentenced to pay a fine, jail time, and supervised release. Druyun violated the law by awarding a contract to Boeing while negotiating for employment with Boeing. It would also have been a violation of the law for Druyun to work on regulations affecting the aerospace industry and simultaneously negotiate for employment with Boeing, which is a part of that industry.

Your obligation to disqualify yourself from government matters affecting potential employers continues after you get the job, and ceases only when you are unsuccessful in your job search, or are no longer seeking employment.

You are no longer seeking employment when:

1. you or your prospective employer reject the possibility of employment and all discussions of possible employment have terminated;
2. two months have passed since you sent out an unsolicited resume or made an employment inquiry and you received no indication of interest from any of those potential employers; or
3. you resign your government position.

Even after you leave federal employment, criminal laws ([18 USC § 207](#)) and a regulation ([5 CFR § 2641](#)) still govern your behavior. A common misconception employees have about these "post-employment" rules is that they limit where you can work after you leave. This is not the case.

The rules limit your ability to communicate to or appear before the federal government after you leave, but not where you can work. We will cover three rules in this part of the training:

1. Life-Time Ban, which prohibits switching sides in the same specific party matter, applicable to all employees;
2. Two-Year Ban, which prohibits representational contacts about specific party matters that were under your official responsibility in your last year of government service, applicable to all employees; and,
3. One-Year Cooling Off Period for senior employees, which prohibits representational contacts regarding both specific and general matters. For political appointees this ban is extended to two-years by the President's Ethics Pledge.

Government matters fall into two categories:

- ***specific party matters***, and
- ***matters of general applicability***.

The Life-Time Ban and Two-Year Ban deal with specific party matters, for example, a contract, a grant, an application, an investigation, an audit, a law suit, or a study. In a specific party matter you can clearly identify the parties involved. Some examples are:

- a lawsuit has a named plaintiff and defendant,
- a procurement has offerors or bidders,
- a new drug application has a pharmaceutical company applicant.

The life-time ban prohibits you from contacting any part of the federal government (with the exception of Congress) regarding a specific party matter that you worked on while in government service.

What does this mean?

For example, if you work on a contract and leave government service to work for that contractor, you cannot call or meet with any part of the federal government to seek action on that contract. You can make factual inquiries, such as asking when a meeting is scheduled, but you cannot then ask to

reschedule the meeting to benefit your new employer. Asking to reschedule the meeting is representing your new employer in an effort to sway a government decision.

The two-year ban is like the life-time ban in that it deals with specific party matters and prohibits communications to or appearances before any part of the federal government with the intent to obtain governmental action. However, the two-year ban is unlike the life-time ban because it casts a broader net for a shorter period of time:

- it covers specific party matters that were under your official responsibility, even if you did not work on the matter and did not know about it,
- within the last year of your federal service.

Thus for *two years after* you leave government service, you cannot contact or appear before the federal government with the intent to influence governmental action regarding any specific party matter you had *under your official responsibility during your last year of government service*.

There are exceptions to the life-time ban and the two-year ban, but they are generally complicated, and require an ethics official to determine if they apply in your situation. Even after you leave federal service, you can call your ethics official if you have a question about these rules.

Additional rules apply to senior employees. For post-employment purposes, "senior" refers to the following:

- Senate-confirmed Presidential appointees,
- Executive Schedule levels II-V;
- uniformed service officers, pay grades O-7 or above;
- SES, and
- employees in other pay systems with an annual rate of basic pay (excluding locality adjustments) calculated at 86.5% of the basic pay for level II of the Executive Schedule (in 2009 that equals \$153,105). Other pay systems includes Title 42 employees, among other possibilities.

NOTE: This definition of senior is ***not the same as the NIH definition of senior for purposes of the HHS Supplemental Standards of Ethical Conduct***. The NIH definition of senior is applicable when considering whether holding certain financial interests is permissible, and has no relationship to the post-employment use of the term. Seek advice from your IC's DEC or Ethics Specialist/Coordinator.

