

CHAPTER 733

ETHICS

- 1. PURPOSE.** To furnish information on ethics expected and required of all Federal employees.
- 2. ASSISTANCE.** Please refer to Chapter 001 of this Manual for the telephone number to call for additional information or further assistance relative to this Chapter.
- 3. GENERAL ETHICS PRINCIPLES.** The foundation for policy on ethical conduct is Executive Order 12674. Under the Executive Order and Title 5 of the Code of Federal Regulations, Part 2635, the following general principles apply to every employee:
 - a. Public service is a public trust requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.
 - b. Employees shall not hold financial interests that conflict with the conscientious performance of duty.
 - c. Employees shall not engage in financial transactions using nonpublic government information or allow the improper use of such information to further any private interest.
 - d. An employee shall not, except as permitted by Subpart B of Part 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 nonperformance of the employee's duties.
 - e. Employees shall put forth honest effort in the performance of their duties.
 - f. Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the government.
 - g. Employees shall not use public office for private gain.
 - h. Employees shall act impartially and not give preferential treatment to any private organization or individual.
 - i. Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.
 - j. Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official government duties and responsibilities.

k. Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

l. 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.

m. 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 handicapping condition.

n. Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in Part 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.

4. OUTSIDE EMPLOYMENT. The general principle is that an employee must not engage in any outside employment that might result in a conflict or apparent conflict with his/her official government responsibilities. Obviously, a rule of reason must be applied to this broad language, because almost any manner of outside employment might result in an apparent conflict with an employee's responsibilities. Government-wide regulations issued by the Office of Personnel Management (OPM) are phrased in terms of outside employment or "other outside activity" not compatible with "the full and proper discharge of the duties and responsibilities of... government employment." By way of amplification, incompatible activities include those where an employee receives a fee or something of monetary value under circumstances that may result in a conflict of interest or create the appearance of such a conflict.

Also prohibited is outside employment that tends to impair the mental or physical capacity of an employee to perform his/her duties acceptably. Finally, a separate criminal statute prohibits an employee from receiving a salary or anything of monetary value from a private source as compensation for services to the government.

5. FINANCIAL INTERESTS. Related to the restrictions on outside employment is a restriction on financial interests. Employees are not permitted to have direct or indirect financial interests that conflict substantially, or appear to conflict substantially, with their duties and responsibilities as Federal employees.

6. DISCLOSURE OF INFORMATION. Within the scope of ethical conduct, there is a general prohibition against an employee using official information that has not been made available to the general public to further a private interest. This prohibition immediately suggests a discussion of the Freedom of Information Act (FOIA) (Public Law 93 502), the Privacy Act (Public Law 93 579), and the provisions of the Civil Service Reform Act for protecting whistleblowers.

a. The Freedom of Information Act is a misnomer since it deals not with information generally, but nearly exclusively with access to activity records. No one is legally obliged to answer questions under FOIA, perform research, or give a point of view on a given matter.

Neither can an individual be stampeded into providing records on the spot. To invoke the Act, requesters must follow activity procedures that ordinarily call for a request to be made in writing. After a request has been received, an activity still has ten working days to decide whether the records requested should be withheld or disclosed.

b. The Privacy Act is even more limited since its coverage is confined not only to records, but records in a "system of records." To put it another way, someone cannot invoke the Privacy Act simply because an activity has a record on him/her. It must also be a record within a system of records. A system of records under the Privacy Act means a group of any records under the control of any activity from which information is retrieved by the name of the individual or by some identifying characteristic particular to the individual, such as a person's Social Security Number.

c. The law on whistleblowing protects an employee or applicant for employment against reprisal for disclosing information. This protection extends to any disclosure where the individual "reasonably believes" the information evidences either a violation of any law, rule, or regulation, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety.

Disclosure of the information is not protected if it is specifically prohibited by law or specifically required to be kept secret in the interest of national security. Thus, a whistleblower would not be protected if he/she wrongfully discloses records covered by the Privacy Act. Nor would this protection extend to a similar disclosure of properly classified information. However, this area of records and information disclosure is so technical and specialized that the advice of the activity's legal counsel should be sought.

7. MISUSE OF INFORMATION. The prohibition on misuse of official information, as with whistleblowing, extends to information generally and not just records. On the other hand, it deals with the use of information and not merely disclosure. Mere disclosure, therefore, may not be enough for this provision to be applicable. Moreover, the information must be used to further a private interest. The usual defense invoked when an employee is accused of leaking information to the press or others is that the public interest is served by bringing the information to the attention of others. The more discernible the public interest, the less likely it would be that an employee could be held accountable. What contrasts this prohibition from the others and what suggests its continued vitality is its purpose which is to prevent employees from using official information for their own private benefit or the benefit of others.

8. POLITICAL ACTIVITY. The law on prohibited political activity is commonly known as the "Hatch Act." Because it restricts First Amendment rights of employees in the interest of maintaining the independence and integrity of the civil service, it has long been the subject of controversy. The Hatch Act has been challenged several times in the Supreme Court. The Court has said that the First Amendment right of political association and participation is not absolute. Therefore, Congress may regulate political activities of Federal employees to promote the efficiency and effectiveness of public service. The Supreme Court has recognized, however, that the challenge is to strike a proper balance between the interests of the employee as a citizen and the interests of the government in fostering an independent civil service.

