



Reducing Risk. Unleashing Opportunity.

Overview of Federal Conflict of Interest Statutes

Office of Ethics Brown Bag Series

Lisa V. Terry

Senior Vice President and
Chief Ethics Officer

May 16, 2017



What are the Federal Conflicts of Interests Rules?



Government-wide Conflicts of Interest Laws Title 18, U.S. Code

- Apply to ALL federal employees
- Prevent employees from leveraging time and relationships forged in government service to personally benefit themselves or others
- Impose both civil and criminal penalties for violations
- Form the basis for the *Standards of Ethical Conduct for Employees of the Executive Branch*, 5 C.F.R. Part 2635

Bribery of Public Officials with Intent to Influence

18 U.S.C. § 201

- Prohibits bribery of public officials and acceptance of bribes and illegal gratuities by public officials
- “Bribery” is directly or indirectly giving or offering anything of value in exchange for influencing official action by a public official OR a public official seeking or accepting anything of value in exchange for being influenced in official acts
- “Illegal gratuities” are items of value given or accepted merely “for or because of” an official act—do not require *quid pro quo* intent 'to influence' or 'to be influenced' in an official act
- Violations may result in fines up to 3x amount of the bribe, up to 15 years in prison, and disqualification from federal employment

Restrictions on Compensated Representation



Providing Representation before the Executive Branch 18 U.S.C. § 203

- Prohibits employees from seeking or receiving compensation for representing others before a federal court or executive agency (e.g., INS or Treasury) in a “particular matter” in which the U.S. is a party or has a direct or substantial interest
- Includes any communications on behalf of another party with the intent to influence government action
- *Exceptions:* you may represent yourself, an immediate family member (parent, spouse or child), or a person or estate for which you act as a fiduciary

Restrictions on Acting as an Agent or Attorney



Representing Others in Claims Against the Government

18 U.S.C. § 205

- Prohibits a Government employee from acting as an agent or attorney for anyone before a Federal court or agency
- Applies whether or not the representation activity is compensated
- *Exceptions:* representing other employees in personnel administrative proceedings; representing employee nonprofit organizations; representing yourself or an immediate family member; or representing a person or estate for which you act as a fiduciary
- However, exceptions do NOT apply where you have participated officially or have official responsibility in the matter



Restrictions for Former Employees



Post-Government Employment Restrictions 18 U.S.C. § 207

- Imposes restrictions on communications former employees may make to the government on behalf of a third party
- Lifetime ban on communicating to, or appearing before, the Government on behalf of others with the intent to influence in *specific party matters* in which you participated *personally and substantially* during your government service
- 2 year ban on communicating to, or appearing before the Government regarding specific party matters pending under your official responsibility during your last year of government service
- Does not prohibit you from accepting employment with any specific employer, nor providing “behind the scenes assistance”

Restrictions for Current Employees



Personal Financial Conflicts of Interest

18 U.S.C. § 208

- Prohibits employees from participating personally and substantially in any particular matter in which they have a financial interest
- The particular matter must have a *direct and predictable effect* on the financial interest
- Financial interests of certain others are imputed to an employee
- “Imputed interests:” include those of a spouse; minor child; general partner; organization in which an employee serves as an officer, trustee, partner or employee; and any person or organization with whom the employee is negotiating or has an arrangement concerning future employment
- Cure conflicts by recusing from the matter or seeking a waiver

Dual Compensation for Official Duties



Prohibition on Supplementation of Federal Salary 18 U.S.C. § 209

- Prohibits employees from receiving any salary, or any contribution to or supplementation of salary; or anything of value from a non-federal entity as compensation for performing official duties
- You may not accept payment from any source other than the U.S. for performing your official duties
- Intent to influence specific official acts or *quid pro quo* not required
- Examples include: honoraria for official speeches and “golden parachute” packages from former employers

Protecting Sensitive Information



Prohibition on Use of Official Information 18 U.S.C. § 1905

- Prohibits employees from disclosing certain sensitive information which the employee obtains in the course of performing official duties or as a result of Government employment
- Applies to trade secrets and similar confidential information
- Violations may result in fine, removal from office or employment, and/or imprisonment of up to 1 year

Examples for Discussion



- You are speaking on behalf of the Bank at a major industry event. One of the event sponsors approaches you at the event and asks you to lead an impromptu breakout session on EXIM Bank airline transaction processes. In exchange, the sponsor offers you a 50% discount on a roundtrip flight to a destination of your choice on the sponsor's airline.
- An EXIM Bank customer has contacted you about a potential employment opportunity with his company. He believes your familiarity with the EXIM Bank transaction process would be a great asset and improve his working relationship with the Bank.
- Your mother-in-law recently had her application for Social Security benefits denied and has asked you to assist with her appeal.

Any Additional Questions?



Contact:

Lisa V. Terry – (202) 565-3195

Senior Vice President & Chief Ethics Officer and Designated Agency Ethics Official

Felice Smith – (202) 565-3234

Senior Counsel & Alternate Designated Agency Ethics Official (Acting)

Or email any questions to: ethicsadvice@exim.gov