The one-year "cooling off" rule prohibits you, for one year after leaving your senior position in the federal government, from contacting or appearing before your former agency regarding any matter, whether general or specific, if your communication is made with the intent to influence the government on behalf of another.

Notice the key differences between this rule and the other two we have discussed: the one-year cooling off period does not limit itself to specific party matters, and it is not limited to matters you worked on, or which were under your supervision. Whether the matter is a specific party matter or one of general applicability, whether you participated, supervised or had no involvement at all in the matter, is irrelevant. The rule is an absolute ban against communicating back to your agency for one year after you leave government service.

What is "your former agency" for purposes of this "cooling off" period? If you are appointed by the President and confirmed by the Senate, then you cannot contact anyone in the Department of Health and Human Services. If you work in a staff division, your agency is the Office of the Secretary. If you work in an operating division, e.g., the National Institutes of Health (NIH), your agency is that operating division. Your "former agency," therefore, is the NIH.

Please review the following scenarios and choose the best answer for each situation.

Leaving Government Service Scenario 1 of 7

Question : Meredith is an FDA scientist who routinely works on matters that affect drug companies. Her education and experience would allow her to work in a variety of fields. Meredith's husband has a job offer in Arizona. On Monday Meredith asks a headhunter to look for positions in Arizona for which she would be qualified. On Tuesday she calls a friend who works at the University of Arizona to talk about the job market for scientists in Arizona. On Wednesday her friend calls back and tells her about a possible opening with PharmaX, a pharmaceutical company. On Thursday Meredith forwards her resume to her friend, who then forwards it to a PharmaX representative. On Friday the headhunter calls back with a list of other leads, and Meredith tells the headhunter to schedule interviews. On what day did Meredith's initial obligation to recuse herself begin?

- Monday
- Tuesday
- Wednesday
- Thursday
- Friday

Answer: The correct answer is Thursday. Meredith has no ability to recuse on Monday or Tuesday because she has not identified any potential employers. Her conversations on Monday and Tuesday did not target any particular company or industry, and she gave no limiting instructions to the headhunter. On Wednesday she merely received information from her friend who does not represent PharmaX, and she took no action. On Thursday, however, the moment Meredith forwarded her resume to her friend with the intention that it be sent on to PharmaX, Meredith had an obligation to cease working on any federal matter that could affect PharmaX. On Friday when the headhunter gave Meredith a list of possible employers, she would have another obligation to recuse from all government matters affecting those potential employers.

Additional Question: How would Meredith "recuse herself?"

Answer: Meredith would contact her DEC or EC, and consult with her supervisor. Together, they would discuss which of her assigned duties might affect the potential employers with which she has begun seeking employment; and then she would have nothing to do with those matters. Additionally, she and her supervisor would tell anyone in their office who needs to know that Meredith cannot be involved in any meetings, discussions, phone calls, email chains, etc., regarding those matters from which she is recused.

Leaving Government Service Scenario 2 of 7

Question: Meredith's recusal obligation with regard to multiple potential employers makes it impossible for her to perform her job duties. She faces removal if the situation cannot be resolved quickly. What are her choices?

- A. She resigns to pursue a broad search of all potential employers.
- B. She narrows her job search to one or two potential employers.
- C. She takes annual leave, accepts one job offer, and upon her return recuses from matters affecting that employer and the industry in which that employer operates.
- D. All of the above are possible.

Answer: The correct answer is D, all of the above options are possible. First, Meredith can resign and end the problem. B is an option if Meredith's supervisor determines that she can continue to perform the duties critical to her job by eliminating all but one or two potential employers. However, Meredith must say "no" to all other potential employers for this to be a viable option. And "no" is not postponing discussions for a month or two. Finally, it is possible for Meredith to take leave, and cease working on all matters affecting potential employers, while she interviews and accepts one job. After accepting one job, she could possibly return to work and recuse herself from all government matters affecting that one employer until her last day of work. There are times when even that won't be possible, and Meredith's only choice will be to resign her government position. The moment you consider non-federal employment, contact your DEC or EC (<http://ethics.od.nih.gov/coord.pdf>)

Leaving Government Service Scenario 3 of 7

Question: Ultimately, Meredith chooses PharmaX as her new employer. About six months after working there, her supervisor asks her to call the FDA about a pending drug approval application that Meredith worked on just before leaving the FDA to discuss the potential side-effects of this new drug. Can Meredith make this call?