a. *Employees may:*

- (1) Register and vote as they choose in any election.
- (2) Express their opinions as individuals, privately and publicly, on all political subjects and candidates as long as they do not take an active part in partisan political management or partisan political campaigns.
- (3) Wear a political badge or button or display a political sticker on their private automobile, subject to work related limitations.
- (4) Make a voluntary campaign contribution to a political party or organization.
- (5) Accept appointment to public office, provided service in the office will not conflict or interfere with the efficient discharge of their Federal duties.
- (6) Participate in a nonpartisan election either as a candidate or in support of (or in opposition to) a candidate and, if elected, serve in the office if such service will not conflict or interfere with their Federal duties. *An election is **partisan** if any candidate for an elected public office is running as a representative of a political party whose presidential candidate received electoral votes in the last presidential election.*
- (7) Serve as an election clerk or judge, or in a similar position, to perform nonpartisan duties as prescribed by state or local law.
- (8) Be politically active in connection with an issue not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance, or similar issue.
- (9) Participate in the nonpartisan activities of a civic, community, social, labor, professional, or similar organization.
- (10) Be a member of a political party or other political organization, attend meetings, and vote on issues, but may not take an active part in managing the organization.
- (11) Attend a political convention, rally, fund raising function, or other political gathering, but may not take an active part in conducting or managing such gatherings.
- (12) Sign petitions, including nominating petitions, but may not initiate them or canvass for signatures if they are nominating petitions for candidates in partisan elections.
- (13) Petition Congress or any member of Congress, such as by writing to their Representatives and Senators to say how they think they should vote on a particular issue.

b. *Employees may not:*

(1) Be a candidate for public office in partisan elections, but may run for office as described in paragraph 8a(6) of this Chapter. Exemptions in certain communities are discussed in paragraph 8d of this Chapter.

(2) Become a partisan candidate for nomination or election to public office.

(3) Campaign for or against a political party, a member of a national, state, or local committee of a political party, an officer or member of a committee of a partisan political club, or be a candidate for any of these positions.

(4) Serve as an officer of a political party, a member of a national, state, or local committee of a political party, an officer or member of a committee of a partisan political club, or be a candidate for any of these positions.

(5) Participate in the organizing or reorganizing of a political party, organization, or club.

(6) Solicit, receive, collect, handle, disburse, or account for assessments, contributions, or other funds for a partisan political purpose or in connection with a partisan election.

(7) Sell tickets for or otherwise actively promote such activities as political dinners.

(8) Take an active part in managing the political campaign of a candidate for public or political party office.

(9) Work at the polls on behalf of a partisan candidate or political party by acting as a checker, challenger, or watcher, or in a similar partisan position.

(10) Distribute campaign material in partisan elections.

(11) Serve as a delegate, alternate, or proxy to a political party convention.

(12) Address a convention, rally, caucus, or similar gathering of a political party in support of or in opposition to a candidate for public office or political party office, or on a partisan political question.

(13) Endorse or oppose a candidate in a partisan election through a political advertisement, broadcast, campaign literature, or similar material.

(14) Use their automobile to drive voters to the polls on behalf of a political party or candidate in a partisan election.

c. *Penalties for Violation.* The Merit Systems Protection Board (MSPB) will enforce political activity restrictions for employees in competitive positions. The Special Counsel of MSPB will make investigations and prosecute in cases involving violations. The most severe penalty for violation is removal, and the minimum penalty is suspension without pay for 30 days.

d. Special rules apply to residents of certain communities with large numbers of Federal employees. Any community in the immediate vicinity of Washington, DC, and any municipality where the majority of voters work for the Federal government, may ask for partial exemption from the political activity restrictions.

e. Employees who have questions concerning the laws, regulations and policies governing political activities may obtain an advisory opinion by telephoning the Office of Special Counsel, 1-800-854-2824.

9. EMPLOYMENT OF RELATIVES (NEPOTISM)

a. The only civil service law which speaks specifically to the employment of relatives is 5 USC Chapter 73. Section 3110 prohibits a public official from appointing or advocating the appointment, employment, promotion, or advancement of his/her relatives. It does not per se prohibit relatives from being employed in the agency concerned. Thus, agency regulations adopted under this section must be designed to implement the statutory proscription and may not contain an absolute prohibition.

b. Section 3110 also specifically defines the term "relative" as including "father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister. There is no authority under section 3110 for an agency to enlarge the statutory definition of relative to include any other individuals for purposes of applying the prohibition in that section.

c. An activity may prohibit the employment of relatives if it can justify this prohibition on conflict of interest grounds pursuant to Executive Order 12674 and 5 CFR Part 735 (governing employee conduct) or other reasons which might be disruptive to work and interfere with the orderly operation of the activity mission. While there is some latitude in this area, the decisions must be consistent with the EEO laws prohibiting discrimination on the basis of sex and marital status, as well as the merit system principles embodied in the Civil Service Reform Act (5 USC Chapter 23).

10. GIFTS. Generally, employees are prohibited from giving, donating to, or soliciting contributions for a gift to an official superior. Also prohibited is an employee receiving a gift from another employee who receives less pay than himself/herself, unless the gift falls under a specific exception. A gift is an item or a service of monetary value, but does not include modest items of food and refreshments, such as beverages and doughnuts, greeting cards, plaques, certificates and trophies, or equally shared costs of carpooling. A superior may never coerce a gift from a subordinate, no matter what the value. On an occasional basis, including any occasion on which gifts are traditionally given or accepted, items other than cash with an

aggregate market value of \$10 or less per occasion may be given, or refreshments may be given to be shared in the office. On special infrequent occasions, e.g., marriage, illness, birth of a child, retirement or resignation, a gift may be given to an official superior.

11. LIMITS ON EMPLOYEE TEACHING, SPEAKING, AND WRITING

ACTIVITIES. The Ethics in Government Act placed broad restrictions on Federal employees about accepting money, or anything of value, in exchange for making an appearance, giving a speech, or writing an article outside of their official duties. Since the case law in this area is still evolving, employees involved in this type of outside activity should obtain an opinion on the matter from the activity's designated ethics officer, or call Human Resources Office (HRO), Norfolk.