



ETHICS RULES DURING A LAPSE IN APPROPRIATIONS

Applicability of Ethics Rules During a Lapse in Appropriations

You, like all Department of Commerce (DOC) personnel, whether at a bureau or other operating unit, remain subject to the same conflict of interest statutes and ethics regulations that apply during normal duty and non-duty hours, even during a furlough due to a lapse of appropriations. Below is general guidance that may be of interest to you should there be a lapse of appropriations.

Non-Federal Employment and Activities

You may accept employment or engage in business activity, whether compensated or uncompensated, that does not conflict with your DOC position.¹ For example, laws prohibit you from working for a foreign government or engaging in activities that would require you to contact a federal agency or court on behalf of others. You may want to avoid working for a company, organization, university, local government, or other non-federal entity that has interests that might come before you or your Commerce office (e.g., contractor, vendor, grantees, licensees, or regulated entities). Before accepting such employment, you should review the guidance from our [website](#). Ethics approval is not required; however, if you have questions about how the rules apply, you should seek guidance from this office.

The following is a brief summary of the ethics rules related to outside employment:²

- You may not use the authority or title of your public office (your DOC position) for the private gain of yourself, an employer, or client. 5 C.F.R. § 2635.702.
- You may not, with or without compensation, represent your employer or client before any department, agency, or court, where the U.S. Government is a party or has a substantial interest in the matter. 18 U.S.C. §§ 203 and 205.
- Official time and resources may only be used for official purposes and limited authorized activities. 5 C.F.R. §§ 2635.704 and 705. You may not use official time or resources for the benefit of your outside employer, including self-employment activities, regardless of whether it is non-profit or for-profit. However, while personnel who are furloughed, there is no “official time” restriction to engage in outside employment.
- You may not give the appearance that DOC sanctions or endorses your employer, its activities, or services. 5 C.F.R. § 2635.702(b) and (c).
- You may not use or improperly disclose non-public information, including sensitive, classified, or otherwise protected information acquired as part of your official DOC duties, and which is not generally available to the public. 18 U.S.C. § 1905; 5 C.F.R. § 2635.703.
- For a year after you end your engagement with the outside employer (or client), you are considered to have a personal conflict and may not participate in DOC matters where the employer or client is a party or represents a party. 5 C.F.R. § 2635.502.

¹ Non-career SES are constrained with the outside earned income limitations (currently \$31,815 for CY2023).

² Please note this will only trigger the employment notification requirement if it results in departure from federal service.

- If you continue the engagement after any furlough, you may not participate personally and substantially in a particular DOC matter (e.g., contract, grant, license, claim, investigation, or other agency decision) that will directly affect the financial interests of your outside employer or client, or participate where they are a party or represent a party. 18 U.S.C. § 208; 5 C.F.R. § 2635.502.

Gifts and Other Payments

You remain subject to restrictions on gifts, which means you may not accept a personal gift offered because of your official position or from a prohibited source, unless an exception applies, such as a gift from a friend or a gift of \$20 or less.³ A gift is given because of your official position if it would not have been given had you not held the status, authority, or duties associated with the federal position. Prohibited sources include any person with interests that may be affected by your official duties as well as any person seeking official action by, doing, or seeking to do business with, or conducting activities regulated by Commerce. For additional information on gifts, please review our [website](#).

Common exceptions include: (1) gifts personally paid for by a friend, when it is based on your personal friendship and not your federal position, (2) gifts of de minimis value (\$20 or less), per source, per occasion, (3) gifts based on outside business relationships (e.g., your spouse's employer). As a reminder, certain gifts may require prior written approval, which will not be able to be approved during a lapse. For example, if you received approval to personally accept complimentary attendance at a widely attended gathering (WAG)⁴ which will occur during the lapse in appropriations, you may attend. However, you will not be able to receive approval during the lapse. Absent advance written approval, you must pay the fair market value if you wish to attend.

There are also certain items which are excluded from the legal definition of gifts. For example, you may accept any benefits or discounts that are offered to *all* federal employees.

As a reminder, you may not solicit the giving of a gift. If you do, even if the gift might have met an exception, the ethics rules prohibit your acceptance. For this reason, you should beware of starting a crowdsourced campaign to raise funds while you are in a non-pay status. Even where someone else starts it for your benefit, if your DOC position is referenced, you generally will be unable to accept any contributions from entities that are considered DOC prohibited sources. Therefore, you would need to be able to identify and reject any donations made through the crowdsourcing platform that are from any entity that has business before the Department. However, an employee may accept donations from friends or relatives when it is clear that the donations are based on a friendship or family relationship. Before accepting any crowdsourced funds, it would be prudent to seek ethics guidance.

You must also adhere to the gifts between employees' restrictions. The rules generally do not prevent you from offering or accepting financial assistance to another employee. However, you

³ Political appointees may not accept a gift (e.g., WAG invitation) from a lobbyist or lobbying organization unless it is a 501(c)(3) organization or a media company.

⁴ *Id.*

may not give, donate to, or solicit contributions for an official supervisor, and may not accept gifts from employees receiving less pay, absent an exception. For specific guidance on this, please reach back to this office.

Misuse of Government Resources

You must also comply with departmental policies related to use of government resources. For example, the department-wide Chief Information Officer policy generally prohibits use of government equipment for other than official or authorized purposes. There is limited personal use of government equipment. If you are furloughed, there is not authorized limited use as there is no authorized official use. Put simply, if you are furloughed, you may NOT use your government computer, phone, or other devices, and you may NOT use personal devices to access your government account.

Political Activities

Regardless of furlough status, you may not engage in fund-raising for a political party or partisan candidates. You may not run for partisan political office when during a shutdown. You may also not use your official authority or influence to affect the outcome of an election. If you are a career SES employee or NOAA Corps officer, you also may not assist a campaign or hold a party office. It is worthwhile for you to review the Office of Special Counsel quick [guide](#) to avoid social media missteps. For additional information on political activities, please review our [website](#).

Public Financial Disclosure Filer

You remain subject to the periodic transaction reporting (OGE 278-T) filing requirement of certain transactions of securities. For additional information on periodic transaction reporting, please review our [website](#). NOTE: This is a very narrow and limited exception to the prohibition on using your government computer during a lapse, for those furloughed.

This handout is for informational purposes only and is not a substitute for advice from an [ethics official](#). Please check our [website](#) for additional ethics guidance and materials.