- A. Yes.
- B. No.

Answer: The correct answer is No. Meredith is prohibited from communicating back to the FDA on behalf of PharmaX regarding any specific party matter she worked on while with the federal government. A drug appeal application is a specific party matter, and making the phone call would be a communication made with the intent to influence the outcome of the approval. If Meredith called simply to ask when a decision could be expected, or if the agency had received a report, that would be permissible because it would not be a representational communication made with the intent to influence government action. Meredith should be careful, however, not to suggest or request that a decision be expedited or a deadline extended, because that would turn a factual inquiry into a communication made with the intent to influence government action.

Leaving Government Service Scenario 4 of 7

Question: Can Meredith's supervisor make the call?

- A. Yes.
- B. No.

Answer: The correct answer is Yes. Meredith's supervisor can make the call. In fact, Meredith can advise her supervisor about the most effective arguments, provided she does not disclose non-public information she learned while with the FDA. Further, she must remind her supervisor not to use Meredith's name during the supervisor's dealings with the FDA.

Leaving Government Service Scenario 5 of 7

Question: If Meredith did not personally work on this drug approval application while employed at the FDA, but someone she supervised did, can she make the call?

- A. Yes.
- B. No.

Answer: The correct answer is No. If the drug approval application was “under her official responsibility” during her last year of federal employment she cannot, for two years after leaving federal service, communicate to or appear before any part of the federal government regarding that same matter.

Leaving Government Service Scenario 6 of 7

Question: Can Meredith continue to work on the drug approval application for PharmaX, even though she worked on the same matter for the federal government?

- A. Yes.
- B. No.

Answer: The correct answer is Yes. The post-employment rules generally do not prohibit behind-the-scenes work, unless you are advising foreign government or foreign political parties. For example, if you want to work for a foreign government-run or -owned hospital, university or pharmaceutical company, then you should contact your DEC or EC immediately to discuss additional post-employment restrictions.

Leaving Government Service Scenario 7 of 7

Question: Could Meredith contact the Commerce Department on behalf of PharmaX to seek that agency’s support in getting the drug approved for foreign market use?

- A. Yes.
- B. No.

Answer: The correct answer is No. The life-time ban follows the specific party matter, wherever it goes, for the lifetime of the matter. So, not only is Meredith prohibited from communicating to her former federal employer about this drug approval, but she is also prohibited from communicating with any other federal entity about this drug approval. The one exception to this is Congress. She is free to communicate with Congress regarding any matter on which she worked as a federal employee.

Leaving Government Service Conclusion: Although you can look for and take a non-federal job, you cannot work on government matters affecting potential employers.

And, after you leave, you cannot use the influence and knowledge you obtained during your federal service to get the federal government to do or not do something for someone else, such as your new employer.

“It takes 20 years to build a reputation and five minutes to ruin it. If you think about that, you’ll do things differently.”

(Warren Buffett)

Financial Disclosure Reporting

Many employees are subject to the financial disclosure requirements outlined in the Ethics in Government Act, and explained in the regulation at [5 CFR § 2634](#). The purpose of requiring employees to file financial disclosure reports is to ensure confidence in the integrity of the Federal Government by verifying that no conflicts of interests exist for employees in the conduct of their job.

There are two types of government-wide financial disclosure, public (form SF-278) and confidential (form OGE-450). Filers are defined by the responsibilities of their position and/or their appointment mechanism. For example, all Senior Executive Service employees file the Public Financial Disclosure Report (SF-278), as do top NIH and IC officials because of the position they occupy. Employees in other positions which may affect an outside entity but with lesser level of responsibility may file the Confidential Financial Disclosure Report (OGE-450).

Each IC Ethics Office manages the financial disclosure program for their respective IC, including notifying employees when to file, which form to file, and reviewing the contents of the report to ensure there is no conflict between an employee's interests and his/her official responsibilities.

Detailed information about financial disclosure reporting is available on the NIH Ethics Program web site, on the [financial disclosure page](#), including defining who files, when reports are due, and who reviews the reports. Individuals selected for positions which require filing the SF-278 must submit their report for clearance prior to beginning the position at NIH. At that time, financial and other interests will be analyzed in light of proposed official duties and any real or apparent conflicts identified and managed.

In addition, the supplemental HHS regulation at [5 CFR § 5502](#) requires certain NIH employees are required to file the Confidential Report of Financial Interests in Substantially Affected Organizations for Employees of the National Institutes of Health, form HHS-717-1. This report is required for all individuals who file the SF-278 or the OGE-450, and for all Clinical Investigators who do not file either the SF-278 or the OGE-450. The purpose of this supplemental report is to disclose additional details specifically about your financial interests in *substantially affected organizations* (SAOs), which is defined in the regulation at 5 CFR 5501.109(b)(10):

- A biotechnology or pharmaceutical company; a medical device manufacturer; or a corporation, partnership, or other enterprise or entity significantly involved, directly or through subsidiaries, in the research, development, or manufacture of biotechnological, biostatistical, pharmaceutical, or medical devices, equipment, preparations, treatments, or products;
- Any organization a majority of whose members are described in paragraph (b)(10)(I) of this section; and
- Any other organization determined by the designated agency ethics official or, in consultation with the designated agency ethics official, by the NIH Director or the NIH Director's designee that is substantially affected by the programs, policies, or operations of the NIH.

Therefore, new employees who will occupy a position designated to file either the SF-278 or the OGE-450 will submit two financial disclosure reports at the beginning. Thereafter, the employee will submit either the SF-278 or the OGE-450 each spring when notified to do so, and will submit a new HHS-717-1 to report any acquisition of a financial interest in an SAO, including purchase, receipt as a gift, or reinvestment of dividends into additional financial interests. It is the employee's responsibility to remain aware of his/her acquisitions and submit the updated HHS-717-1 within 30 days of acquiring the additional financial interest. In addition, the information on SAO interests is used for reviewing intramural clinical protocols, and investigators may be asked to update the information on their holdings on a more frequent basis depending on their participation in clinical protocols.

There is one specific prohibition for certain NIH employees. The HHS regulation noted above defines **NIH Senior** as certain positions at the NIH: NIH level deputy directors, senior staff in the Office of the Director

who report to the NIH Director, IC Director, IC Deputy Directors, IC Clinical Directors, IC Scientific Directors, and IC Extramural Program Officials who report directly to the IC Director. The individuals who occupy these positions are limited in the amount of financial interests they may hold in substantially affected organizations. Seek clarification from your IC ethics official as needed.

Financial Disclosure Conclusion: If you are designated as a filer, it is your responsibility to understand these requirements and submit your financial disclosure reports in a timely manner. Normally, you will be reminded to file the Public (SF-278) or Confidential (OGE-450) Financial Disclosure Report, but you know that it is due each spring, and therefore have a responsibility to have your personal information available to permit you to file in a timely manner. These two financial disclosure reports are filed using an automated system so that once you enter your data, you will be able to “copy” it for the future years, thus decreasing the time needed to complete your annual report.

Conclusion

You’ve just learned about the ethics rules that govern your behavior as a federal employee, both at work and outside of work. While no one expects you to be an expert in ethics, ultimately you are responsible for knowing the ethics rules that apply to you. Your Deputy Ethics Counselor (DEC) and Ethics Coordinator/Specialist (EC) in your Institute/Center (IC) can help you apply the ethics rules to your situation. If you have a question, please review information available here or on the NIH Ethics Program web site, or contact your IC’s [DEC or EC](#) with any comments or questions.

Links

NIH Ethics Program web site <http://ethics.od.nih.gov>

Deputy Ethics Counselor (DEC) <http://ethics.od.nih.gov/decs.pdf>

Ethics Coordinator/Specialist (EC) <http://ethics.od.nih.gov/coord.pdf>

Conflicts of Interest Criminal Statutes (18 USC §§ 201-209, 216)
http://www.oge.gov/laws_regs/statutes.aspx

Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR § 2635)
http://www.oge.gov/laws_regs/regulations/5cfr2635.aspx

Supplemental Standards of Ethical Conduct for Employees of the Department of Health and Human Services (5 CFR § 5501) http://www.access.gpo.gov/nara/cfr/waisidx_07/5cfr5501_07.html

Supplemental Financial Disclosure Requirements for Employees of the Department of Health and Human Services (5 CFR § 5502) http://www.access.gpo.gov/nara/cfr/waisidx_07/5cfr5502_07.html

“Easy to Read” Version of 5 CFR § 5501 and § 5502, the HHS Supplemental Regulations (pdf, 22 pages)
<http://ethics.od.nih.gov/topics/5-CFR-5501-5502-10-26-05.pdf>

The Hatch Act and Political Activity Implementing Regulations http://www.osc.gov/ha_fed.htm

Ethics Provisions in the Procurement Integrity Act <http://ethics.od.nih.gov/topics/procure.htm>

APPENDIX: ADDITIONAL INFORMATION FOR PROCUREMENT STAFF

Government employees who serve as procurement officials as defined in the Procurement Integrity Act are subject to certain prohibitions when involved in the conduct of a procurement. In summary:

Government employees participating personally and substantially in the conduct of a procurement cannot:

1. Seek employment with a competing contractor during the conduct of the procurement unless disqualified from the procurement;

Note: If the contract is for more than \$100,000 and the employee is seeking employment or is contacted by the vendor, the employee must provide a written report of the contact to his/her supervisor and Deputy Ethics Counselor (DEC). The report must be kept for 2 years. The employee must either reject the potential employment or be disqualified from the procurement. Reinstatement following disqualification from the procurement can occur if the contractor is no longer a bidder, or if employment discussions have terminated. Such reinstatement is at the discretion of the Head of the Contracting Authority (in the NIH Office of Administration), it must involve consultation with the DEC, and it must be in writing.

2. Solicit any gifts or services, or accept anything over \$20 in value per occasion (total of \$50 per calendar year) from an employee, representative, or consultant of a competing contractor;
3. Disclose any proprietary or source selection information to any unauthorized person before the award of the contract (applies to anyone with access to the information);
4. If retired prior to January 1, 1997, for two years after participating in a procurement:
 - Participate in any matter on behalf of a competing contractor in negotiations for the award, modifications or extensions of such procurement, including "behind the scene" activities, or
 - Participate on behalf of a competing contractor in the performance of the contract.
5. If retired after January 1, 1997, the contract was over \$10 million, and employee was the procurement or program officer on the contract, or made certain decisions such as approving a modification, the employee cannot receive any compensation from the contractor for one year from the date of the selection or award, last date served in the procurement or program position, or date decisions were made, whichever is later. The employee may accept compensation from another division of the contractor's company if that division does not produce the same or similar products or services as provided in the contract with the Federal agency.

Non-government contractors and other non-appointed consultants cannot:

1. Disclose any proprietary or source selection information to an unauthorized person before the award of the contract (applies to anyone with access to the information).
2. Definitions and specific guidelines are contained in 41 U.S.C. Code 423(b) Subsection 27 and I&I Memorandum DCG 91-3, Procurement Integrity Act Implementation. You may also wish to read the Federal Acquisition Regulation, section 3.104. (See <http://ethics.od.nih.gov/lawreg/FAR3-104.pdf>)

For additional information, contact your IC's Deputy Ethics Counselor or Ethics Coordinator.
(See <http://ethics.od.nih.gov/coord.pdf>)

Web site address: <http://ethics.od.nih.gov/topics/procure.htm>



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